

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Power & Light Company

Docket Nos. ER93-465-000,
ER96-417-000
ER96-1375-000
OA96-39-000
and OA97-245-000

ORDER ON INITIAL DECISION ADDRESSING INTEGRATION
OF FACILITIES AND DIRECTING COMPLIANCE FILING

(Issued December 16, 2003)

Introduction

1. This order addresses an Initial Decision issued in this proceeding on March 19, 1995,¹ in Docket No. ER93-465-000,² concerning the justness and reasonableness of proposed rates filed by Florida Power & Light Company (FP&L) for wholesale power and transmission services. In addition, the Commission discusses the standard it has used for determining integration of facilities in this case, and directs FP&L to make a compliance filing. This order benefits customers because it ensures that comparable facilities receive comparable rate treatment.

¹Florida Power & Light Company, 73 FERC & 63,018 (1995) (Initial Decision).

²There were other docket numbers associated with the Initial Decision, however, with the exceptions of Docket No. EL93-28-000, which is in settlement discussions, those proceedings have since been settled and/or closed. The other captioned docket numbers, Docket Nos. ER96-417-000, ER96-1375-000, OA96-39-000, and OA97-245-000, involve proceedings that followed the Initial Decision, but were determined by the Commission to be subject to the outcome of Docket No. ER93-465-000, et al.

Background

The Instant Proceeding

2. This case has a long procedural history, which we briefly summarize. On March 19, 1993, as completed on July 26, 1993, FP&L made a comprehensive rate filing designed to overhaul its existing tariff structure for various types of wholesale power sales and transmission service, including open access tariffs (Proposed Tariff). On September 24, 1993, the Commission accepted and suspended the Proposed Tariff, and established hearing procedures.³

3. As still relevant here, in the Initial Decision, the presiding judge found that certain facilities, which FP&L sought to include in its rate base,⁴ were part of FP&L's integrated transmission system and were, therefore, properly included in the Proposed Tariff.⁵ The presiding judge declined to rule on the eligibility for transmission credits of facilities of Florida Municipal Power Agency (FMPA), concluding that this issue was more properly resolved in the parallel proceeding in Docket Nos. TX93-4 and EL93-51, which we discuss below.⁶

4. On April 17, 2000, FP&L filed a settlement agreement which proposed to fully resolve the rate issues in Docket No. ER93-465, et al., with the exception of three Reserved Issues, with FMPA (Settlement). Part IV(A) of the Settlement explained that the Reserved Issues were:

[W]hether FMPA is entitled to refunds in connection with the network transmission service it purchases from [FP&L] as a result of claims that FMPA has made for (i) credits for customer-owned transmission facilities, (ii) treatment of behind-the-meter generation and associated load, and (iii) exclusion from [FP&L's] transmission rates of the costs of

³Florida Power & Light Company, 64 FERC & 61,361 (1993), order on reh'g, 67 FERC & 61,326 (1994).

⁴The disputed facilities consist of: Georgia Ties; eight Turkey Point transmission facilities; and substations, associated step-up transformers, and substation equipment for ancillary services.

⁵73 FERC at 65,199-200.

⁶Id. at 65,143-44.

facilities that under the appropriate standard should not be considered part of [FP&L's] integrated transmission system.⁷

The Commission approved the Settlement on September 18, 2000.⁸

TX Case

5. On July 2, 1993, FMPA filed a complaint (Docket No. EL93-51-000) and, alternatively, request for an order under Sections 211 and 212 of the Federal Power Act⁹ (Docket No. TX93-4-000) directing FP&L to provide transmission service for FMPA and its members (TX Case).¹⁰ On October 28, 1993, the Commission issued a Proposed Order under Section 211, which granted FMPA's request for transmission service and established further procedures to establish the rates, terms, and conditions of such service.¹¹

6. On May 11, 1994, the Commission issued a Final Order directing transmission service and also directed a compliance filing by FP&L, to ensure comparability of access.¹² On January 5, 1996, the Commission granted clarification in part, denied rehearing, and held that FMPA was not entitled to transmission credits for its facilities, as they were not integrated with FP&L's transmission system.¹³ The Commission also declined to address the issue of whether certain FP&L facilities should be excluded from

⁷Part IV(B) of the Settlement noted that interchange issues with Seminole Electric Cooperative, Inc. (Seminole) were also not terminated. However, on February 14, 2003, FP&L informed the Commission that the parties had reached a settlement on this issue.

⁸Florida Power & Light Company, 92 FERC & 61,241 (2000).

⁹16 U.S.C. ' ' 824j, 824k (2000).

¹⁰Part IV(B)(1) of the Settlement provided that "TX93-4 remains wholly unaffected by this Settlement."

