

KEVIN C. FITZGERALD
202.274.2955 telephone
kevin.fitzgerald@troutmansanders.com

TROUTMAN SANDERS

TROUTMAN SANDERS LLP
Attorneys at Law
401 9th Street, N. W.
Suite 1000
Washington, District of Columbia 20004-2134
202.274.2950 telephone
202.274.2994 facsimile
troutmansanders.com

January 19, 2010

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 52-77
Washington, DC 20426

RE: *Southern Company Services, Inc.*
Docket Nos. ER09-88-___

Dear Secretary Bose:

In compliance with the Commission's Order issued December 17, 2009,¹ Southern Company Services, Inc. ("SCS"), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively, "Southern Companies"), respectfully submits the instant compliance filing.

Specifically, Southern Companies: (i) tender revised tariff sheets to their Market-Based Rate ("MBR") Tariff to incorporate the Commission's directives for Phase II of the day-ahead and hour-ahead energy auctions ("Auction"); and (ii) provide additional explanation as to the roles of the Independent Auction Administrator ("IAA") and Southern Companies' Auction Administrator in accordance with the December 2009 Order.

1. Background

On December 17, 2009, the Commission issued its Order conditionally accepting Southern Companies' October 19, 2009 compliance filing in this proceeding.² The Commission accepted the proposed tariff revisions effective January 4, 2010, and in so doing, enabled the Auction to function with multiple sellers while providing additional clarification to the governing MBR Tariff. Among the accepted revisions were several changes specifically tailored to be responsive to third-party feedback. In addition, the Commission approved Southern Companies'

¹ *Southern Co. Svcs., Inc.*, 129 FERC ¶ 61,253 (2009) ("December 2009 Order").

² The October 19, 2009 filing ("October 19 Compliance Filing") was submitted to comply with a Commission directive to modify the Auction to include third-party sellers. See *Southern Co. Svcs., Inc.*, 125 FERC ¶ 61,316 at P 51 (2008) ("December 2008 Order"). Southern Companies accepted this condition, along with the others specified in the December 2008 Order, in their January 21, 2009 compliance filing ("January 21 Filing"). That filing was accepted by the Commission on March 25, 2009. See *Southern Co. Svcs., Inc.*, 126 FERC ¶ 61,274 at P 2 (2009) ("March 25 Order").

Hon. Kimberly D. Bose
January 19, 2010
Page 2

proposed administrative charge to recover specified Auction-related costs, and contemporaneously authorized a regulatory asset accounting treatment to the extent such costs are under-recovered.³

A number of the conditions reflected in the Commission's December 2009 Order resulted from its consideration of the comments and suggestions submitted by other parties. These conditions largely involved directions to define or clarify the definition of certain terms related to the Auction. That said, many changes suggested by those parties were found to be unnecessary or inappropriate. For example, one commenter sought to require the Independent Auction Monitor ("IAM") to monitor quantities of power purchased by Southern Companies in the Auction so that the IAM could respond to questions regarding the "integrity of the Auction process."⁴ The Commission found that no revision was needed in this regard, accepting Southern Companies' explanation that the IAM's monitoring role already encompasses the identifying and reporting of suspected violations of the Auction Rules.⁵ Other portions of those parties' comments were rejected because they constituted improper collateral attacks on prior Commission orders.⁶ Indeed, the bulk of the third-party comments fell into this category.

Since the issuance of the December 2009 Order, Southern Companies have continued to work diligently to prepare for the timely start-up of Phase II of the Auction. Such plans have included working with Open Access Technology International, Inc. ("OATI") on finalizing software issues, working with TranServ International, Inc. ("TranServ") regarding IAA duties and responsibilities, and handling third-party seller issues. Seventeen third-parties currently have signed the Participation Agreement for Phase II and Southern Companies will continue outreach efforts to gain further participation.

³ December 2009 Order at PP 18-21, 34.

⁴ *Id.* at P 107.

