

facilities for the export of natural gas at the International Boundary between the United States and Mexico in San Diego County, California. SDG&E states that it seeks authorization to modify these facilities to enable gas to be imported as well as exported through the facilities, pursuant to a mutual assistance agreement with a Mexican utility, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll free at (866) 208-3676, or for TTY contact (202) 502-8659.

Any questions concerning this application may be directed to Carolyn F. Corwin, Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC 20004, or call (202) 662-5338 or fax (202) 778-5338.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party

to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

*Comment Date:* April 1, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4-638 Filed 3-19-04; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL04-87-000]

#### **Southern Company Services, Inc.; Order Proposing to Find Agreements Unjust and Unreasonable Pursuant to Section 206 of the Federal Power Act**

March 16, 2004.

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

1. On February 27, 2004, the Commission inadvertently failed to act on two rollover agreements filed by Southern Company Services, Inc. (Southern),<sup>1</sup> which resulted in their becoming effective by operation of law. This order provides Southern an opportunity to argue to the Commission in a paper hearing why these agreements should not be found to be unjust and unreasonable because certain provisions in the agreements limit the transmission customers' rollover rights in a manner contrary to Commission policy. Pursuant to section 206 of the Federal Power Act,<sup>2</sup> the Commission initiates this proceeding in which this filing may be made. This action benefits customers by allowing the Commission

<sup>1</sup> Southern Company Services, Inc. acts as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively "Southern Companies").

<sup>2</sup> 16 U.S.C. 824e (2000).

to consider whether these limitations on transmission customers' rollover rights are consistent with Commission policy.

### Background<sup>3</sup>

2. On December 30, 2003, in Docket No. ER04-353-000, Southern filed two executed rollover service agreements for continued firm point-to-point transmission service under the Southern Companies Open Access Transmission Tariff (OATT). The service agreement between Southern Companies and Oglethorpe Power Corporation (Oglethorpe) was to become effective on December 1, 2003 with service continuing until November 30, 2004. The service agreement between Southern Companies and Calpine Energy Services, LP (Calpine) was to become effective on January 1, 2004 with service continuing until December 31, 2004.

3. Notice of Southern's filing was published in the **Federal Register**, 69 FR 2346 (2004), with protests and interventions due on or before January 20, 2004. On January 20, 2004, Calpine filed a motion to intervene and protest. On February 4, 2004, Southern filed an answer to Calpine's protest.

4. In its protest, Calpine argues that Southern is attempting to restrict improperly Calpine's rights to renew or rollover its transmission rights. Section 2.2 of the pro forma OATT, Calpine states, provides that an existing long-term (one year or longer) firm transmission customer has the right to continue to take transmission service when the contract expires, rolls over, or is renewed. The Commission has concluded, Calpine adds, that once a transmission provider evaluates the impact on its system of providing transmission service to a customer and decides to grant that customer's request for transmission service, the transmission provider must plan and operate its system with the expectation that it will continue to provide transmission service should the customer request rollover in a timely manner.

5. The Commission did not act on the filing by February 27, 2004, and the two rollover agreements accordingly became effective by operation of law.<sup>4</sup>

### Discussion

6. When the Commission inadvertently failed to act by February 27, 2004, Southern's two rollover transmission service agreements became

<sup>3</sup> To the extent necessary, the various filings and submittals in Docket No. ER04-353-000 are made part of the record in Docket No. EL04-87-000.

<sup>4</sup> 16 U.S.C. 842d (2000).

effective by operation of law. Both of these agreements are rollovers of previous agreements. In previous cases, the Commission directed Southern to remove added restrictions on the right of the transmission customer to roll over its service.<sup>5</sup> In both of the proposed agreements here, however, Southern has again included provisions that would limit the rollover rights of the transmission customers, Oglethorpe and Calpine, to continue to receive firm point-to-point transmission service.

7. Section 5.0 of the agreement for continued firm point-to-point transmission service between Southern Companies and Oglethorpe at issue here and section 5.0 of the agreement for continued firm point-to-point transmission service between Southern Companies and Calpine at issue here are identical except for certain dates. Section 5.0 states:

The Transmission Provider has determined that after [December 1, 2004 for Oglethorpe and December 31, 2004 for Calpine] insufficient capacity exists to accommodate both the future rollover by the Transmission Customer of this Rollover Service Agreement and to provide service to Transmission Customers having an earlier priority for transmission service. Therefore, the Transmission Customer's right to continue to take transmission service hereunder (in whole or in part) after [December 1, 2004 for Oglethorpe and December 31, 2004 for Calpine] is expressly conditioned on the availability of sufficient transmission capacity after the following Transmission Customers exercise their rights to transmission service or to roll over their respective service agreements:

\* \* \*

Additionally, the Transmission Provider has determined that 7500 MW of transmission capacity are needed to meet its forecasted native load growth for 2003 to 2011. The reservations for transmission capacity necessary to meet this native load growth forecast are identified on OASIS, and the reservations most likely to be used to schedule deliveries are modeled in the Base Case Load Flows used to conduct studies under the Tariff. In accordance with Order No. 888-A, the Transmission Customer's right to continue to take transmission service (in whole or in part) under this Rollover Service Agreement is expressly conditioned upon the availability of sufficient transmission capacity after the allocation of capacity to meet the

Transmission Provider's native load needs. The Transmission Customer's right to continue to take transmission service (in whole or in part) under this Rollover Service Agreement is also expressly conditioned upon the availability of sufficient transmission capacity after the requests for transmission service on the Georgia Integrated Transmission System having an earlier priority than the Transmission Customer (if any) have been accommodated.

