

129 FERC ¶ 61,253  
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 No. ER09-88-003

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENTS AND  
ORDERING COMPLIANCE FILING

(Issued December 17, 2009)

1. On October 19, 2009, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively, Southern Companies), filed revisions to their market-based rate tariff to include third-party sellers in the bid-based, day-ahead and hour-ahead auctions for energy (the Auction) that they operate in the Southern Companies balancing authority area.

2. In this order, the Commission conditionally accepts the revised tariff sheets, effective January 4, 2010, and directs Southern Companies to revise their tariff within 30 days of the date of this order, as discussed below.

**I. Background**

3. On December 18, 2008, the Commission conditionally accepted a proposal and tariff revisions submitted by Southern Companies on October 17, 2008 pertaining to Southern Companies' establishment of day-ahead and hour-ahead energy auctions.<sup>1</sup> Southern Companies proposed to institute, for at least a three year period, an Auction to make available all uncommitted thermal resources at cost-capped offer prices and proposed to contract with an Independent Auction Monitor to oversee the Auction. In the December 2008 Order, the Commission concluded that the Auction, with conditions, would sufficiently mitigate any potential that Southern Companies may have to exercise

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<sup>1</sup> *Southern Companies Services, Inc.*, 125 FERC ¶ 61,316 (2008) (December 2008 Order).

market power in the Southern Companies balancing authority area.<sup>2</sup> Specifically, the Commission found that Southern Companies' proposal advanced the goals of increasing price discovery, transparency and liquidity in Southeastern bilateral markets.<sup>3</sup> The Commission's acceptance of Southern Companies' proposal and tariff revisions included two conditions: first, that the role and responsibilities of the Independent Auction Monitor be further developed and, second, that the Auction be expanded to include sellers other than Southern Companies, within one year of the date of the December 2008 Order.

4. On January 21, 2009, as supplemented February 2, 2009, Southern Companies submitted a compliance filing which accepted the conditions imposed by the Commission in the December 2008 Order and included tariff revisions. On March 25, 2009, the Commission accepted Southern Companies' compliance filing.<sup>4</sup>

## **II. The October 19, 2009 Filing**

5. Southern Companies state that the Auction is fully functional and operating in accordance with the rules on file with the Commission.<sup>5</sup> They explain that they continue

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<sup>2</sup> December 2008 Order, 125 FERC ¶ 61,316 at P 52.

<sup>3</sup> *Id.* P 2.

<sup>4</sup> *Southern Company Services, Inc.*, 126 FERC 61,274 (2009) (March 2009 Order). We note that on May 29, 2009, the Director, Division of Tariffs and Market Development – West, acting pursuant to delegated authority, issued an order accepting tariff revisions filed on April 3, 2009 and April 23, 2009 in compliance with the March 25, 2009 Order, which revised the tariff to include the effective date corresponding to the date of Auction commencement, which was April 23, 2009. *Southern Company Services, Inc.*, Docket No. ER09-88-002 (May 29, 2009) (unpublished letter order).

<sup>5</sup> Southern Companies state that, although approximately 1,400 bids have been submitted to acquire energy through the Auction, Southern Companies have made only eight hour-ahead sales and no day-ahead sales via the Auction. According to Southern Companies, two factors appear to have contributed to these low volumes. First, the entire Southeast region has experienced a loss of load associated with economic downturn, resulting in a surplus of generating capacity. This surplus has tended to depress market prices and limit market opportunities. Second, the current state of the fuel markets, and specifically the relative economics of coal and natural gas, appears to be a contributing factor. Southern Companies state that they have significant amounts of coal-fired generation, but the prevailing market price for energy during this period typically has been established by gas-fired generation. Since the Auction commenced, Southern

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to offer their Available Capacity in each day-ahead and hour-ahead auction subject to the cost-based offer price caps.<sup>6</sup> They represent that the Independent Auction Monitor continually oversees these activities and receives all requisite data to confirm Southern Companies' compliance.

6. Southern Companies state that the Auction has operated as a means of matching Southern Companies with willing buyers for the sale of energy. They explain that the expanded Auction (i.e., Phase II of the Auction) will act as a brokering system between potential buyers and sellers but will not mandate that such buyers and sellers (other than Southern Companies as seller) actually engage in sales. They state that although there is an expectation that a match from the Auction will result in a physical transaction, it is left to the buyer and seller to effectuate that transaction.

7. After discussions with the Auction software provider regarding software modifications necessary to permit participation by third-party sellers, Southern Companies announced a technical conference regarding the expansion of the Auction. On August 3, 2009, the technical conference was held with approximately 20 different organizations participating. Southern Companies state that they incorporated many of the ideas developed through the conference outreach into the October 19, 2009 compliance filing. They represent that the proposed tariff changes generally relate to the Auction expansion and include changes necessary to implement third-party seller participation, changes responsive to third-party feedback, clarification and correction of existing Auction tariff provisions, and implementation of an administrative charge.<sup>7</sup>

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Companies state that they have been overall net buyers by a wide margin when considering both purchase and sale transactions.

<sup>6</sup> "Available Capacity" is defined in Appendix DA-1 and Appendix HA-1 to Participation Rules, at section 1.3, as that portion of the supply curve in excess of total obligations but does not include generation resources that cannot be committed to supply day-ahead energy blocks for the delivery day (or hour-ahead energy units for the delivery hour) of uncommitted resources not located in the Southern Companies balancing authority area.

<sup>7</sup> Southern Companies' revised tariff is divided into the following segments: General Tariff Provisions; Rules of the Energy Auction; Rules on Southern Companies' Energy Auction Participation; Appendix DA-1 to Participation Rules; Appendix DA-2 to Participation Rules; Appendix HA-1 to Participation Rules; Appendix HA-2 to Participation Rules.

8. Southern Companies request that the tariff revisions become effective the date that the expanded Auction commences. Southern Companies state that while they are prepared to meet the Commission's deadline of permitting third-party sellers within one year of the date of the December 2008 Order, Southern Companies request that the expanded Auction commence during the week of January 4, 2010.

**A. Proposed Changes to Implement Third-Party Seller Participation (Participation Rules, Nomenclature Changes, Auction Matching Algorithm)**

9. Southern Companies explain that the current Rules of the Energy Auction were designed to accommodate only Southern Companies as a seller in the Auction.<sup>8</sup> As such, these rules currently include provisions governing the operation of the Auction as well as provisions governing Southern Companies' participation in the Auction. In order to simplify the Rules of the Energy Auction and lessen the possibility of confusion by third-party sellers, Southern Companies propose to separate the generally-applicable rules governing conduct of the Auction from those rules applicable only to Southern Companies.

10. Southern Companies explain that the inclusion of third-party sellers in the Auction requires certain nomenclature changes and that they have also revised the tariff so that the nomenclature is consistent with the terminology used in the Auction software.

11. Southern Companies add that they revised the tariff to discontinue use of the term "bid-based" to describe the Auction because the Auction is being expanded to be both bid-based and offer-based, insofar as parties other than Southern Companies will be submitting both bids and offers. Southern Companies have also revised the tariff to change certain references to "sales" (or "sold" or "selling") through the Auction to references to "matching" buyers and sellers.

**B. Changes Responsive to Feedback (Opening and Closing Times, Confidential Data, Implied Heat Rates)**

12. First, in response to feedback received from a written survey and the technical conference, Southern Companies propose to shift the opening and closing times of the hour-ahead and day-ahead auctions. Specifically, Southern Companies propose to shift by 15 minutes both the opening and closing times for the hour-ahead auction so that under Phase II the hour-ahead auction will open 75 minutes before the delivery hour and

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<sup>8</sup> We note that the previously accepted version of this section of the tariff was entitled "Rules of the Bid-Based Energy Auction."

close 60 minutes before the delivery hour (as opposed to the present schedule of 60 minutes to 45 minutes before the delivery hour). Southern Companies explain that parties requested this change to better align with the timing of the traditional hour-ahead bilateral energy markets. In addition, Southern Companies propose to move the closing time of the day-ahead auction forward by 15 minutes, from 6:30 a.m. Central Prevailing Time (CPT) to 6:45 a.m. CPT. Southern Companies state that parties sought this change to make it easier to enter offers and bids given the timing of their staff shifts.

13. Southern Companies explain that the adequacy of protections afforded confidential data was raised at the technical conference. Notwithstanding the current safeguards in place to prevent misuse of Auction data, Southern Companies state they were already exploring the possibility of moving certain administrative functions away from their own personnel to those of an independent auction administrator. We note that the Auction Administrator is defined in section 2.1 of the Rules of the Energy Auction as “[t]hose persons administering the Energy Auction consistent with the provisions set forth herein.” Southern Companies state that they are in the process of finalizing arrangements with an independent auction administrator to move certain administrative functions away from their own personnel to the independent auction administrator.<sup>9</sup>

14. Southern Companies state that certain entities also suggested that Southern Companies discontinue the use of implied heat rates in the day-ahead auction. Southern Companies explain that when the Rules of the Energy Auction were conceived, Southern Companies imposed upon themselves a requirement to submit their initial offers to the Auction Administrator contemporaneously with the opening of the day-ahead auction at noon two business days before delivery. In so doing, Southern Companies state they attempted to eliminate any perception that their traders might somehow access bid information and use it in the formulation of those offers (notwithstanding the legal prohibitions on the traders knowing any bid information at any time). Southern Companies state that this requirement, however, exposed Southern Companies to fuel price risk between the time they were required to enter their day-ahead bids at noon two business days before delivery and the date of energy delivery. If, for example, the price of natural gas rose between the time the bids were due and the time of delivery, then Southern Companies would have potentially bid below their actual cost and not recovered their costs in the auction. In order to mitigate this fuel price risk, the day ahead auction employed an implied heat rate to price bids and offers, as opposed to a price based on

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<sup>9</sup> The Commission takes administrative notice that Southern Companies have chosen TranServ International, Inc. to be the independent auction administrator for the Auction. See <http://www.southerncompany.com/energyauction/contactus.aspx>. We note that the Auction Administrator during Phase I was not independent.

dollars per MW hour (\$/MWh). By bidding in an implied heat rate, Southern Companies could be certain that they would be permitted to recover their actual costs because the clearing price would be based on the actual fuel prices at the time of delivery times the heat rate of the marginal unit.