⁵ *Id.* at P 109. Southern Companies understand this discussion in the December 2009 Order to be a reiteration of the IAM's existing duties set forth in the MBR Tariff, which focus on the mitigation-related terms and conditions applicable to Southern Companies and the manner in which the Auction clears. In the course of carrying out these duties, including the development of its annual report, the IAM will necessarily have access to Auction submissions by Southern Companies as well as other Auction participants. That said, Southern Companies do not interpret the December 2009 Order as expanding or broadening the IAM's current role. Specifically, Southern Companies interpret the statements made in Paragraphs 88 and 109 of the December 2009 Order to indicate: (1) the IAM will monitor issues associated with the Auction; and (2) the term "Auction" should be used in place of the term "market" in three instances (*i.e.*, in Paragraph 88, "Independent Market Monitor" should refer to "Independent Auction Monitor" in Paragraph 88, and in Paragraph 109, "market manipulation" and "market participant" should refer to "Auction manipulation" and "Auction participant" in Paragraph 109).

⁶ *Id.* at PP 37, 53, 55, 58, 83, 103-105.

Hon. Kimberly D. Bose
January 19, 2010
Page 3

Consistent with the Commission's determination regarding the effective date of the October 19 Compliance Filing, Southern Companies began Phase II of the Auction on January 4, 2010.

2. Description of Filing

a. MBR Tariff Revisions

In accordance with the December 2009 Order, Southern Companies submit as Exhibit A revised MBR Tariff sheets to be effective January 4, 2010, the first date of Phase II of the Auction ("Revised Tariff Sheets"). A blacklined version of the Revised Tariff Sheets, showing these compliance-related changes from the MBR Tariff sheets as filed, is attached as Exhibit B. The Commission's directives and associated changes made to the MBR Tariff are described more fully below.

- (i) The December 2009 Order directs Southern Companies to state affirmatively in Section 2.1 of the Rules on Southern Companies' Energy Auction Participation ("Participation Rules") who may serve as the Southern Companies' Auction Administrator.⁷ Southern Companies have revised Section 2.1 of the Participation Rules to comply with this directive.
- (ii) The December 2009 Order directs Southern Companies to revise Sections 2.19a and 2.31 of the Rules of the Energy Auction ("Auction Rules"), which define Dependent Offer and Independent Offer, respectively, to correct the cross-references in those sections.⁸ Specifically, Sections 2.19a and 2.31 should reference Section 5.2.3 rather than Section 5.2.4. Southern Companies have revised Section 2.19a and 2.31 of the Auction Rules to comply with this directive.
- (iii) The December 2009 Order directs Southern Companies to revise Section 4.3.4 of the Auction Rules to reflect the fact that Southern Companies will report annually any refunds or surcharges related to Southern Companies' administrative charge by February 15, 2011 and each year thereafter.⁹ Southern Companies commit to provide such information in an annual report, and have proposed language to this effect in Section 4.3.4 of the Auction Rules.

⁷ *Id.* at P 33.

⁸ *Id.*

⁹ *Id.* at P 34.

- (iv) The December 2009 Order directs Southern Companies to revise the MBR Tariff to reference the restrictions previously approved in the December 2008 Order pertaining to market-based energy sales for delivery into the Southern Companies balancing authority area during the Auction periods.¹⁰ Southern Companies have made the requisite revision by adding a new Section 8.2 to the General Tariff Provisions of the MBR Tariff.
- (v) The December 2009 Order directs Southern Companies to revise Section 1.2.1 of Appendix DA-1 of the Participation Rules to make clear that the term “peak” refers to the system-wide coincident peak of Southern Companies.¹¹ Southern Companies have modified Section 1.2.1 of Appendix DA-1 to make this clarification.
- (vi) The December 2009 Order directs Southern Companies to define the term “linked” in the MBR Tariff as it applies to Sections 2.1.3 and 2.1.4 of Appendix DA-1 of the Participation Rules.¹² Southern Companies have complied with this directive by adding a definition of the term “linked” as new Section 1.2.5B of the Participation Rules.
- (vii) The December 2009 Order directs Southern Companies to revise the MBR Tariff to state that each winning Bidder or Offeror will be notified no later than 15 minutes subsequent to the close of bid period for day-ahead auctions and no later than five minutes subsequent to the close of the bid period for hour-ahead auctions.¹³ In accordance with those directives, Southern Companies have modified Sections 4.2.2, 5.5.1, and 6.5.1 of the Auction Rules to reflect these notification time periods.
- (viii) The December 2009 Order directs Southern Companies to include in the MBR Tariff a definition for the term “Southern Transmission Provider.”¹⁴ Southern Companies have complied with this directive by adding a definition of the term “Southern Transmission Provider” as new Section 2.46 of the Auction Rules.