¹¹Florida Municipal Power Agency v. Florida Power & Light Company, 65 FERC & 61,125, reh'g dismissed, 65 FERC & 61,372 (1993).

¹²Florida Municipal Power Agency v. Florida Power & Light Company, 67 FERC & 61,167 at 61,484 (1994).

¹³Florida Municipal Power Agency v. Florida Power & Light Company, 74 FERC & 61,006 at 61,009-10 (1996) (TX Clarification Order).

FP&L's transmission rates, as that was being address in the instant proceeding (i.e., Docket No. ER93-465-000).¹⁴

7. On July 26, 2001, the Commission denied rehearing.¹⁵ The Commission affirmed its prior findings that FMPA's transmission facilities had not met the Commission's network integration test,¹⁶ and that any exclusion of transmission facilities from FP&L's rate base was outside the scope of the TX Case, but was among the issues being litigated in the instant proceeding.¹⁷

8. On January 21, 2003, the D.C. Circuit affirmed the Commission's orders in the TX Case, denying FMPA any credits for its transmission facilities, as supported by

¹⁴Id. at 61,010 n.48.

¹⁵Florida Municipal Power Agency v. Florida Power & Light Company, 96 FERC & 61,130 (2001).

¹⁶The Commission pointed to the criteria, laid out in Order No. 888-A, that the Commission considers necessary to meet the system (or network) integration test:

[F]or a customer to be eligible for a credit, its facilities must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid. . . . [T]he fact that a transmission customer's facilities may be interconnected with a transmission provider's system does not prove that the two systems comprise an integrated whole such that the transmission provider is able to provide transmission service to itself or other transmission customers over these facilities.

Id. at 61,545, citing Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs., ¶ 31,036 (1996), order on reh'g. Order No. 888-A, FERC Stats. & Regs. & 31,048 at 30,271 (1997), order on reh'g. Order No. 888-B, 81 FERC & 61,248 (1997), order on reh'g. Order No. 888-C, 82 FERC & 61,046 (1998), aff'd in relevant part. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

¹⁷Id.

"substantial evidence."¹⁸ The court added that "the Commission's denial of . . . credits does not violate the comparability principle for an obvious reason: FERC has yet to rule on FMPA's request for reductions in [FP&L's] rate base . . . in the [instant proceeding]."¹⁹

More Recent Pleadings

9. On December 4, 2002, the Commission's Office of General Counsel sent a letter to FP&L asking about the status of settlement negotiations in the instant proceeding. Between December 13, 2002 and March 10, 2003, FP&L and FMPA filed ten answers to that letter and to each other's answers.

10. On June 30, 2003, FMPA filed a motion requesting that the Commission direct it and FP&L to file further pleadings. On July 11, 2003, the Commission directed FP&L and FMPA to file supplemental briefs informing the Commission of "events that have occurred since the record closed."²⁰

11. On July 31, 2003, FMPA and FP&L filed Supplemental Initial Briefs, and on August 18, 2003, they filed Supplemental Reply Briefs. FMPA argued that subsequent events demonstrate that some of its facilities are, in fact, integrated with the FP&L system. FP&L disputed the claim of integration. Between August 29, 2003 and October 15, 2003, FMPA filed corrections to its Supplemental Brief, FP&L filed answers and a motion to strike, and FMPA filed an answer to the motion.

12. On July 31, 2003, Seminole filed comments. Also on July 31, 2003, American Public Power Association (APPA) filed a brief amicus curiae and conditional motion to intervene out of time. Both argued that the Commission should consider the importance of requiring comparable treatment of consumer-owned utility transmission facilities, which they maintain is essential for voluntary RTO participation. On August 6, 2003, FP&L filed in opposition to the untimely motion of APPA to intervene.

¹⁸Florida Municipal Power Agency v. FERC, 315 F.3d 362, 367 (D.C. Cir. 2003).

¹⁹Id. at 366.

²⁰Florida Power & Light Company, 104 FERC ¶ 61,076 at P 2 (2003) (July 11 Order).

Discussion

Procedural Matters

13. In the July 11 Order, the Commission directed only FMPA and FP&L to file pleadings; nevertheless, Seminole and APPA also submitted comments. We will accept the comments of Seminole and APPA, but note that the submission of comments (or an amicus curiae brief) does not confer party status.²¹ Accordingly, as APPA's untimely motion to intervene was conditional upon the Commission's determination that party status is required for the filing of comments, that motion is moot.