15. Southern Companies are conditionally willing to change this aspect of the Rules of the Energy Auction so that offers and bids into the day-ahead auction are entered as \$/MWh. Specifically, Southern Companies propose a change to the Rules on Southern Companies' Energy Auction Participation: (a) to require that their offers be entered before the Lock-Down Period of any day-ahead auction (as opposed to the beginning of the day-ahead auction period), and (b) to prohibit Southern Companies from revising their day-ahead offers during the Lock-Down Period as result of them entering into one or more sales of energy outside of the Energy Auction but allowing revisions for other reasons. Southern Companies assert that these changes are necessary because retaining the existing requirements concerning the timing of day-ahead offers while changing the Rules of the Energy Auction to provide for day-ahead \$/MWh bids and offers (rather than implied heat rate bids and offers) would expose Southern Companies to the price risk described above - a risk that would not be borne by other Phase II sellers (since third-party sellers will be allowed to change their offers up until the closing of the day-ahead auction).

### **C. Clarification and Correction of Existing Tariff Provisions**

16. Southern Companies state that as they began reviewing the Rules of the Energy Auction for Phase II implementation, they determined that certain provisions could be considered ambiguous or potentially confusing. For example, Southern Companies propose: (a) changing the reference in Rules of the Energy Auction section 1.1 from "effective date" to "April 23, 2009," the actual effective date of the Auction, and (b) changing the defined term "DAE [Day-Ahead Energy] Market Clearing Price" to "DAE Auction Clearing Price" to reflect the general terminology used for the Auction.

17. In addition, as Southern Companies began the process of reviewing the Rules of the Energy Auction for Phase II implementation, they state that they identified several errors in the Rules of the Energy Auction as currently on file. They maintain that the proposed corrections do not change the substance of the Rules of the Energy Auction but merely address errors that, if not corrected, could result in confusion. For example, Southern Companies propose to strike the definition of OASIS because that term is not used in the Rules of the Energy Auction. Similarly, Southern Companies propose to change the reference in Rules of the Energy Auction section 3.3.3 from "Bid Period" to "DAE Bid Period" because the term Bid Period is not a defined term and the context of the section clearly indicates that "DAE Bid Period" was the intended reference. Southern Companies state that these and other proposed corrective changes are enumerated in the Table of Changes included with their filing.

**D. Administrative Charge (Under Recovery and Over Recovery)**

18. Southern Companies explain that they are incurring significant incremental costs in implementing Phase II of the Auction and, as such, they seek to recover the additional costs associated with development, implementation, and administration of Phase II of the Auction to accommodate third-party sellers.

19. Southern Companies propose to implement an administrative charge of \$0.02/MWh on all offers and bids matched through the Auction (Administrative Charge); this Administrative Charge would be charged to each Offeror and Bidder on matched bids and offers, not the bids and offers themselves, including Southern Companies' own offers and bids matched through the Auction. Southern Companies commit to refund, with interest at the Commission-established rate, any collections under the Administrative Charge that exceed the above-described costs incurred in expanding and administering the Auction.

20. According to Southern Companies, by applying the Administrative Charge only to matched bids and offers, there will likely be an under-recovery of actual costs incurred, at least for some period of time. Accordingly, should the amounts collected through operation of the Administrative Charge in any calendar year be less than the costs incurred (i.e., a shortfall), Southern Companies propose that the Auction Administrator be permitted to upwardly adjust the Administrative Charge on a prospective basis. Southern Companies propose that any such prospective increase in the Administrative Charge, however, will not exceed \$0.01/MWh for any calendar year and will be based on the amount of underrecovered costs carried over from the previous year plus actual invoiced costs from the software provider and independent auction administrator. In addition, Southern Companies will not charge interest on any shortfall carried forward to succeeding calendar years. Should the amounts collected through operation of the Administrative Charge in any calendar year be greater than the costs incurred (i.e., overage), the Auction Administrator will refund the difference based on a *pro rata* allocation calculated on the volume of energy matched during the preceding calendar year with interest.

21. By February 15, 2011 (the first year any prospective increase in the Administrative Charge may take effect under this proposal), and by February 15<sup>th</sup> of each year that the Administrative Charge remains in effect, Southern Companies state that they will post on the Auction website a report identifying: (i) the amount recovered under the approved charge structure for the immediately preceding calendar year; (ii) the administrative costs for that same period; (iii) the amount carried over, if any; and (iv) the revised Administrative Charge to be effective for the upcoming year. Southern Companies commit as part of this proposal to not revise the Administrative Charge unless and until this posting has been made. In addition, for any shortfall carried forward to

succeeding years, Southern Companies request permission to book the shortfall as a regulatory asset.<sup>10</sup>

### **III. Notice of Filing and Responsive Pleadings**

22. Notice of Southern Companies' filing was published in the *Federal Register*,<sup>11</sup> with motions to intervene and protests due on or before November 9, 2009. North Carolina Electric Membership Corporation filed a motion to intervene. Energy Consulting Group, LLC (Energy Consulting)<sup>12</sup> filed a motion to intervene and comments. Constellation Energy Commodities Group, Inc. (Constellation) filed comments. Energy Consulting filed an amendment to its comments on November 30, 2009 to correct a submitted graph.

23. Constellation argues that the Commission should impose certain requirements upon Southern Companies. These requirements include working with market participants in developing a methodology for calculating the Available Capacity based upon the average price during all peak hours rather than the peak hour; adding additional Auction products available for non-peak times and days; requiring Southern Companies to participate as a bidder; and clarifying the timing of notification to winning bidders.

24. Energy Consulting requests that the Commission use the Auction as a platform to encourage increased price discovery, transparency and liquidity in the Southern Companies balancing authority area. Energy Consulting states that the initiation of the Auction has not mitigated the higher day-ahead prices in the Southern Companies

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<sup>10</sup> According to 18 C.F.R. § 367.1(a)(38) (2009), “[r]egulatory assets and liabilities are the assets and liabilities that result from rate actions for regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Unified System of Accounts but for it being probable: (i) [t]hat such items will be included in a different period(s) for purposes of developing rates the service company is authorized to charge for its services; or (ii) [i]n the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.”

<sup>11</sup> 74 Fed. Reg. 56602 (2009).

<sup>12</sup> Energy Consulting represents the interests of Central George EMC, Cobb EMC, Diverse Power Incorporated, Excelsior EMC, Pataula EMC, Snapping Shoals EMC, Upson EMC and Washington EMC, which are load-serving entities in Georgia.

balancing authority area as compared to the adjoining systems. As described below, Energy Consulting also comments on Southern Companies' specific tariff provisions concerning Available Capacity, sales during non-peak times and days, notification of winning bids and clearing prices, the Lock-Down Period, delivery, *Force Majeure*, curtailment, and transparency.

25. On November 24, 2009, Southern Companies filed an answer in response to Constellation's and Energy Consulting's comments. Southern Companies assert that the majority of comments relate to features of the Auction that were not modified by Southern Companies' October 19, 2009 Filing and should thus be summarily rejected as outside the scope of this proceeding. Southern Companies argue that Constellation's and Energy Consulting's suggestions to modify tariff provisions that have been accepted by the Commission constitute collateral attacks on prior Commission orders and should be rejected. Despite the alleged procedural deficiency of the comments submitted, Southern Companies nevertheless respond substantively to these comments, as described below. Additionally, Southern Companies explain that they will conduct another technical conference during the second quarter of 2010, at which time Constellation's and Energy Consulting's suggested changes can be discussed with all the Auction participants. Finally, Southern Companies state that Energy Consulting's comments pertaining to prices for day-ahead firm energy in the Southern Companies balancing authority area relative to those in adjacent balancing authority areas are not relevant to the issue of whether Southern Companies have properly implemented the Commission's condition to include third-party sellers.

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), North Carolina Electric Membership Corporation's timely, unopposed motion to intervene serves to make it a party to this proceeding.<sup>13</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), 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.

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<sup>13</sup> We note that Energy Consulting and Constellation are already parties to this proceeding. December 2008 Order, 125 FERC ¶ 61,316 at P 28, 39-40.

**B. Analysis****1. Uncontested Provisions**

27. We will first address proposed tariff changes that have not been contested by commenters.

28. The Commission accepts Southern Companies' tariff revisions to: (i) separate the generally-applicable rules governing conduct of the Auction from those rules applicable only to Southern Companies; (ii) revise changes to be consistent with the terminology in the Auction software; and (iii) discontinue the use of the term "bid-based" and change references from "sales" to "matching." The Commission finds that these changes clarify how the Auction will function with multiple sellers and further eliminate ambiguity where previously there were discrepancies between Southern Companies' tariff and the Auction software.

