

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. ER93-465-033
ER96-417-002
ER96-1375-003
OA96-39-010
OA97-245-003

ORDER ON COMPLIANCE FILING

(Issued January 25, 2005)

1. This order addresses a compliance filing by Florida Power and Light Company (FP&L), submitted in response to the Commission's order issued in this proceeding on December 16, 2003,¹ that directed FP&L to revise its proposed rate schedules to exclude those FP&L facilities that fail to meet the same integration test applied to its network service customer, Florida Municipal Power Agency (FMPA), in Docket Nos. EL93-51 and TX93-4.² In this order, we accept the compliance filing in part, reject it in part, and direct a further compliance filing. This order benefits customers because it ensures that comparable facilities receive comparable rate treatment.

¹ *Florida Power and Light Company*, 105 FERC ¶ 61,287 (2003) (December 16 Order), *reh'g denied*, 106 FERC ¶ 61,204 (2004).

² *Florida Municipal Power Agency v. Florida Power & Light Company*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *clarified*, 74 FERC ¶ 61,006 (1996), *reh'g denied*, 96 FERC ¶ 61,130 (2001), *aff'd*, *Florida Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003), *cert. denied*, 124 S. Ct. 386 (2003) (TX Case).

I. Background

2. This case has a long procedural history dating back to 1993, when FP&L completed a comprehensive restructuring of its then-existing tariff structure, including a new open access transmission tariff. On January 18, 1996, in Docket No. ER96-417-000, the Commission accepted for filing, and suspended FP&L's network integration transmission service tariff, thus allowing FMPA to start taking network transmission service from FP&L.³ On September 18, 2000, in Docket No. ER93-465-000, *et al.*, the Commission accepted a settlement agreement that fully resolved most of the rate issues related to the network integration transmission service tariff.⁴

3. The Commission addressed the three remaining issues in the December 16 Order, and directed 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."⁵ The Commission also required that FP&L, in the "compliance filing should identify, as to those FP&L facilities whose costs were included in the rates which were objected to by FMPA, why they should be included in the rates and why they are or are not comparable to FMPA's facilities."⁶ On March 11, 2004, the Commission granted FP&L's request for a 60-day extension of time to make its compliance filing.

4. On May 14, 2004, FP&L submitted a revised proposed rate schedule. FP&L states that it analyzed facilities beginning at the 69 kV voltage level, using a 1998 test year. FP&L also explains that it distilled the network integration transmission test to four factors (TX Case Factors) and that a facility must pass each of these tests to be considered integrated.

5. Notice of FP&L's filing was published in the *Federal Register*,⁷ with protests and interventions due on or before June 4, 2004. On May 27, 2004, FMPA requested a two-week extension of time to file comments. On June 1, 2004, FP&L filed an answer to that motion. On June 1, 2004, the Commission granted an extension of time until June 18, 2004 for the filing of protests.

³ *Florida Power & Light Co.*, 74 FERC ¶ 61,021 (1996).

⁴ *Florida Power & Light Co.*, 92 FERC ¶ 61,241 (2000).

⁵ December 16 Order at P 16.

⁶ *Id.* (citation omitted).

⁷ 69 Fed. Reg. 30,290 (2004).

6. June 18, 2004, FMPA filed a protest to FP&L's May 14 filing. On July 6, 2004, FP&L filed an answer. On July 20, 2004, FMPA filed an answer to FP&L's July 6 answer. On July 27, 2004, FP&L filed an answer to FMPA's July 20 answer.

7. FMPA asserts that the compliance filing does not achieve comparability. Rather, FMPA argues, FP&L devised its own network integration test that includes all the facilities owned by FP&L and excludes those owned by FMPA as redundant and non-integrated. FMPA argues that FP&L must exclude facilities from rate base if they do not provide a transmission service as generally defined - for example, generator leads that primarily benefit only a company's generation marketing function or facilities that solely benefit servicing a company's retail load.

8. In addition, FMPA argues that FP&L must exclude all lines that are used exclusively to supply FP&L's local distribution facilities, and those other customers, from the backbone transmission system. These local load-serving transmission facilities are comprised of FP&L's 138 kV, 115 kV, and 69 kV facilities, and some 230 kV radial lines. FMPA also contends that FP&L must exclude its investments that are radial in nature and are like FMPA investments serving retail load (including those that serve more than one customer), as well as associated substations and related investments. Finally, FMPA asserts that refunds are owed for periods when FP&L transmission investment ought to have been excluded from rates based on comparability principles.

