103 FERC ¶ 61,279
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc. Docket Nos. ER03-386-000
ER03-386-001
ER02-2455-000
ER02-2015-001

ORDER ACCEPTING NOTICE OF CANCELLATION AND CONDITIONALLY ACCEPTING INTERCONNECTION AGREEMENT AS MODIFIED

(Issued June 4, 2003)

1. In this order we conditionally accept for filing, an Interconnection Agreement (IA) between Athens Development Company, L.L.C. (Athens) and Georgia Power Company (Georgia Power). In addition, we accept a Notice of Cancellation and grant waiver of the Commission's 60-day notice requirement to permit an effective date of January 6, 2003, as requested. This action benefits customers by facilitating the addition of new generation to meet customer needs.

Background

2. Athens proposes to construct a 564-MW generation facility in Clarke County, Georgia and to interconnect its facility to the electric transmission system of Georgia Power. On June 5, 2002, Southern Company Services, Inc. (Southern), as an agent for Georgia Power, filed an IA proposing an effective date of May 6, 2002.

3. On July 30, 2002, in Docket No. ER02-2015-000, a letter order was issued pursuant to delegated authority accepting the IA for filing, subject to modification. Georgia Power was directed to revise the IA to be consistent with Commission policy.[1]

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[1]Specifically, the July 30, 2002 unpublished letter order directed Georgia Power to revise the IA to: (1) provide transmission credits to Athens; (2) state that the credits will reflect interest on the monies paid from the date of collection until the date the credit is paid; and (3) state that operation and maintenance charges for network upgrades (upgrades are at or beyond the point where Athens connects to the grid) will not be

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On August 9, 2002, Southern filed a Notice of Cancellation of the IA. Southern stated that the IA terminated in accordance with its terms under Section 17.25. It argued that because the IA was expressly conditioned upon the Commission's acceptance of all provisions without change or condition, the changes required in the July 30, 2002, order caused the IA to terminate in accordance with Section 17.25. Athens filed a motion to intervene and protest on September 6, 2002. On September 20, 2002, Southern filed a "Motion for a Tolling Order" in these proceedings. Southern requested that the Commission delay action on this proceeding for 90 days to allow the parties to continue to negotiate a mutually acceptable interconnection arrangement. On October 8, 2002, the Commission issued an Order Deferring Action Pending Negotiations,[2] which allowed the parties to negotiate a new IA.

4. On January 6, 2003, Southern filed a revised IA in Docket No. ER03-386-000 to replace the previously filed and accepted IA. On March 6, 2003, the Director, Division of Tariffs and Market Development-South, issued a deficiency letter requesting additional information. On April 7, 2003, Southern filed its response.

Notice and Interventions

5. Notice of Southern's January 6, 2003 filing was published in the Federal Register, 68 Fed. Reg. 2329 (2003), with comments, protests, and motions to intervene due on or before January 27, 2003. On January 27, 2003, Athens filed a motion to intervene and comments in support of the IA. Notice of Southern's April 7, 2003 response to the deficiency letter was published in the Federal Register, 68 Fed. Reg. 23,983 (2003), with comments, protests, and motions to intervene due on or before May 9, 2003. No additional comments or interventions were filed.

Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules Practice and Procedure, 18 C.F.R. § 385.214 (2003), Athens' timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. New Interconnection Agreement

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[1](...continued)
charged, and to file a revised Appendix B designating these facilities as network facilities.

[2]Southern Company Services, Inc., 101 FERC ¶ 61,002 (2002) (Southern).

1. Direct Assignment of Interconnection Facilities

7. Georgia Power has directly assigned the total estimated costs of the interconnection facilities, including network upgrades, to Athens, stating that this has been mutually agreed upon.[3] Specifically, Section 5.2(b) of the IA states that Athens, for consideration in the form of extended milestones in Appendix B, agrees to accept full cost responsibility for all the upgrades.

8. In Consumers Energy Company, 96 FERC ¶ 61,132 (2001) (Consumers), the Commission clarified its interconnection policy to provide that it is just and reasonable to spread the costs of short-circuit and stability upgrades among all transmission customers and to provide credits to the generators that funded the upgrades after transmission service begins. The Commission rejected the direct assignment of integrated grid facilities even if those facilities would not have been installed but for a particular request for service. Further, in Entergy[4] the Commission clarified that network facilities include all facilities at or beyond the point where the customer or generator connects to the grid (because these are facilities that would provide system-wide benefits). This prohibition is without distinction or regard as to the purpose of the upgrade (e.g., to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration). Some of the facilities at issue in the instant filing are facilities at or beyond the point where the customer connects to the grid. Georgia Power is directed to revise the IA to be consistent with the Commission's policy in Consumers and Entergy within 30 days of the date of this order.

9. In addition, the IA does not provide for interest on monies paid from the date of collection until the date the transmission service credit is reimbursed. Consistent with the Commission's order in American Electric Power Service Corporation, 97 FERC ¶ 61,098 (2001), Georgia Power is directed to revise the IA to provide that the transmission credits

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[3]As detailed in Appendix B, these facilities include a new Tillman-Athens 230 kV interconnection substation, construction to loop the Athena-Center 230 kV line into the new substation, fiber optic links and relay modifications at the Center and Athena substations, and replacement of three overstressed circuit breakers at the Athena substation.