29. As discussed above, Southern Companies proposed a number of changes to the Auction in response to feedback received as part of a technical conference. The Commission accepts Southern Companies' revisions to its tariff adjusting the opening and closing times of the Auctions<sup>14</sup> and discontinuing the use of implied heat rates in favor of prices being measured in \$/MWh. We find that these changes will not adversely impact the Auction.

30. Regarding the protection of confidential data, Southern Companies state in their filing that they are in the process of finalizing arrangements with an independent auction administrator to move certain administrative functions away from their own personnel. As noted above, Southern Companies have chosen TranServ International, Inc. to be the independent auction administrator for the Auction. The Commission supports the hiring of an independent auction administrator as a positive step towards ensuring the confidentiality of Auction data, and we accept this commitment.<sup>15</sup> Although Southern

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<sup>14</sup> Southern Companies propose that under Phase II the hour-ahead auction will open 75 minutes before the delivery hour and close 60 minutes before the delivery hour (as opposed to the present schedule of 60 minutes to 45 minutes before the delivery hour). Southern Companies propose to add 15 minutes to the closing time of the day-ahead auction, from 6:30 a.m. CPT to 6:45 a.m. CPT.

<sup>15</sup> According to Southern Companies, the duties of the independent auction administrator will include: (i) ensuring the Auction software is configured and operates in accordance with the Rules of the Energy Auction; (ii) coordinating the implementation of changes to the Auction software; (iii) performing periodic testing of the Auction software; (iv) administering the user registration process; (v) managing, safeguarding,

(continued...)

Companies maintain that the identity of Auction participants is concealed from third-parties other than the Commission, Independent Auction Monitor, and Auction Administrator,<sup>16</sup> the Auction Administrator as currently defined in section 2.1 of the Rules of the Energy Auction and clarified further in section 2.1 of the Rules on Southern Companies' Energy Auction Participation, includes Southern Companies' personnel.<sup>17</sup> Thus, under the proposal, it appears that Southern Companies' personnel will continue to have access to this information, which would now include third-party confidential data. However, the Commission does not understand, and Southern Companies have not explained why, Southern Companies' personnel would need access to this information given the existence of an independent auction administrator. We find that adequate safeguarding of third-party data is important to encourage third-party participation in Phase II of the Auction.

31. To the extent that Southern Companies request that their employees have access to third-party confidential information after the independent auction administrator assumes its duties, Southern Companies should, in the compliance filing directed below, explain

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and storing, subject to confidentiality provisions, all bid, offer and transaction-related information; (vi) assisting in responding to inquiries from regulatory entities as related to Auction activities; (vii) coordinating with Southern Companies and the Independent Auction Monitor regarding administration of the Auction software and the Rules of the Energy Auction; and (vii) coordinating with Southern Companies and the software provider to resolve questions or issues related to operation of the Auction. Southern Companies Filing at n.30.

<sup>16</sup> Section 4.2.5 of the Rules of the Energy Auction.

<sup>17</sup> See generally section 2.0 of the Rules on Southern Companies' Energy Auction Participation. Section 2.1 of the Rules of the Energy Auction defines the Auction Administrator as "[t]hose persons administering the Energy Auction consistent with the provisions set forth herein." Section 2.1 of the Rules on Southern Companies' Energy Auction Participation provides that "Southern Companies' Marketing Function Employees and Transmission Function Employees, as those terms are defined in 18 C.F.R. § 358.3(d) and (i), may not serve as Auction Administrator." In addition, section 2.2 of the Rules on Southern Companies' Energy Auction Participation provides that those employees of Southern Companies directly engaged in wholesale electricity marketing and trading shall not having access to Bid Information or Offer Information for any purpose (except to the extent such information is made available pursuant to section 4.2.4 of the Rules of the Energy Auction).

why its employees need access to this data, and how such information will be protected from improper disclosure or misuse.

32. Southern Companies state that they would be “moving certain administrative functions away from their own personnel to those of an independent auction administrator.” We direct Southern Companies to identify the administrative functions that will be moved from Southern Companies’ personnel to the independent auction administrator. We direct Southern Companies in a compliance filing to explain what the role of the independent auction administrator will be and whether the independent auction administrator will be taking over all of the responsibilities of the Auction Administrator under the existing tariff. If the independent auction administrator will not be taking over all of the responsibilities of the Auction Administrator, we direct Southern Companies to identify which responsibilities will not be assumed by the independent auction administrator, and to identify who will perform them instead. Additionally, Southern Companies are directed to submit a compliance filing revising their tariff by setting forth the specific duties and responsibilities of the independent auction administrator and the Southern Companies’ personnel, if any, that are involved with administering the auction subsequent to the independent auction administrator’s duties beginning under its contract with Southern Companies. Southern Companies must submit a compliance filing in this regard within 30 days of the date of this order.

33. The Commission will also direct revisions to three sections. First, in section 2.1 of the Rules on Southern Companies’ Energy Auction Participation, Southern Companies proposed to revise the description of Auction Administrator previously contained in section 3.4. The Commission finds the proposed description in section 2.1, which identifies who may not serve as Auction Administrator, to be too broad, and directs Southern Companies to state affirmatively who may serve as Auction Administrator. Second, sections 2.19a and 2.31 of the Rules of the Energy Auction, which define Dependent Offer and Independent Offer, respectively, contain incorrect cross-references to section 5.2.4, which is an invalid section number. Southern Companies are directed, within 30 days of the date of this order, to correct the cross-references to reflect section 5.2.3.

34. Third, with respect to Southern Companies’ proposed administrative charge, the Commission recognizes Southern Companies’ need to charge matched participants in the expanded Auction to cover the various expenses Southern Companies incurs in maintaining the Auction. The Commission accepts Southern Companies’ administrative charge but requires that Southern Companies report any refunds or surcharges as part of an annual report that Southern Companies will be required to submit with the Commission by February 15, 2011 and each year thereafter that the Administrative Charge remains in effect. Section 4.3.4 of the Rules of the Energy Auction must be revised to reflect this addition, within 30 days of the date of this order.

35. Fourth, the Commission grants Southern Companies' request to delay implementation of the expanded Auction. The Commission extends the commencement date of the expanded Auction until January 4, 2010 as requested by Southern Companies.<sup>18</sup> Southern Companies are directed to revise its tariff to reflect the appropriate effective date, within 30 days of the date of this order.

36. Finally, we note that in the December 2008 Order, the Commission accepted proposed tariff provisions that prohibit Southern Companies from making certain market-based rate sales of energy in the Southern Companies balancing authority area outside of the Auction. Therefore, we direct Southern Companies to make a compliance filing revising their market-based rates tariff to reference the restrictions previously approved in the December 2008 Order restricting market-based energy sales for delivery into the Southern Companies balancing authority area during the Auction periods.<sup>19</sup>

## 2. Collateral Attack

37. We agree with Southern Companies that a number of Constellation's and Energy Consulting's arguments (as identified below) constitute collateral attacks on the Commission's December 2008 and/or March 25, 2009 Orders. Neither Constellation nor Energy Consulting has explained why the Commission should re-examine tariff language that it previously accepted, i.e., how expansion of the Auction to third-parties requires a re-examination of these previously-accepted provisions. We note that, although Constellation and Energy Consulting had the opportunity to raise many of their concerns earlier in this proceeding, they did not. Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, impede the finality and repose in agency decisions that are essential to administrative efficiency,

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<sup>18</sup> We note that Southern Companies specifically request that the proposed tariff revisions become effective "the date that the expanded Auction commences, currently expected to be during the week of January 4, 2010." Southern Companies Filing at 1-2.

<sup>19</sup> The reference should be included under the tariff section titled "Limitations and Exemptions Regarding Market-Based Rate Authority." The tariff should cite to the relevant Commission order(s) imposing such restrictions. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 916, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 384, *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).

and are therefore strongly discouraged.<sup>20</sup> Nevertheless, we have reviewed Constellation's and Energy Consulting's comments as well as Southern Companies' responses as discussed below.

### **3. Mitigation of Energy Prices**

38. Energy Consulting states that the initiation of the Auction has not mitigated the higher day-ahead prices in the Southern Companies balancing authority area as compared to the adjoining systems. Southern Companies respond stating that Energy Consulting's comments pertaining to prices for day-ahead firm energy in the Southern Companies balancing authority area relative to those in adjacent balancing authority areas is not relevant to the issue of whether Southern Companies have properly implemented the Commission's condition to include third-party sellers.

39. We agree with Southern Companies that their compliance filing expanding the Auction to include additional sellers is not the appropriate vehicle to examine issues regarding the impact the Auction as currently structured may have had on prices. As such, we will not respond to Energy Consulting's comments in this regard.

### **4. Available Capacity**

#### **a. Tariff**

40. Southern Companies' tariff sheets include provisions concerning the determination of Available Capacity for the Auction.<sup>21</sup>

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<sup>20</sup> See, e.g., *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117, at P 12 (2005); *NSTAR Electric Co.*, 120 FERC ¶ 61,261 (2007) (dismissing complaint as a collateral attack on a prior Commission order where the party had the opportunity to raise its concern in its prior filings).

<sup>21</sup> See Section 1.2.1 of Appendix DA-1 (how to determine Southern Companies' Total Obligations); Section 2.1.3 Appendix DA-1 to Participation Rules (Available Capacity of generating units with less than 50 MW of Available Capacity may be combined and "linked" with other, similar generating units to similar DAE Units to the extent practicable); Section 1.1 of Appendix DA-2 to Participation Rules ("Average Variable Costs" shall be determined in a manner consistent with the determination of variable dispatch cost pursuant to Article III of the Intercompany Interchange Contract); Sections 1.1.1.1 of Appendix DA-1 and 1.1.1.1. of Appendix HA-1 to Participation Rules (when determining Southern Companies' Available Capacity, such capacity shall include: all steam, combined cycle, and combustion turbine resources dispatched pursuant to the

(continued...)