¹⁰ *Id.* at P 36.

¹¹ *Id.* at P 54.

¹² *Id.* at P 56.

¹³ *Id.* at P 75.

¹⁴ *Id.* at P 121.

Hon. Kimberly D. Bose
January 19, 2010
Page 5

- (ix) In compliance with the Commission's December 2009 Order,¹⁵ Southern Companies have revised the footers of relevant pages of the MBR Tariff to reflect the appropriate effective date of January 4, 2010, the date of commencement of Phase II of the Auction.

b. Additional Directives

As the Commission notes in the December 2009 Order, Southern Companies have chosen TranServ to serve as the IAA for Phase II of the Auction.¹⁶ The Commission states further that it "supports the hiring of an independent auction administrator as a positive step towards ensuring the confidentiality of Auction data"¹⁷ The December 2009 Order also indicates that the safeguard of third-party data is important to encourage third-party participation in Phase II of the Auction. As such, the December 2009 Order directs Southern Companies to elaborate on the circumstances surrounding their employees' access to third-party confidential information, and specifically to "explain why its employees need access to this data, and how such information will be protected from improper disclosure or misuse."¹⁸

In addition, the December 2009 Order directs Southern Companies to: (1) identify the administrative functions that will be moved to the IAA; (2) explain the role of the IAA and whether the IAA will be taking over all of the responsibilities of the Southern Companies' Auction Administrator; (3) explain which of the responsibilities will not be assumed by the IAA and identify who will perform such duties; and (4) set forth the specific duties and responsibilities of the IAA and Southern Companies' personnel related to administering the Auction subsequent to the IAA's duties commencing.¹⁹

In accordance with the aforementioned directives of the December 2009 Order, Southern Companies provide the following additional information related to their utilization of an IAA and their continued adherence to the unchanged provisions of the Auction Rules pertaining to the isolation and safeguard of confidential Auction data.

¹⁵ *Id.* at P 35.

¹⁶ *Id.* at n.9.

¹⁷ *Id.* at P 30.

¹⁸ *Id.* at P 31.

¹⁹ *Id.* at P 32.

Hon. Kimberly D. Bose
January 19, 2010
Page 6

i. Need for Southern Companies' Auction Administrator Personnel to Have Access to Confidential Auction Data

As set forth more fully in the October 19 Compliance Filing, the changes proposed as part of the Phase II expansion allow for the participation of third-party sellers in the Auction. The Auction nevertheless continues to be an integral part of Southern Companies' MBR Tariff, mitigating any potential ability of Southern Companies to exercise market power in the Southern Balancing Authority Area. Likewise, Southern Companies continue to serve as the official, tariff-defined Auction Administrator, charged with the responsibility for establishing and facilitating the day-ahead and hour-ahead auctions.²⁰ Southern Companies thus remain responsible to the Commission for the operation of the Auction in accordance with all applicable rules. Some degree of administrative delegation certainly is feasible and acceptable in this context, hence the retention of the IAA. Any assignment of operational oversight and day-to-day tasks to an outside entity, however, must be consistent with Southern Companies' need to perform their own monitoring of the Auction to ensure that it is functioning as designed. In short, the Auction Rules and Participation Rules are part of Southern Companies' MBR Tariff, and thus Southern Companies bear ultimate responsibility to ensure that the Auction is administered in accordance with the Auction Rules and Participation Rules.