[4]Entergy Gulf States, Inc., 98 FERC ¶ 61,014 (2002), reh'g denied, 99 FERC ¶ 61,095 (2002) (Entergy). See also, Entergy Services, Inc., 95 FERC ¶ 61,437 (2001), reh'g denied, Entergy Services, Inc., 96 FERC ¶ 61,311 (2001), aff'd, Entergy Services, Inc. v. FERC, No. 01-1487, slip op. (D.C. Cir. Feb. 18, 2003).

will reflect interest on the monies paid from the date of collection until the date the transmission service credit is reimbursed, consistent with 18 C.F.R. § 35.19a(a)(2).

10. Sections 5.2(a) and 5.4 provide that Athens will be charged for the operation and maintenance (O&M) of the interconnection facilities. In Duke Energy Corporation, 95 FERC ¶ 61,279 (2001), the Commission held that the direct assignment of O&M charges is improper where the facilities are network upgrades. The facilities at issue here include facilities that are at or beyond the point where Athens, the generator, connects to the grid, and thus provide system-wide benefits to the grid. Accordingly, Georgia Power is directed to remove provisions in the IA that assess O&M charges for network upgrades consistent with this finding and file a revised Appendix B designating the facilities listed in item no. 7 as network upgrades.

11. While we require this IA to conform to the Commission's interconnection pricing policy, we note that in our April 28, 2003, White Paper in Docket No. RM01-12-000, we stated that allowing participant funding, i.e., direct assignment of network upgrades, on the basis of having an independent entity perform transmission planning and related cost allocation is a transitional approach that could be used in anticipation of an RTO or ISO assuming operational control of the regional transmission grid within a year (White Paper, Appendix A at p. 15-16).[5] Once SeTrans has selected its ISA and received the necessary regulatory approvals, and is conducting a regional planning process, that entity can review IAs and make decisions on which transmission upgrades can be participant funded. Further, we note that Section 12.3 (Regulatory Filings) of the IA permits either party to file (pursuant to Sections 205 or 206 of the FPA) for changes in terms and conditions, charges, classification of service, or for termination of the IA and that the IA may be changed to reflect determinations made with respect to such a filing. Accordingly, Southern or Athens may exercise their rights to seek participant funding prospectively for this IA once an independent entity has been certified for making participant funding decisions.[6]

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[5]We also note that the June 27, 2002, Petition for Declaratory Order filed by the SeTrans RTO Sponsors in Docket No. EL02-101-000 links the concept of participant funding for the Sponsors to an independent entity (i.e., the Independent System Administrator) being in place that would be responsible for, among other things, making independent decisions regarding the transmission system. (See, e.g., June 27 filing at 48-57).

[6]Further, we note that in either case (the current pricing policy as applied here or under a participant funding policy) the generator pays for any upgrades initially and then

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12. Section 5.2(b) states that:

> [N]otwithstanding any other provision of this Agreement, Generator expressly waives and disclaims any and all present and/or future right (which rights could exist through a future modification to this Agreement or otherwise) to receive or be reimbursed for amounts associated with its payment of the costs of such facilities under this Agreement . . . notwithstanding that FERC may require such refunds, payments and/or credits . . . .

This language would not allow the Commission to impose requirements regarding the costs of the interconnection. We find this language to be an impermissible limitation on the Commission's statutory obligation to ensure just and reasonable rates. Accordingly, Georgia Power is directed to remove this part of Section 5.2(b) in a compliance filing within 30 days.

2. Transmission Line Outages

13. Section 5.2(a) states that the generator will reimburse Georgia Power for all costs and expenses caused by or reasonably related to scheduled transmission line outages associated with interconnecting Athen's interconnection facilities to the Georgia Power electric system. We direct that before Georgia Power charges Athens, or Athens reimburses Georgia Power, for any costs or expenses discussed in Section 5.2(a), it must make a Section 205 filing pursuant to Part 35 of the Commission's regulations together with appropriate cost support.

C. Notice of Cancellation and Compliance Filing

14. As noted above, in Southern, the Commission deferred action on the Notice of Cancellation in Docket No. ER02-2455-000. Here, we shall accept the Notice of Cancellation for the original IA in that docket and make it effective January 6, 2003, as requested. In addition, because Georgia Power has complied with the directive to file an amended IA, which has superseded the original IA, Georgia Power's compliance filing in Docket No. ER02-2015-001 is moot.

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[6](...continued)
either receives transmission credits once the delivery component of transmission service begins or, if participant funded, does not receive credits. We also note that in this case, no delivery service is due until June 2006 (the scheduled Commercial Operation Date).

D. Effective Dates

15. Southern requests an effective date of January 6, 2003, both for the revised IA with Athens and for the Notice of Cancellation. Consistent with Central Hudson,[7] waiver of the Commission's 60-day notice requirement is granted to permit an effective date of January 6, 2003, as requested for both filings.

The Commission orders:

(A) Georgia Power's request for waiver of the Commission's 60-day prior notice requirement is granted.

(B) Georgia Power is directed to make a compliance filing within 30 days as discussed in the body of the order.

(C) Georgia Power's Interconnection Agreement is hereby accepted, as modified, subject to a compliance filing pursuant to Ordering Paragraph (B) above.

(D) Georgia Power's Notice of Cancellation is hereby accepted, to become effective January 6, 2003.

(E) Georgia Power's compliance filing in Docket No. ER02-2015-001 is hereby moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[7]See, e.g., Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106 at 61,338, reh'g denied, 61 FERC ¶ 61,089 (1992) (Central Hudson).