**b. Comments**

41. Constellation asserts that the Commission should require Southern Companies to work with market participants in developing a methodology of calculating the Available Capacity based upon the industry standard average daily peak products rather than the peak hour. It claims that Southern Companies' day-ahead auction has never cleared due to the manner in which Southern Companies calculate their Available Capacity to offer into that auction. Constellation alleges that under the current Auction process, the Available Capacity calculation does not appear to be consistent with the industry norm. Constellation states that its experience in other power markets (including the standard peak product for bilateral markets in the Southern Companies balancing authority area) indicates that a product encompassing all peak hours for a day is typically calculated based on the average price during all peak hours, not just the peak hour. In limiting their Total Obligations calculations to the highest peak hour, Constellation contends that Southern Companies "overstate[s] their Available Capacity" in all hours (and thus the price they can offer). Constellation submits that this "results in less capacity available" for the Auction and less interest in Market Participants to offer bids.

42. Energy Consulting also comments on the Available Capacity calculation. Energy Consulting states that the peak referred to in section 1.2.1 of Appendix DA-1 to Participation Rules is not clearly defined as either coincident or non-coincident. Energy Consulting claims that if it is not clarified as being the coincident peak then the peak used in the calculation of the Available Capacity will be higher than appropriate, which would result in less capacity of Southern Companies being offered in the Auction.

43. Regarding resources actually available for the Auction (section 1.1.1.1 of Appendix HA-1 to Participation Rules), Energy Consulting states that such resources will be artificially reduced unless all resources (including such resources like demand side management, renewable resources, uncommitted resources not located in the Southern Companies balancing authority area and both firm and non-firm market power purchases) are added to the Supply Curve that is counted toward the service of the Total Obligations. Without such adjustment, Energy Consulting claims that Southern Companies would not be obligated to offer all of their Available Capacity at the Auction, but rather would be able to withhold capacity from the market.

44. Section 2.1.3 of Appendix DA-1 to Participation Rules provides that "[T]he Available Capacity of generating units with less than 50 MW of Available Capacity may

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Intercompany Interchange Contract; the portion of hydroelectric resources scheduled by Southern Companies for the Delivery Day; and third-party purchases).

be combined and “linked” with other, similar generating units to form [day-ahead energy] Units to the extent practicable.” Energy Consulting adds that the term “linked” is not defined in the Auction and that such ambiguity makes the audit of the adherence to these rules indeterminate.

45. Regarding section 1.1 of Appendix DA-2 to Participation Rules, Energy Consulting states that Article III of the Intercompany Interchange Contract Manual needs to be included directly so that it can be referenced by interveners and other parties participating in the Auction.

46. Energy Consulting requests that section 1.1.1.1 of Appendix DA-1 to Participation Rules should be revised to clearly designate the resources currently referred to as being “dispatched pursuant to the [Intercompany Interchange Contract]” as either “already having been dispatched pursuant to the [Intercompany Interchange Contract]” or “as may be dispatched pursuant to the [Intercompany Interchange Contract].”

**c. Southern Companies’ Response**

47. Southern Companies respond by stating that they have not proposed any change to the Available Capacity calculations. Southern Companies argue that were they to adopt Constellation’s proposal that the day-ahead energy Available Capacity calculations be based on an average hourly peak load value rather than the instantaneous peak load value, Southern Companies would have insufficient capacity to serve their own firm obligations in those hours when such obligations climbed above the average peak load value. For the hour-ahead auction, Southern Companies explain that Available Capacity is calculated based on the instantaneous peak for the delivery hour. Southern Companies maintain that while Constellation is correct that there will likely be capacity to provide energy for the Auction in the shoulder hours of the day, Constellation incorrectly suggests that energy from such capacity is not being offered in the Auction. Rather, Southern Companies argue that they are required to make energy from this shoulder hour capacity available in the hour-ahead Auction. Finally, Southern Companies assert that the manner by which they price their day-ahead Available Capacity offerings is consistent with the industry “standards” and “norms.”

48. Regarding Energy Consulting’s request to clarify whether the peak used is coincident peak or non-coincident peak, Southern Companies clarify that this reference refers to the system-wide coincident peak.

49. Regarding Energy Consulting’s request to include additional resources in the Residual Supply Curve for determination of Available Capacity (section 1.1.1.1 of Appendix HA-1), Southern Companies argue that this request should be rejected as a collateral attack on the December 2008 Order because the approach was previously accepted in that Order and is entirely unchanged in the October 19, 2009 Filing. Southern Companies contend that Energy Consulting’s conclusion that Southern

Companies' Available Capacity "will be artificially reduced" if those resources are not included is simply incorrect. Southern Companies assert that demand side programs are presently incorporated in Southern Companies' load. Further, they represent that the inclusion of "both firm and non-firm market power purchases" is already specifically included in the definition. Southern Companies also state that resources located outside the Southern Companies balancing authority area are not covered because the product offered in the Auction is an "Into Southern" product. Regarding renewable resources, Southern Companies state that they have already included certain renewable resources (i.e., hydroelectric) in the definition, while the remaining existing renewable resources available to Southern Companies today are "included in either the supply curve ... or incorporated in the load." Finally, Southern Companies emphasize that the Independent Auction Monitor oversees the Auction to ensure compliance with tariff provisions and can monitor every generating resource the Southern Companies have available in the Southern Companies balancing authority area.

50. On the concern about the term "linked," Southern Companies respond that "linked" is self-evident and note that no bidder has ever before raised this issue.

51. Southern Companies also respond that there is no need to file Article III of the Intercompany Interchange Contract as part of the market-based rate tariff. They state that the Intercompany Interchange Contract and the Manual that goes with it are already defined<sup>22</sup> and included in a rate schedule on file with the Commission. Thus, given its public availability, Southern Companies do not believe it necessary to include the Intercompany Interchange Contract in the market-based rate tariff.

52. Finally, Southern Companies argue that section 1.1.1.1 of Appendix DA-1 need not be clarified, since the Intercompany Interchange Contract provides sufficient information on how resources are to be dispatched on Southern Companies' system. Southern Companies add that the Intercompany Interchange Contract is a term defined in section 1.2.4 of the Rules on Southern Companies' Energy Auction Participation and is publicly available as a rate schedule on file with the Commission.

**d. Commission Determination**

53. We note that the Commission previously approved Southern Companies' method of calculating Available Capacity, which involved using native load for the instantaneous peak of the delivery day. Thus, Constellation's arguments regarding calculation of Available Capacity constitute a collateral attack on a previous Commission order

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<sup>22</sup> See sections 1.2.4 and 1.2.5 of the Proposed Rules on Southern Companies' Energy Auction Participation.

approving Southern Companies' approach. We also note Southern Companies' response that they are required to make energy from shoulder hour capacity available in the hour-ahead Auction, so such energy will be offered as part of the Auction.

54. With regard to the term "peak," Southern Companies' response clarifies that they intended to reference system-wide coincident peak. Although this language was present in the previously-approved tariff, the Commission directs Southern Companies to revise section 1.2.1 of Appendix DA-1 to make clear that it applies to system-wide coincident peak, within 30 days of the date of this order.

55. Regarding Energy Consulting's request that all resources, as detailed above, that are "normally counted toward the service of the Total Obligations" (section 1.1.1.1. of Appendix HA-1 to Participation Rules) be added to the Supply Curve, the Commission finds that this section is virtually unchanged since being approved by the Commission, and Energy Consulting's comments constitute a collateral attack on the previous Commission order approving this approach. In addition, we note that Southern Companies have adequately responded substantively to Energy Consulting's concerns by explaining how Southern Companies account for different types of resources. For these reasons, we will not direct any revisions in this regard.

56. Southern Companies assert that the term "linked" as used in Southern Companies' tariff is self-evident yet does not clarify for Energy Consulting how they define it. Thus, the Commission agrees with commenters that, in order to provide clarity, Southern Companies should, within 30 days of the date of this order, define the term "linked" in the tariff as it applies to sections 2.1.3 and 2.1.4 of Appendix DA-1 to Participation Rules.

57. With regard Energy Consulting's request that the Commission order Southern Companies to include Article III of the Intercompany Interchange Contract in their market-based rate tariff, we note that this is already a rate schedule on file with the Commission and therefore publicly available. Nevertheless, we encourage Southern Companies to post the Intercompany Interchange Contract on the Auction website.

58. With regard to Energy Consulting's request regarding section 1.1.1.1 of Appendix DA-1, this section is virtually unchanged since being approved by the Commission. Energy Consulting has not adequately justified nor explained its position, which is essentially a collateral attack on the prior Commission order approving this language. Thus, the Commission will not direct any revisions to this section.

## 5. Non-Peak Times and Days

### a. Tariff

59. Section 3.3 of the Rules of the Energy Auction provides that the Auction Administrator may administer a day-ahead auction for energy to be delivered on a weekend day or a North American Electric Reliability Corporation (NERC) holiday at its discretion.<sup>23</sup> Section 3.1.1 of the Rules on Southern Companies' Energy Auction Participation addresses sales that Southern Companies may not make during weekdays or days that are not NERC holidays.