Upon receipt of a request by the Transmission Customer to rollover service under this Rollover Service Agreement, the Transmission Provider will, within a reasonable amount of time, notify the Transmission Customer which (if any) of the above Transmission Customers have exercised their rights to transmission service or to rollover their respective service agreements and will also notify the Transmission Customer of the amount (if any) of transmission capacity that the Transmission Customer may rollover for purposes of section 2.2 for continued transmission service hereunder after [December 1, 2004 for Oglethorpe and December 31, 2004 for Calpine]. Such analysis may or may not be feasible until the expiration of the last deadline for the above Transmission Customers to exercise their respective rights to transmission service or to rollover their respective transmission service agreements. If the Transmission Customer notifies the Transmission Provider of the Transmission Customer's intent to rollover this service agreement but it remains unclear whether sufficient capacity will be available to accommodate the rollover request because not all of the above-described deadlines have passed, the Transmission Provider will endeavor to offer the Transmission Customer conditional service for the affected amount of transmission capacity.

8. Since issuing Order Nos. 888 and 888-A,<sup>6</sup> the Commission has consistently reaffirmed its policy in orders directed to Southern and other parties that a transmission provider can deny a customer the ability to roll over a long-term (one year or longer) firm point-to-point transmission service agreement only if the 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. In short, any limitations to rollover rights must be stated clearly in the original transmission service agreement and the transmission provider must plan and operate its transmission system with the expectation that it will continue to provide service to the customer should the customer request rollover.<sup>7</sup>

9. In sum, the Commission has determined that once a transmission provider commits to provide long-term firm transmission service to a customer without including any restrictions on that customer's rollover rights in the original agreement, that provider is required to allow rollover of the agreement. To include provisions to the contrary would be unjust and unreasonable; a just and reasonable agreement would be one that does not include rollover restrictions like those found in section 5.0 of each of the agreements that are at issue here. Therefore, pursuant to section 206 of the Federal Power Act, the Commission will provide Southern an opportunity to argue in a paper hearing why the agreements should not be found to be unjust and unreasonable and institutes this proceeding in which the filing may be made.

10. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, Section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to customers, we will establish the statutorily-directed refund effective date, in this context the date that we revise the two rollover transmission service agreements, at the earliest date allowed,<sup>8</sup> 60 days after publication of the order initiating the Commission's investigation in Docket No. EL04-87-000 in the **Federal Register**. In addition, section 206

<sup>7</sup> E.g., Southern Company Services, Inc., 103 FERC ¶ 61,370 at P 5 & n. 6 (2002); *accord* Constellation Power Source v. American Electric Power Service Corporation and Southwest Power Pool, 100 FERC ¶ 61,157 at P 25-28 (2002), *reh'g denied*, 102 FERC ¶ 61,142 at P 8-41 (2003); *see* Tenaska Power Services Company v. Southwest Power Pool, 99 FERC ¶ 61,344 at P 15-18 (2002), *reh'g denied*, 102 FERC ¶ 61,140 at P 14-47 (2003); Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,665; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,197-98.

<sup>8</sup> *See, e.g.,* Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

<sup>5</sup> *See* Southern Company Services, Inc., 103 FERC ¶ 61,117 at P 6-5 (2003); Southern Company Services, Inc., 102 FERC ¶ 61,319 at P 10 (2003).

<sup>6</sup> *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public 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*, 225 F.3d 667 (DC Cir. 2000), *aff'd*, 535 U.S. 1 (2002).

requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by June 30, 2004.

#### The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), the Commission hereby institutes an investigation of Southern's rollover transmission service agreements with Calpine and Oglethorpe and why these agreements should not be found to be unjust and unreasonable because the agreements limit the transmission customers' rollover rights in a manner contrary to Commission policy.

(B) Southern is hereby given the opportunity, within 21 days of the date of this order, to argue to the Commission in a paper hearing in Docket No. EL04-87-000 why the two rollover transmission service agreements should not be found to be unjust and unreasonable because the agreements limit the transmission customers' rollover rights in a manner contrary to Commission policy.

(C) The refund effective date in Docket No. EL04-87-000 will be 60 days following publication of this order in the **Federal Register**.

(D) Any interested person desiring to be heard in these proceedings should file notices of intervention or motions to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214) within 21 days of the date of this order.

(E) Responses to the show cause submissions filed pursuant to Ordering Paragraphs (B) and (D) above may be submitted by the parties to the proceeding within 15 days of the date of filing of the submissions.

(F) The Secretary shall promptly publish a copy of this order in the **Federal Register**.

By the Commission.

**Linda Mitry,**

*Acting Secretary.*

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#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. RP04-54-001]

##### Young Gas Storage Company, Ltd.; Notice of Tariff Filing

March 1, 2004.

Take notice that on February 24, 2004, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 47E, to become effective December 13, 2003.

Young states that this tariff sheet corrects the Available Daily Withdrawal Quantity formula applicable to Young's storage field that was recently revised in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the e-Library link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Linda Mitry,**

*Acting Secretary.*

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#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Tapoco Project No. 2169-020]

##### Alcoa Power Generating, Inc., North Carolina/Tennessee; Notice of Availability of Environmental Assessment

March 15, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects (staff) has reviewed the application for a new major license for the Tapoco Project, located on the Little Tennessee and Cheoah Rivers in Graham and Swain Counties, North Carolina and Blount and Monroe Counties, Tennessee, and prepared an environmental assessment (EA) for the project. The project affects Federal lands of the U.S. Forest Service and the National Park Service.

In this EA, the staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA and application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. Register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Tapoco Project No. 2169-020" to all comments. For further information, please contact Randy Yates by e-mail at [lorance.yates@ferc.gov](mailto:lorance.yates@ferc.gov) or phone 770-452-3784.

The Commission strongly encourages electronic filings. Comments may be filed electronically via the Internet in