Integration of FP&L Facilities

14. As noted above, this case began on March 19, 1993, well before the Commission issued Order No. 888, when the Commission ordered open access nationwide, and addressed the development of rates for network transmission service. And since then, we have provided further and more explicit guidance on the development of rates for network transmission service. The issues at hearing were not addressed using the standards that are in place today. For example, as discussed above regarding the TX Case,²² the Commission laid out criteria necessary to meet the network integration test in Order No. 888-A. And in Consumers Energy Company, we applied the network integration test to evaluate inclusion of a company's transmission lines in rate base.²³

15. Similarly, in Order No. 888, we addressed comparability and explained:

We caution all transmission providers that while our discussion here addresses the requirements necessary for a customer's transmission facilities to become eligible for a credit, the principles of comparability compel us to apply the same standard to the transmission provider's facilities for rate determination purposes.^[24]

²¹See Rule 214(a)(3) of the Commission's Rules of Practice and Procedure. 18 C.F.R. §385.214(a)(3) (2003).

²²See supra note 16.

²³Opinion No. 456, 98 FERC ¶ 61,333 at 62,410 (2002) (affirming Consumers Energy Company, 86 FERC ¶ 63,004 at 65,008-10, corrected, 86 FERC ¶ 63,005 (1999)).

²⁴Order No. 888 at 31,743 n.452.

We further addressed the concept of comparability in Order No. 888-A:

As we noted in [the TX Clarification Order], this fundamental cost allocation concept applies to the transmission provider as well. Just as the customer cannot secure credit for facilities not used by the transmission provider to provide service, the transmission provider cannot charge the customer for facilities not used to provide transmission service.^[25]

This concept applies equally in the instant case.

16. Accordingly, we will direct FP&L to make a compliance filing, within 90 days of the date of this order, of a proposed rate schedule which does not include those FP&L facilities that fail to meet the same integration test applied to FMPA facilities in the TX Case.²⁶ The compliance filing should identify, as to those FP&L facilities whose costs were included in the rates which were objected to by FMPA,²⁷ why they should be included in the rates and why they are or are not comparable to FMPA's facilities.

²⁵Order No. 888-A at 30,271 n.277, citing 74 FERC at 61,010 n.48.

²⁶We note that, in recent pleadings, both FP&L and FMPA have indicated support for, or acceptance of, this approach. FP&L has stated, "[i]f the Commission were to conclude that FMPA's evidence shows that comparability has been violated, the proper remedy would be to remove the applicable [FP&L] facilities from [FP&L's] rate base, not to give FMPA credits for facilities that are not integrated with [FP&S's] system. FP&L February 6, 2003 Answer at 9.

FMPA has stated, "FMPA agrees . . . discrimination can be cured by some combination of rate credits, reduction of FMPA network load, and rate base reduction, as may be appropriate." FMPA February 24, 2003 Answer at 14 (emphasis added).

²⁷In its Brief on Exceptions, FMPA argued:

In its compliance filing, [FP&L] should be ordered to remove from rate base all non-backbone transmission facilities which, to paraphrase [the TX Clarification Order], are connected to the backbone grid only at single points, which are used only to transfer power between [FP&L] backbone transmission and [FP&L] retail delivery points. [74 FERC at 61,010.] These facilities may perform a transmission function for the benefit of [FP&L's] retail customers, but they are not used to benefit

Remaining Issues

17. There are two other issues that remained unresolved by the Settlement: whether FMPA is entitled to credits for its customer-owned transmission facilities, and the appropriate treatment of behind-the-meter generation and associated load. The Commission has already resolved both issues.

18. Regarding the question of customer credits, as discussed above, we determined that FMPA was not entitled to such credits in the TX Case - which was affirmed by the D.C. Circuit - and we see no persuasive reason to revisit that determination here.

19. Regarding the issue of behind-the-meter generation, we note that FMPA raised the same concerns in Order Nos. 888 and 888-A, and we addressed the issue of load ratio pricing for network integration service in that context²⁸ - and were affirmed on appeal²⁹ - and we, likewise, see no persuasive reason to revisit that determination here.

The Commission orders:

- (A) The comments of Seminole and APPA are hereby accepted.
- (B) APPA's conditional untimely motion to intervene is hereby dismissed as moot.

[FMPA] or any other party. Id. For the same reason, i.e., that the facilities benefit only one customer, the Commission should order [FP&L] to exclude radials from the transmission rate base.

FMPA January 29, 1996 Brief on Exceptions at 103 (citation omitted). FMPA identifies the facilities it had in mind as "Transmission Breaker Dead End Lines." Id. at 107.

²⁸See, e.g., Order No. 888-A at 30,259-61.

²⁹225 F.3d at 726.

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(C) FP&L is hereby directed to make a compliance filing, within 90 days of the date of this order, as discussed in the body of this order.

By the Commission. Chairman Wood issuing a separate statement at a later date.

(S E A L)

Magalie R. Salas,
Secretary.