### b. Comments

60. Constellation requests that the Commission require Southern Companies to implement weekend day and NERC holiday day-ahead auctions. Similarly, Energy Consulting states that section 3.3 of the Rules of the Energy Auction should be revised to state that the Auction Administrator will administer a day-ahead auction for energy blocks to be delivered on weekend days and NERC holidays. According to Energy Consulting, the exclusion of Southern Companies' obligations from weekend days or NERC holidays sets a harmful precedent.

61. Energy Consulting submits that if a day-ahead Bid Period is set up for weekend days or NERC holidays it could be problematic if Southern Companies are not required to participate in them. Energy Consulting asserts that Southern Companies must be prohibited from making sales during the Bid Period if they are to be prevented from exercising market power via capacity withholding. It maintains that capacity could be withheld from the Southern Companies balancing authority area if Southern Companies set low prices for their power for locations beyond the Southern Companies balancing authority area. According to Energy Consulting, this could cause all of Southern Companies' excess capacity to be sold off-system before it can be offered in the Auction.

### c. Southern Companies' Response

62. Southern Companies represent that the Commission's prior orders on the establishment of the Auction did not require additional products to be added, as now requested by Constellation and Energy Consulting. Southern Companies explain that while the Commission recognized Southern Companies' willingness to add future

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<sup>23</sup> The prior provision stated: "The Auction Administrator will administer a DAE Auction for DAE Blocks to be delivered on weekend days and NERC holidays at the discretion of Seller.

products, it did not condition approval of the Auction on such a requirement. Southern Companies represent that in Phase I, and continuing to Phase II of the Auction, section 3.3 authorizes but does not require Southern Companies to hold the Auction on weekends or NERC holidays. Southern Companies further explain that they have committed to a Phase II implementation schedule that will allow third-party sellers to participate in January 2010. That schedule, and all of the software development, testing and other activities necessary to meet it, already presents a significant but achievable challenge. Southern Companies submit that attempting to include additional products at this time will delay implementation.

63. Southern Companies assert that Energy Consulting's request to require Southern Companies to participate in day-ahead bid periods for weekend days or NERC holidays, as well as the argument regarding Southern Companies' sales during the bid period, should be rejected as a collateral attack on prior Commission orders because each of these was previously accepted by the December 2008 Order and entirely unchanged in the October 19, 2009 Filing. While Energy Consulting asserts that the wholesale markets in the Southern Companies balancing authority area will be "harmed" unless Southern Companies are required to participate in all purchase and sale activity in that market, and are forbidden from participating in other wholesale markets, Southern Companies explain that they are neither the primary nor only seller in their balancing authority area. In 2008, Southern Companies ranked tenth out of more than 40 sellers by volume reported by jurisdictional entities in the Electric Quarterly Reports, and in 2009, they ranked eleventh. Southern Companies state that these provisions regarding sales of energy outside the auction reflect carefully crafted mitigation measures that respect Southern Companies' firm obligations while supplementing the existing bilateral markets.

**d. Commission Determination**

64. The Commission agrees with Southern Companies that any expansion of the Auction to include new products (such as on the weekends or on NERC holidays) would almost certainly delay expansion of the Auction to third-parties. We acknowledge Southern Companies' efforts to implement Phase II of the Auction in a timely manner in light of the necessary software development, testing and other preparations. Expanding the Auction to include new products at this time would require additional development, testing, and other preparations by Southern Companies. Thus, the Commission will not at this time direct Southern Companies to expand their Auction beyond the products approved as part of the December 2008 Order.

**6. Southern Companies as a Bidder**

**a. Tariff**

65. Southern Companies' revised tariff sheets do not require them to participate as a bidder in the Auction.

**b. Comments**

66. Constellation states that the Commission should require Southern Companies to participate as a bidder in the Auction. It further states that Southern Companies indicated at the technical conference that they would likely be a bidder in the Auction once the Auction was expanded to third-party sellers. Constellation claims that if Southern Companies do not participate as a bidder in the Auction (and instead choose to run their generation units out of merit as opposed to buying from the market), they could artificially suppress the overall market results. Constellation adds that by participating as a bidder in the Auction, Southern Companies may reduce their costs if third-party sellers have lower cost sources than Southern Companies' own units.

**c. Southern Companies' Response**

67. Southern Companies respond that they intend to participate as a bidder in the Auction but that the Commission did not mandate in the December 2008 Order a requirement that Southern Companies participate as a bidder. As such, they add that Constellation's proposal should be dismissed as outside the scope of the compliance filing. Further, Southern Companies state that it is unclear what Constellation means by suppressing "market results," nor does Constellation provide any support for this assertion.

**d. Commission Determination**

68. The Commission finds it unnecessary to require Southern Companies to participate as a bidder in the Auction. A key premise of Constellation's concern – that Southern Companies could decline to participate as a bidder and manipulate the Auction by running its generation units out of merit -- is misplaced because such a scheme by Southern Companies would violate the Rules of the Energy Auction<sup>24</sup> and be susceptible to discovery by the Independent Auction Monitor and subsequent reporting to the Commission. Further, commenters have failed to justify why requiring Southern Companies to participate as a bidder would improve the Auction as a mitigation measure.

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<sup>24</sup> Appendices HA-1 and DA-1 describe how Southern Companies determine their Available Capacity. In addition, Southern Companies are obligated to serve their native load at least cost, whether through purchases or self-generating. Either of Constellation's scenarios would be a violation of that obligation.

## 7. Notification of Winning Bids and Clearing Prices

### a. Tariff

69. Sections 5.5.1 and 6.5.1 of the Rules of the Energy Auction provide that “as soon as possible” after the close of the Bid Period, the Auction Administrator shall notify each Offeror and each Bidder of its respective awarded Units and the counterparty or counterparties to such award. Section 4.2.2 of the Rules of the Energy Auction provides a schedule by which clearing prices of the Auction shall be made available.

### b. Comments

70. Constellation explains that “as soon as possible” is too vague a timeline. Rather, Constellation suggests that the Commission follow the protocols and timing inherent in the bilateral markets and require Southern Companies to notify each winning Bidder or Offeror no later than 15 minutes prior to the close of the bid period for day-ahead auctions and no later than 5 minutes prior to the close of the bid period for hour-ahead auctions.

71. Energy Consulting is also concerned with this timeline. Energy Consulting states that the time between the close of the Bid Period (for both day-ahead and hour-ahead) and the notification of participants of results needs to be less than five minutes. It states that the Auction is automated and is capable of performing the buyer to seller matching and sending out the required notifications in much less than five minutes.

72. Constellation states that Southern Companies indicates in section 4.2.2 that they will make available the Clearing Prices of the day-ahead auction and the hour-ahead auction to Bidders and Offerors within 1 hour (day-ahead) and 45 minutes (hour-ahead) of the close of the bid period. Constellation argues that these proposed timelines will preclude a bidder from taking any necessary and appropriate actions in the bilateral markets in a timely manner. Therefore, Constellation states that reducing the timelines’ thresholds, such as to 15 minutes for the day-ahead and 5 minutes for the hour-ahead auctions, would give potential Bidders and Offerors the results of the Auction in a more timely fashion so that they could take appropriate actions in the bilateral markets.

### c. Southern Companies’ Response

73. Southern Companies assert that Constellation’s and Energy Consulting’s requests are unnecessary. With regard to notifying Auction winners, Southern Companies state that as with the current Phase I Auction software, the Phase II Auction software will notify winning Bidders or Offerors immediately after the software finishes processing the Auction, usually within seconds of the time the respective day-ahead or hour-ahead Auction closes. Southern Companies represent that the Auction results have always been sent to winning Bidders in less than one minute of the Auction bid period closing.

However, Southern Companies note that Auction participants must sign up for the notification in the software in order for the software to have a means to notify such participants.

74. Southern Companies also respond to Constellation's comments regarding the notification period of Auction clearing prices. Southern Companies state that the Auction clearing price posting timelines are not "proposed" but rather are the timelines previously accepted by the Commission and they have not changed these timelines in this compliance filing. Additionally, Southern Companies represent that the changes they have proposed regarding the hour-ahead and day-ahead Auction bid periods leave more than enough time for Bidders to participate in bilateral markets in the event their bids are not matched in the Auctions. Thus, Southern Companies state that the timelines are more than sufficient to allow buyers to participate in the Auction, or alternatively, to decide to purchase power in the bilateral market.

**d. Commission Determination**

75. We disagree with Southern Companies' claim that these comments are collateral attacks on previous Commission orders, since the arguments clearly relate to an expansion of the Auction to new Bidders and Offerors. Since Southern Companies acknowledge in their Answer that in the current Auction results are always sent to the winning bidders in less than one minute, and that the Phase II Auction software will enable winning bidders to be notified usually within seconds, we see no reason that Southern Companies cannot revise their tariff to state that each winning Bidder or Offeror will be notified no later than 15 minutes subsequent to the close of the bid period for day-ahead auctions and no later than 5 minutes subsequent to the close of the bid period for hour-ahead auctions. Both Constellation and Energy Consulting have articulated why such a practice would enhance the functionality of the Auction to third-parties, and Southern Companies has provided no reason why this request is unreasonable or would be technically difficult to implement. Thus, we direct Southern Companies to modify sections 4.2.2, 5.5.1 and 6.5.1 of the Rules of the Energy Auction accordingly, within 30 days of the date of this order.

**8. Lock-Down Period and Timing of When Southern Companies Must Offer Excess Generation**

**a. Tariff**

76. Section 1.2.6 of the Rules on Southern Companies' Participation in the Auction defines the Lock-Down Period for the day-ahead auction as the one hour prior to the close of the bid period and for the hour-ahead auction, five minutes prior to the close of the bid period.