With this in mind, Southern Companies have delegated to the IAA the Auction Administrator function of coordinating the management, safeguard and storage of confidential Auction data, including that of third-parties. Notwithstanding that delegation, however, Southern Companies' Auction Administrator personnel will continue to have the ability to access this information as necessary to assure compliance with their MBR Tariff. Absent inquiries from the Commission or a regulatory entity, such access to confidential Auction data will not involve sharing the data outside of Southern Companies' Auction Administrator function and the IAA. Indeed, the Southern Company Auction Administrator personnel normally will not need confidential Auction data as part of their compliance-related activities.

Notwithstanding the foregoing, some circumstances could arise that would require access to confidential Auction data. Such instances might involve, for example, questions or complaints regarding the outcome of a particular auction or a specific entity's participation in a particular auction. In those instances, Southern Companies' Auction Administrator will need to obtain and review confidential Auction data in order to research and respond to those questions or complaints, as the case may be, and ensure that the Auction is functioning as intended and consistent with the requirements of their MBR Tariff.

Southern Companies certainly do not anticipate questions or complaints occurring with any degree of frequency, and not all of the questions or complaints submitted will require access

20

MBR Tariff, Section 3.0.

Hon. Kimberly D. Bose
January 19, 2010
Page 7

by Southern Companies to confidential Auction data. Indeed, as discussed more fully below, the key new protection for such data in Phase II – *i.e.*, off-site, non-Southern Companies data storage – reflects this expectation. Nevertheless, in order to fulfill its official role as Auction Administrator and maintain the ability to monitor the Auction, Southern Companies' Auction Administrator personnel have retained the ability to access this data, subject to the protections discussed below.

ii. Protection of Confidential Auction Data from Improper Disclosure or Misuse

As with Phase I, access in Phase II to confidential Auction data continues to be limited to a discrete group of Southern Companies' personnel. Specifically, and as was the case in Phase I, Southern Companies' Marketing Function Employees and Transmission Function Employees, as those terms are defined in 18 C.F.R. § 358.3(d) and (i), are prohibited from serving as Auction Administrator personnel,²¹ and any other employee of Southern Companies directly engaged in wholesale electricity marketing and trading is prohibited from accessing confidential Auction data.²² Furthermore, and consistent with the requirements of Phase I, Southern Companies have imposed internal data control restrictions similar to those used for Standards of Conduct compliance in order to ensure that confidential Auction data is maintained in a secure fashion and protected from improper disclosure or misuse.²³

In addition to these provisions (as accepted by the Commission in the December 2008 Order), Phase II affords even more protection because the management, safeguard and storage of confidential Auction data shifts entirely from Southern Companies to the IAA. As noted above, the data now will be stored at an off-site (non-Southern Companies) location. Moreover, Southern Companies' ability to access the data will be limited to those circumstances, as discussed above, related to compliance-related activities relating to their MBR Tariff. To the extent Southern Companies' Auction Administrator personnel may be required to download confidential Auction data, such instances will be documented accordingly.

Thus, as compared to Phase I, a two-tiered system now is in place with respect to the safeguard and protection of confidential Auction data. First, the IAA serves as the data custodian for the Auction. Requests for confidential Auction data will be routed through and processed by the IAA. Second, to the extent Southern Companies' Auction Administrator personnel require access to confidential Auction data, the previously established and approved

²¹ Participation Rules § 2.1. *See also* Phase I Auction Rules § 3.4.

²² Participation Rules § 2.2. *See also* Phase I Auction Rules § 3.6

²³ Participation Rules § 2.3.