77. Section 5.1.2 of the Rules on Southern Companies Energy Auction Participation provides that notwithstanding the provisions of Rules of the Energy Auction section 6.2.1,<sup>25</sup> Southern Companies may not during the Lock-Down Period for a given hour-ahead Auction revise their offers as result of entering into one or more sales of energy outside of the Energy Auction provided, however, that Southern Companies may revise their offers for other reasons.

**b. Comments**

78. Energy Consulting takes the position that the Lock-Down Period is too short to be effective at preventing the exercise of market power by Southern Companies. It seeks a Lock-Down Period of 90 minutes for the day-ahead auction and 15 minutes for the hour-ahead auction. According to Energy Consulting, with shortened Lock-Down Periods and flexibility in the setting of their Auction offer prices, a “high market” could encourage Southern Companies to justify higher Auction offer prices. Further, this could allow Southern Companies to make market deals (resulting in higher Auction offers) prior to the Lock-Down Period, predicated on the Auction offers not being taken.

79. Energy Consulting states that Southern Companies must be obligated to offer all their excess capacity at the beginning of the Lock-Down Period and also be prohibited from making any sales during the Lock-Down Period that are not supplied by matching purchases. It states that while Southern Companies may modify their offers prior to the Lock-Down Period, they must not modify them during that period except as the direct result of a *Force Majeure*, or for the purpose of maintaining system reliability. If Southern Companies are allowed to revise their hourly-ahead Offers “for other reasons” then they have no obligation to offer excess capacity to the market and alleviate their potential market power.

**c. Southern Companies’ Response**

80. Southern Companies reply that Energy Consulting’s comments regarding the Lock-Down Period should be rejected as a collateral attack on the Commission’s prior orders because the Lock-Down Period was previously accepted in December 2008 Order and entirely unchanged in the October 19, 2009 Filing. Southern Companies note that while the definition of the Lock-Down Period moved from section 2.3.5 of the Rules of the Energy Auction to section 1.2.6 of the Rules on Southern Companies’ Energy

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<sup>25</sup> Section 6.2.1 provides that at any time during an hour-ahead bid period, an Offeror may submit to the Auction Administrator one or more hour-ahead offers, withdraw any hour-ahead offer, and/or change any offer previously submitted during the bid period.

Auction Participation in the October 19, 2009 Filing, the periods themselves have not been modified.

81. Southern Companies further address Energy Consulting's argument that section 5.1.2 of the Rules on Southern Companies' Energy Auction Participation be modified to require Southern Companies to offer all their excess capacity at the beginning of the lock-down period and to be prohibited from making sales during the Lock-Down Period that are not supplied by matching purchases. Southern Companies state that the Rules of the Energy Auction already provide that Southern Companies offer all their Available Capacity in the day-ahead or hour-ahead energy Auction at the beginning of the Lock-Down Period for such Auction. Southern Companies claim that Energy Consulting misconstrues the tariff when it argues that Southern Companies may revise their offers "for other reasons" in a manner that could result in no actual commitment by Southern Companies. Southern Companies clarify that to the extent they make permissible sales during the Lock-Down Period, such sales cannot be a basis to make changes to the Available Capacity calculation. Thus, Southern Companies confirm that their sales cannot be a part of the "other reasons" for which Southern Companies may revise their offers.

82. Additionally, Southern Companies note that they explain in the October 19, 2009 Filing that changes to the Rules of the Energy Auction were necessary.<sup>26</sup> They state that retaining the existing requirements concerning the timing of day-ahead energy Offers while changing the Rules of the Energy Auction to provide for day-ahead \$/MWh bids and offers would unfairly expose Southern Companies to fuel price risk between the time the day-ahead energy auction opens and the date of delivery.

**d. Commission Determination**

83. The Commission finds that Energy Consulting's comments regarding shortening the Lock-Down Period (section 1.2.6 of the Rules on Southern Companies' Participation in the Auction) constitute a collateral attack on a prior Commission order approving that provision. Energy Consulting has not explained why opening the Auction up to sellers in

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<sup>26</sup> Southern Companies explain their changes as: (a) requiring that their offers be entered before the Lock-Down Period of any day-ahead energy auction (as opposed to the beginning of the day-ahead energy auction period), and (b) prohibiting Southern Companies from revising their day-ahead energy offers during the Lock-Down Period as a result of them entering into one or more sales of energy outside of the Auction but allowing revisions for other reasons.

addition to Southern Companies affects the prior Commission determinations regarding the Lock-Down Period. Therefore, we do not order any changes to that section 1.2.6.

84. As noted above, Energy Consulting also claimed that section 5.1.2 of the Rules on Southern Companies' Energy Auction Participation should be modified to: (1) require Southern Companies to offer all of its excess capacity at the beginning of the Lock-Down Period, and (2) ensure that Southern may not modify its offers during the Lock-Down Period for reasons other than *Force Majeure* or to maintain system reliability. In its Answer Southern Companies have clarified that the Rules of the Energy Auction already provide that Southern Companies offer all their Available Capacity in the day-ahead or hour-ahead energy Auction at the beginning of the Lock-Down Period for such Auction, and that to the extent Southern Companies make permissible sales during the Lock-Down Period, such sales cannot be a basis to make changes to the Available Capacity calculation. Given Southern Companies' commitments and clarifications on these matters, which we rely on and on which both parties appear to be in agreement, we see no need to revise the tariff provisions to further clarify these points.

## 9. Delivery

### a. Tariff

85. Sections 5.5.2 and 6.5.2 of the Rules of the Energy Auction provide that each seller awarded a unit shall be responsible for contacting its buyer counterparty to arrange delivery and the delivery point shall be the location determined by the seller or such other point mutually agreed to by the seller and buyer (notwithstanding that all units shall be delivered "into Southern").

### b. Comments

86. Energy Consulting argues that the location determined by the seller must be within the Southern Companies balancing authority area and be unconstrained. Otherwise, the seller will be capable of gaming the sales. Without this change, Energy Consulting states that a seller would be able to sell Recallable energy that was undeliverable and collect a 10 percent penalty for a failure on the part of the buyer to take delivery.<sup>27</sup>

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<sup>27</sup> Section 2.42 of the Rules of the Energy Auction defines Recallable as Energy sold whereby the seller, upon experiencing a supply side disruption, an event of *Force Majeure*, or as needed to maintain system reliability, has the right, but not the obligation, to curtail the delivery of such Energy without liability on the part of the seller.

c. **Southern Companies' Response**

87. Southern Companies agree with Energy Consulting's assertion that the delivery point locations determined by both day-ahead and hour-ahead sellers must be within the Southern Companies balancing authority area and be unconstrained. They further represent that any receipt point specified must be capable of receiving the energy matched under the Auction. Southern Companies explain that this expectation is already embodied in the definition of "Into Southern" in section 2.34 of the Rules of the Energy Auction and thus do not believe additional clarification or modification of the tariff is necessary.

d. **Commission Determination**

88. The Commission agrees with Southern Companies that the definition of "Into Southern" contained in section 2.34 of the Rules of the Energy Auction already addresses Energy Consulting's concern.<sup>28</sup> Moreover, in its Answer, Southern Companies have provided the clarification on this issue that was sought by Energy Consulting. We note that the Independent Market Monitor shall report issues involving the availability or terms of transmission service needed to accommodate an Auction purchase<sup>29</sup> and is authorized to confirm that any transmission service provided by Southern Companies necessary to accommodate a purchase under the Auction is not unreasonably withheld.<sup>30</sup>

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<sup>28</sup> Section 2.34 states "For purposes of sales through the DAE [day-ahead energy] Auction and the HAE [hour-ahead energy] Auction, the term 'Into Southern' means that the energy shall be scheduled and delivered to an interconnection or interface either: (i) on Southern Companies' transmission system border or (ii) within the Southern BAA [Southern Companies balancing authority area] if the Energy is from a source of generation in the Southern BAA, which interface, in either case, the Southern Transmission Provider identifies as available for delivery of the Energy in or into the Southern BAA."

<sup>29</sup> See section 3.3.1 of the Rules on Southern Companies Energy Auction Participation.

<sup>30</sup> See section 3.3.2(ii) of the Rules on Southern Companies Energy Auction Participation.

## 10. Force Majeure and Curtailment

### a. Tariff

89. Section 2.23 of the Rules of the Energy Auction defines *Force Majeure*.

90. Section 2.42 of the Rules of the Energy Auction defines Recallable as Energy sold whereby the seller, upon experiencing a supply side disruption, an event of *Force Majeure*, or as needed to maintain system reliability, has the right, but not the obligation, to curtail the delivery of such Energy without liability on the part of the seller.

91. Section 5.6.1 of the Rules of the Energy Auction provide that each day-ahead seller shall have the right, but not the obligation, to curtail delivery of Recallable Energy sold as day-ahead units in the event it experiences a supply side disruption (e.g., an unplanned outage or derate) affecting the Energy offered into the day-ahead auction.

92. Section 4.2.3 of the Rules on Southern Companies Energy Auction Participation provides that a curtailed day-ahead buyer awarded one or more units comprised of Recallable Energy to be sold by Southern Companies may request, in the event of curtailment, continuity of service (i.e., to not be curtailed by Southern Companies) at a “buy-through” price. The “buy-through” price for each hour for which continuity of service occurs shall be the greater of: (a) a price equal to the hour-ahead auction clearing price (if such an hour-ahead auction clearing price exists) applicable to each hour for which such continuity of service occurs (if Southern Companies are awarded Energy through the hour-ahead auction at that price), or (b) Southern Companies’ first (lowest) Offer Price for the hour-ahead auction for such hour. Southern Companies will honor such request if able to do so without adversely impacting system reliability.<sup>31</sup>

93. Section 5.2.2 of the Rules on Southern Companies Energy Auction Participation provides that sales of energy comprising hour-ahead units may be interrupted by Southern Companies for any reason or for no reason, without liability, on the part of Southern Companies, provided that: (a) sales of such Energy based on lower-priced hour-ahead bid blocks shall be curtailed before sales of Energy based on higher-priced hour-ahead bid blocks; and (b) in the event that two or more hour-ahead buyers had the same hour-ahead bid block, Energy based on an hour-ahead bid block submitted later in time shall be curtailed prior to Energy based on an hour-ahead bid block submitted earlier in time. An exception to this provision is that Southern Companies may use a different curtailment priority in the event doing so would result in fewer hour-ahead energy units being curtailed than under the curtailment priority provided herein.

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<sup>31</sup> We note that the “buy-through” feature only applies to Southern Companies.

**b. Comments**

94. With respect to section 2.42, Energy Consulting states that wherever the curtailability of Recallable Energy is referred to, it needs to be obvious and clear that not just any “supply side disruption” or any *Force Majeure* is grounds for curtailing delivery or failing to take delivery. Energy Consulting states that in all cases in this Auction where “supply side disruption” or *Force Majeure* is mentioned as a potential cause for nonperformance two conditions need to apply. First, in each case where the “supply side disruption” or *Force Majeure* is used to justify an action in this tariff, that “supply side disruption” or *Force Majeure* should have a direct effect causing the inability of the party to perform its obligations. Second, the effect of any “supply side disruption” or *Force Majeure* should not extend beyond the period during which the “supply side disruption” or *Force Majeure* directly causes the party to be unable to meet its commitments.

95. With respect to section 5.6.1, Energy Consulting states that the sellers are not required to specifically assign a generating unit to a bid block and can thus curtail delivery of any bid block if they have any supply side disruption. It states that the seller should only be allowed to curtail delivery of energy if they have a supply side disruption that disrupts their ability to “maintain system reliability,” otherwise, the seller will be able to exercise undue discrimination against seller-chosen parties on the occurrence of any supply side disruption.

96. With respect to section 4.2.3, Energy Consulting states that the day-ahead buyer that requests and is given a “buy-through” price should not be obligated to take each hourly sale until that price is known, hour-by-hour.<sup>32</sup> Otherwise this Buyer will be left to: (i) suffer market price increases without recourse, and (ii) be subject to Southern Companies’ first Offer Price. Energy Consulting adds that since the hourly price paid is set at the higher of the clearing price or Southern Companies’ offer, for hours during which no clearing price exists the hourly price would be set by Southern Companies.

97. With respect to section 5.2.2, Energy Consulting states that Southern Companies’ hour-ahead units should be defined as Recallable rather than non-firm. It states that if these sales are defined as non-firm, with the ability for Southern Companies to interrupt them “for any reason or for no reason” then Southern Companies have not actually offered their excess capacity for sale. Instead, Energy Consulting claims that Southern Companies will only appear to offer their excess capacity while not being actually obligated to deliver it.

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<sup>32</sup> A curtailed buyer may request continuity of service at a “buy-through” price. See section 4.2.3 of the Rules of Southern Companies Energy Auction Participation.

c. **Southern Companies' Response**

98. Southern Companies believe the conditions and limitations Energy Consulting seeks to incorporate are already present in their market-based rate tariff. Specifically, Southern Companies state that the general definition of *Force Majeure* in section 2.23 must be read in conjunction with the other provisions of the tariff in which that term is used to discern its limited operation. For example, Southern Companies state that both section 7.1 of the Rules of the Energy Auction and section 6.1 of the Rules on Southern Companies' Energy Auction Participation indicate that Southern Companies shall be excused from their obligations "to the extent such non-compliance is the result of an event of *Force Majeure*." Further, Southern Companies state that it is inherent in those provisions (as well as in the definitions for Firm LD and Recallable at sections 2.22 and 2.42 of the Rules of the Energy Auction, respectively) that any action or inaction arising out of a *Force Majeure* event will not extend beyond the duration of such event. Finally, Southern Companies state that the *Force Majeure* tariff provisions apply to the operation of the Auction and have nothing to do with deliveries between matched counterparties, as those deliveries are governed by the parties' relevant enabling agreement.

99. Southern Companies assert that Energy Consulting's comments regarding section 5.6.1 of the Rules of the Energy Auction should be rejected as a collateral attack on prior Commission orders because it was previously accepted in the December 2008 Order and unaltered in the October 19, 2009 Filing. Southern Companies state that they are confused by the suggestion that section 5.6.1 of the Rules of the Energy Auction be modified to allow sellers to curtail delivery of energy only if they have a supply side disruption that disrupts their ability to "maintain system reliability." Southern Companies explain that the Rules of the Energy Auction permit curtailment of Recallable Energy if the seller experiences a supply side disruption affecting the energy offered into the day-ahead energy Auction. Southern Companies claim that Energy Consulting's proposal would severely limit this ability to curtail and thereby fundamentally change the definition of Recallable Energy. Moreover, Southern Companies assert that adoption of Energy Consulting's request could limit third-party participation in the Auction because some third-party sellers may be marketers that do not have any system over which they must maintain system reliability, effectively precluding these entities from offering Recallable Energy because they would never be eligible to recall it.

100. Southern Companies also assert that Energy Consulting's comments regarding the "buy-through" feature of the Recallable product offered in the day-ahead energy auction should be rejected as a collateral attack on prior Commission orders because it was previously accepted in the December 2008 Order and unaltered in the October 19, 2009 Filing. Southern Companies explain that they did not change the fundamental operation of the "buy-through" feature of the Recallable product offered in the day-ahead energy Auction. Southern Companies state that the "buy-through" provision was revised in the October 19, 2009 Filing to reflect the inclusion of third-party sellers. Specifically, they

state that in the event an hour-ahead energy auction clearing price in Phase II is below Southern Companies' costs, that price would be an inappropriate measure upon which to establish a "buy-through" price. Southern Companies thus represent that they amended the "buy-through" provision appropriately. Additionally, Southern Companies explain that the "buy-through" price continues to be a function of the hour-ahead energy Auctions for the delivery day corresponding to the day-ahead energy unit(s) of Recallable Energy awarded. Thus, a participant must decide prior to the opening of the hour-ahead energy auction whether it desires to "buy-through." Southern Companies assert that Energy Consulting's approach is unworkable in the Auction as designed.

101. Southern Companies assert that Energy Consulting's comments regarding changing the definition in section 5.2.2 from non-firm to recallable is a collateral attack on prior Commission orders because it was previously accepted in the December 2008 Order and unaltered in the October 19, 2009 Filing. Southern Companies argue that the Commission approved the hour-ahead product as non-firm in the December 2008 Order, the hourly non-firm product remains just and reasonable, and Energy Consulting's comments on this provision should be dismissed. Southern Companies represent that in the Southeast bilateral markets, the standard hourly energy product is non-firm and thus Southern Companies specifically offered an hour-ahead non-firm product in the Auction. In addition, Southern Companies state that this hourly energy product was proposed in addition to the day-ahead Recallable product and Firm LD day-ahead product in order to eliminate any lingering suggestion that Southern Companies might somehow be physically withholding power in the Southern Companies balancing authority area.

**d. Commission Determination**

102. The Commission agrees with Southern Companies that, when read in conjunction with the other tariff provisions excusing performance based on an event of *Force Majeure*,<sup>33</sup> the definition of *Force Majeure* in section 2.23 of the Rules of the Energy Auction need not be modified. The Commission finds that Southern Companies have adequately defined *Force Majeure*, and further notes that the tariff specifically discusses the period during which performance is prevented by *Force Majeure* for Firm LD. We

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<sup>33</sup> E.g., section 7.1 of the Rules of the Energy Auction ("Auction Administrator and Independent Auction Monitor shall be excused from non-compliance with these Rules of the Energy Auction to the extent such non-compliance is the result of an event of Force Majeure."); section 6.1 of the Participation Rules ("Southern Companies shall be excused from non-compliance with the Auction Rules and the Participation Rules . . . to the extent such non-compliance is the result of an event of *Force Majeure* or otherwise necessary to maintain system reliability or to reliably serve load.").

also note Southern Companies' explanation that the *Force Majeure* tariff provision applies to operation of the Auction and does not have anything to do with deliveries between matched counterparties (as made clear by the definition in section 2.23 of the Rules of the Energy Auction), and our approval of this provision is based on this interpretation.<sup>34</sup> We also agree with Southern Companies' that it is inherent in sections 2.22, 2.42, 6.1 and 7.1 of the Rules of the Energy Auction that: (1) any action or inaction arising out of a *Force Majeure* event will not extend beyond the duration of such event, and (2) that the *Force Majeure* tariff provisions apply to the operation of the Auction and have nothing to do with deliveries between matched counterparties.

103. We find Energy Consulting's comments regarding section 5.6.1 of the Rules of the Energy Auction constitute a collateral attack on a prior Commission order approving that provision. The revisions to this provision reflect nomenclature changes and do not constitute substantive changes.