Hon. Kimberly D. Bose
January 19, 2010
Page 8

limitations on the personnel capable of and prohibited from accessing such data remain in place. In addition, when occasions arise that require Southern Companies' Auction Administrator personnel to access such data, Southern Companies' internal data control restrictions will be used to ensure that confidential Auction data is secured and protected from improper disclosure. To this end, and as a reiteration of previous assurances provided to Auction participants in the course of Phase I operation and Phase II preparation, all employees of Southern Companies directly engaged in wholesale electricity marketing and trading are prohibited from accessing confidential Auction data.²⁴ In sum, confidential Auction data, including that of third-parties, are being afforded reasonable and practical protections in Phase II to safeguard such data from improper disclosure or misuse.

iii. Administrative Functions Being Moved from Southern Companies' Personnel to the IAA and the Role of the IAA

As noted above, one key function moved from Southern Companies' personnel to the IAA is the management, safeguard and storage of confidential Auction data. In addition to this function, the IAA also is charged with testing and verifying the configuration of the Auction software and interactions with potential and actual Auction participants. Examples of anticipated tasks within these functions include:

- Managing, safeguarding and storing, subject to certain terms, all bid, offer and other transaction-related information, including Participant Agreements and user registration materials related to Participants;
- Ensuring the Auction software is configured and operates in accordance with the Auction Rules;
- Administering the Auction participant registration process to enable participation in the Auction;
- Managing participant access to the Auction software;
- Investigating and resolving participant questions regarding Auction activities, such as technical questions relating to the results of a given auction or Auction software questions;

²⁴ Furthermore, any data downloaded by Southern Companies Auction Administrator personnel will be subject to controls to protect it from unauthorized access. All electronic files are stored on a protected drive to which only Southern Company Auction Administrator personnel have access. Computers that may be used for the access and review of this data are equipped with controls that automatically lock down the computer after a brief period of inactivity. In addition, any hard copy versions of the data will be stored in a file cabinet that is locked and accessible only by the Southern Company Auction Administrator personnel.

Hon. Kimberly D. Bose
January 19, 2010
Page 9

- Performing periodic testing of the Auction software to ensure the system operates in accordance with the Auction Rules;
- Participating in testing and training for new or changed Auction functions;
- Serving as the first point of contact for and between Southern Companies and Auction participants;
- Coordinating the implementation of changes to the Auction software (including the testing of such changes);
- Coordinating with Southern Companies' Auction Administrator personnel and the IAM regarding the administration of the Auction software and the Auction Rules;
- Coordinating with Southern Companies' Auction Administrator personnel and OATI to resolve questions or other issues related to the operation of the Auction, including those related to the application of the Auction Rules and the operation of the Auction software;
- Coordinating with Southern Companies' Auction Administrator personnel and OATI to schedule software upgrade installations;
- Coordinating with OATI regarding issues affecting software operation and system outages;
- Documenting assistance requests by Auction participants in support tickets; and
- Assisting, as directed by Southern Companies' Auction Administrator personnel, in responding to inquiries from regulatory entities related to Auction activities.

This list is not intended to be exclusive, however, as Southern Companies and the IAA expect that the IAA will assume responsibility for other related tasks as appropriate.

iv. Responsibilities Not Being Assumed by IAA and Southern Companies' Personnel that Will Perform Them

As stated above, Southern Companies remain ultimately responsible to the Commission for the operation of the Auction in accordance with the Auction Rules and Participation Rules, as set forth in their MBR Tariff. Southern Companies' Auction Administrator personnel must therefore ensure that the Auction functions and clears as intended. In addition, responsibility for compliance with all mitigation-related matters, including compliance with the MBR Tariff appendices relating to the submission and pricing of energy in the Auction, will remain with Southern Companies' Auction Administrator personnel. Further, Southern Companies remain

Hon. Kimberly D. Bose
January 19, 2010
Page 10

the official licensee for the Auction software (and thus responsible for approving any final decisions regarding modifications to the software) and Southern Companies also maintain the Auction website. Accordingly, the official role of Auction Administrator remains within Southern Companies and is carried out by the same individuals from the same three separate business functions that attended to the operation of Phase I and the preparation for Phase II. Those functions and the Auction Administrator roles specific to them are as follows:

- **Financial and Contract Services Auction Administrator – In Phase II, the Financial and Contract Services designee is responsible for ongoing quality assurance of the Auction software, including change management of the software, as well as the coordination with the IAA regarding the billing and collection of administrative and user fees from Auction participants.**
- **Risk Control Auction Administrator – In Phase II, the Risk Control designee is primarily responsible for working with counterparties to facilitate the execution of Participant Agreements, as well as the coordination between counterparties and OATI to obtain executed non-disclosure agreements. Once agreements are in place, the Risk Control designee communicates with the IAA to confirm counterparty setup in the Auction software.**
- **Regulatory Affairs and Energy Policy Auction Administrator – In Phase II, the Regulatory Affairs and Energy Policy designee is primarily responsible for the implementation of decisions that Southern Companies make regarding future development and expansion of the Auction (subject to any required Commission approvals) and for ensuring that all day-ahead auctions and hour-ahead auctions performed as part of the Auction are carried out in accordance with the requirements of the Auction Rules and Participation Rules.**

From an administrative, day-to-day perspective, Southern Companies do not envision the Southern Companies' Auction Administrator personnel discharging many Auction Administrator tasks. As the list set forth above indicates, the IAA has been charged with the performance of much of the day-to-day administration of the Auction. Consistent with Southern Companies' ultimate responsibility over the Auction, however, the IAA is expected to consult with Southern Companies' Auction Administrator personnel on various matters, including:

- **Changes to the Auction software;**
- **Responses to Auction participant queries involving application of the Auction Rules;**
- **Responses to Auction participant comments suggesting or proposing changes to the Auction software or the Auction Rules;**

Hon. Kimberly D. Bose
January 19, 2010
Page 11

- Responses to inquiries or requests for information from regulatory agencies or the IAM; and
- Any other matters on which the IAA desires Southern Companies' guidance.

By balancing the functions and tasks associated with the administration of the Auction in this way, Southern Companies have endeavored to ensure that the Auction will continue to operate as they intended through its design, while at the same time increasing both the efficiency of Auction operations and the confidence that third-parties can participate in the Auction as a supplement to the bilateral markets in the Southeast.

v. New MBR Tariff Language

In accordance with Paragraph 32 of the December 2009 Order, and consistent with the discussion above, Southern Companies have inserted a new Section 2.1A in the Participation Rules setting forth the specific duties and responsibilities of the IAA and the Southern Companies personnel involved with Auction administration. New Section 2.1B addresses the fact that Southern Companies will not delegate ultimate responsibility for the Auction.

c. Posting

In accordance with the recommendation of the December 2009 Order,²⁵ Southern Companies posted the Intercompany Interchange Contract on the Auction website on December 18, 2009.²⁶

3. Contents of Filing

The following documents are attached to this transmittal letter:

- | | |
|-----------|---|
| Exhibit A | Revised Tariff Sheets to Southern Companies' MBR Tariff |
| Exhibit B | Blacklined version of Revised Tariff Sheets |

4. Effective Date and Waiver

Southern Companies respectfully request that the Commission accept the Revised Tariff Sheets, to be effective January 4, 2010, the date of commencement of Phase II of the Auction.

²⁵ *Id.* at P 57.

²⁶ See <http://www.southernco.com/energyauction/auctionRules.aspx>.

Hon. Kimberly D. Bose
January 19, 2010
Page 12

Southern Companies also respectfully request waiver of any requirements of Part 35 of the Commission's regulations that have not been fulfilled by this filing.

5. Conclusion

WHEREFORE, for the foregoing reasons, Southern Companies respectfully request that the Commission: (a) accept this filing in compliance with the December 2009 Order; and (b) accept the Revised Tariff Sheets effective January 4, 2010.

Thank you for your attention to this matter. Please direct any questions concerning this submission to the undersigned.

Sincerely,



Kevin C. Fitzgerald
Jeffrey M. Jakubiak
Rebecca Roback Blitstein
Christopher R. Jones

Counsel for Southern Companies

Exhibits