104. We find Energy Consulting's comments regarding section 4.2.3 of the Rules on Southern Companies Energy Auction Participation constitute a collateral attack on a prior Commission order approving that provision. A day-ahead buyer that requests and is given a "buy-through" price was not given notice of the price ahead of time and this feature remains unchanged. As Southern Companies explain, they revised the "buy-through" provision to reflect the inclusion of third-party sellers and have thus amended the provision appropriately. We agree with Southern Companies and will not direct any revisions to this section.

105. The Commission agrees with Southern Companies that Energy Consulting's comments regarding section 5.2.2 of the Rules on Southern Companies' Energy Auction Participation amount to a collateral attack on provisions previously accepted by the Commission. Section 2.30 of the Rules of the Energy Auction, which were accepted by the Commission, defined HAE Power as "Non-Firm Energy offered or sold by Seller through the HAE Auction." Energy Consulting has not made any argument as to why the Commission should re-examine this definition now that the Auction is going to be expanded to sellers other than Southern Companies. We also note Southern Companies' representation that the standard hourly energy product is non-firm. For these reasons, we are not directing that any changes be made to section 5.2.2.

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<sup>34</sup> Section 2.23 states in part that in the context of the definitions of Firm LD and Recallable herein, *Force Majeure* shall have the meaning given to that term in the Governing Service Agreement (provided that such Governing Service Agreement provides such a definition).

## 11. Transparency

### a. Tariff

106. Section 3.2.1 of the Rules on Southern Companies' Energy Auction Participation provides that Southern Companies will report the quantities and prices *of sales* made via the Energy Auction to either a reputable index developer or a data hub.

### b. Comments

107. Energy Consulting states that given that Southern Companies intend to participate as a buyer in the Auction, their quantities and prices *of purchases* made via the Auction should also be reported to either a reputable index developer or a data hub. It also states that the quantities of power purchased by Southern Companies in the Auction should also be monitored by the Independent Auction Monitor so they can respond to questions from Bidders and/or regulators regarding the integrity of the Auction process.

### c. Southern Companies' Response

108. Southern Companies respond first by clarifying that they currently report their purchases made outside the Auction and will report any purchases they make as a result of the Auction to a reputable index developed or a data hub. With respect to Energy Consulting's statement that the Independent Auction Monitor should monitor the quantity of Southern Companies' power purchases so they can respond to "questions from Bidders and/or regulators regarding the integrity of the Auction process," Southern Companies maintain that they fail to understand how their purchasing activities have any direct or indirect impact on the "integrity of the [A]uction process." Southern Companies argue that: (i) their bids will be reported to the Commission by the Independent Auction Monitor as part of its reporting responsibilities; (ii) anyone can "monitor" Southern Companies' purchases from jurisdictional entities through its submissions of the Electric Quarterly Reports to the Commission; and (iii) because Southern Companies' purchases are included in the Supply Curve for both the hour-ahead and day-ahead energy Auctions, the Independent Auction Monitor already has access to that information.

### d. Commission Determination

109. We note that Southern Companies have responded to Energy Consulting's concerns by saying that they currently report their purchases made outside the Auction and commit to report any purchases they make as a result of the Auction. Thus, the Commission finds that Southern Companies' response sufficiently addresses the concerns raised by Energy Consulting, and in light of this interpretation which we adopt we find that no changes are needed to the tariff on this particular issue. We also note that our December 2008 Order specified that the Independent Auction Monitor must file annual reports regarding the clearing price for each Auction, the amount of energy offered and

sold by each seller in each Auction, and the amount of energy bid or and purchased by each buyer in each Auction.<sup>35</sup> In addition, the Independent Auction Monitor has an obligation to report any complaints relating to the Auction or other serious concerns to the Commission as soon as possible rather than waiting for the next report.<sup>36</sup> We view this obligation as meaning that the Independent Auction Monitor is responsible for identifying suspected tariff violations and/or violations of Commission approved rules and regulations related to the Auction, including suspected market manipulation, by any market participant or the Auction Administrator and promptly notifying and/or referring such questionable behavior to the Commission's Office of Enforcement. Further, any and all data and information accessible by the Independent Auction Monitor and/or the Auction Administrator, as well as any analyses performed of that data, should be made available to the Commission upon request, as the Commission may deem necessary.<sup>37</sup> Thus, the Independent Auction Monitor should be monitoring the power purchased and sold by Southern Companies as well as other Auction participants. Therefore, the Commission will not direct any revisions in this regard.

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<sup>35</sup> Section 4.3.4 of the Rules of the Energy Auction. These reports will include the following: (a) the clearing price for each Energy Auction; (b) the amount of Energy offered and sold by each seller (identified by name) in each Energy Auction; and (c) the amount of Energy bid on and purchased by each buyer in each Energy Auction.

<sup>36</sup> December 2008 Order, 125 FERC ¶ 61,316 at P 49. *See also* sections 4.3.4 and 4.3.5 of the Rules of the Energy Auction.

<sup>37</sup> Pursuant to 18 C.F.R. § 375.311(a) (2009), the Commission delegated to the Director of the Office of Enforcement the authority to request information for purposes of conducting market surveillance from an entity whose activities may affect energy markets, and from state or federal agencies that monitor or regulate such entities. Further, the Auction Administrator comprises certain Southern Companies' personnel but in the future an independent auction administrator may be hired. The independent auction administrator will be responsible for certain administrative functions relating to the Auction, including, but not limited to, managing, safeguarding, and storing, subject to confidentiality provisions, all bid, offer, and transaction-related information. Southern Companies Filing at n.30.

## 12. Agreements

### a. Tariff

110. The tariff revisions include references to the Participant Agreement, which is “an agreement executed by an entity and Auction Administrator that contractually binds such entity to comply with [the] Rules of the Energy Auction, including the obligation to pay for Administrative Charges” but Southern Companies’ filing does not include this agreement.<sup>38</sup>

111. The tariff also references the Governing Service Agreement and defines it as the agreement between a seller and buyer under which the sale of Energy is transacted. Sections 5.7.2 and 6.7.1 of the Rules of the Energy Auction, while not referencing the Governing Service Agreement, provide that in the event a Buyer fails to properly take delivery of Recallable Energy awarded in the Auction, the Seller shall buy back the Energy at 90 percent of the applicable Auction Clearing Price and the Buyer shall be financially responsible for the difference.

### b. Comments

112. Energy Consulting states that the Participant Agreement needs to be presented as part of this proceeding. It states that if it is left to the Auction Administrator to determine what the terms of that agreement are then there can be undue discrimination against certain parties that desire to participate in the Auction. It states that issues such as default conditions, term, responsibilities and dispute resolution need to be addressed in a neutral forum, such as this docket.

113. In its comments concerning sections 5.7.2 and 6.7.1 of the Rules of the Energy Auction (which do not mention the Governing Service Agreement), Energy Consulting states that the Governing Service Agreement should be the controlling document concerning financial exchanges between the seller and buyer. Otherwise, an ambiguity between many existing counterparty agreements and the Auction rules will result.

### c. Southern Companies’ Response

114. Southern Companies state that there is no need to file the Participant Agreement as part of the market-based rate tariff. They state that the current Participant Agreement continues to be publicly available on the Auction website and the Phase II Participant Agreement has been available for review. Thus, given that the Participant Agreement is

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<sup>38</sup> See section 2.41c of the Rules of the Energy Auction.

publicly available to Auction participants, Southern Companies see no utility in including it in their market-based rate tariff.

115. In response to Energy Consulting's comments regarding the Governing Service Agreement, Southern Companies believe that it is important to have a clear understanding of what happens in the Auction when non-receipt occurs. Southern Companies assert that sections 5.7.2 and 6.7.1 of the Rules of the Energy Auction as accepted by the Commission provide that understanding.

**d. Commission Determination**

116. We find it unnecessary to require Southern Companies to file the Participant Agreement as part of this docket. Additionally, we recognize Southern Companies have posted the Participant Agreement on the Auction website; thus, it should be readily available to participants.

117. Regarding Energy Consulting's request that the Governing Service Agreement be the controlling document concerning financial exchanges between the seller and buyer, the Commission clarifies that unless the Rules of the Energy Auction explicitly provide that the Governing Service Agreement be the controlling document regarding certain terms and provisions (e.g., sections 2.22, 2.23, 2.40 of the Rules of the Energy Auction), the Rules of the Energy Auction take precedence over the Governing Service Agreement (e.g., section 5.7.2 of the Rules of the Energy Auction).

**13. Clarification of Southern Transmission Provider**

**a. Tariff**

118. Section 2.34 of the Rules of the Energy Auction defines the term "Into Southern" and includes a reference to "the Southern Transmission Provider."

**b. Comments**

119. Energy Consulting requests that the definition of "Southern Transmission Provider" should be clarified.

**c. Southern Companies' Response**

120. Southern Companies believe the term "Southern Transmission Provider" is self-evident and note that no bidder has ever before raised this issue.

**d. Commission Determination**

121. In order to eliminate any ambiguity in the use of this term, the Commission directs Southern Companies to revise their tariff to include the definition of “Southern Transmission Provider,” within 30 days of the date of this order.

The Commission orders:

(A) Southern Companies’ request to delay implementation of the expanded Auction is granted, as discussed in the body of this order. The Commission extends the commencement date of the expanded Auction until January 4, 2010.

(B) Southern Companies’ tariff revisions are hereby conditionally accepted, effective the date that the expanded Auction commences, January 4, 2010, as discussed in the body of this order.

(C) Southern Companies are directed to revise their tariff to reflect the appropriate effective date of the implementation of the expanded Auction, within 30 days of the date of this order.

(D) Southern Companies are directed to make a compliance filing, which includes the tariff changes discussed herein, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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