II. Discussion

A. Procedural Matters

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will not accept the July 6, 2004 and July 27, 2004 answers by FP&L and the July 20, 2004 answer by FMPA because they do not add any additional information to assist us in our decision-making process.

B. Compliance Issues

1. Comparability

10. FP&L states that it relied on 1998 cost data and transmission system diagrams. However, use of 1998 as a base year does not meet comparability with respect to the determination of the integration of FMPA facilities in the TX Case; to achieve comparability in determining the integration of the transmission facilities, FP&L must

examine its system using the same base year as was used in that proceeding.⁸ Therefore, we will direct FP&L to make a further compliance filing that satisfies this comparability requirement.

11. We accept, in concept, FP&L's four TX Case Factors test as a just and reasonable way to ensure rate treatment comparability between its own and FMPA's facilities. However, as discussed in more detail below, FP&L has not applied its four factor test properly to its own facilities. In the compliance filing, FP&L must properly apply the test to its facilities.

12. FP&L's first TX factor analyzes whether facilities at issue are interconnected with the FP&L transmission system at single points that are used only to transfer power between the FP&L transmission system and one customer. This test is comparable to the test FP&L applied to FMPA facilities in Docket No. TX93-4 and that it applied earlier in this proceeding.⁹ However, when applying this test in its compliance filing, FP&L limited the test to radial facilities that serve only a single customer. This is not comparable to the test applied to FMPA facilities. In the compliance filing we order herein, FP&L should apply the test to exclude from transmission rate base all radial facilities (and associated equipment), regardless of how many customers are served by the facility. Furthermore, as discussed below, the appropriate system to which the test

⁸ We also note that FMPA argues that many of its facilities which were not integrated in 1993 are integrated now. However, that fact is irrelevant to the issue of comparability of the FP&L system to the FMPA system as it was evaluated in the TX Case.

⁹ FP&L argued that single interconnection cities (Key West, Lake Worth, Clewiston, Green Cove, and Jacksonville Beach) are only interconnected with FP&L. Their facilities consist of internal transmission used to distribute power from the point of delivery and from their internal generation to their customers. "[T]hese utilities can be thought of as a 'dead-end' off the [FP&L] system, in that, just as with the [FP&L] distribution substations, power delivered from the [FP&L] transmission system necessarily must be consumed wholly within the city; *i.e.*, the internal facilities do not provide a parallel path for [FP&L]." Exh. FP&L-1A (KA-103), July 4, 1994 in Docket No. ER93-465-000 (FP&L-1A), at 49. "[F]rom the perspective of planning the [FP&L] transmission system, the system can be represented electrically simply as a load (and, where applicable, a generating resource) located at the delivery point interconnected with the [FP&L] system; *i.e.*, without any internal transmission facilities." *Id.* at 49-50. "The size and type of these internal facilities are immaterial as they have no impact on [FP&L's] planning process. None of the internal facilities are or will be used by [FP&L] to integrate [FP&L's] load and generation." *Id.* at 52. Therefore, they are not integrated.

should be applied is the system modeled by FP&L to analyze the integration of FMPA's Fort Pierce-Vero Beach line.

13. The second TX factor states that a facility that provides only unneeded redundancy is not eligible for cost recovery. This test is consistent with the test FP&L applied to FMPA facilities.¹⁰ However, in its compliance filing, FP&L specifically applies this test only to Georgia Ties and Turkey Point lines and, for the rest of its system, FP&L simply makes a general statement that the facilities "do not provide unneeded redundancy." (Sanchez Affidavit at 17). This is insufficient. Thus, in the compliance filing we order herein, FP&L should apply the test to each of its transmission facilities as they existed in the model used by FP&L to analyze Vero Beach-to-Forth Pierce line's integration, and demonstrate, through modeling the system with and without the facility, that each facility included in its transmission rate base was needed to deliver power to customers in the area where the facility is located and to other FP&L load centers.

14. We accept FP&L's argument that Georgia Ties -- the major transmission facilities connecting Florida to the rest of the eastern interconnection -- should not be excluded from base transmission rates. We agree with FP&L's argument that it is not relevant to the case whether or not these lines were built to import electricity from Georgia. The only relevant question is whether the facilities at issue are part of the transmission provider's integrated grid. FP&L and FP&L's transmission customers (*i.e.*, Seminole, FMPA, and others) rely on and utilize these lines to transmit power from numerous network resources to their respective loads.¹¹ Contrary to FMPA's claims, these facilities improve stability and reliability for all utilities in Florida by substantially minimizing the

¹⁰ With regard to the Fort Pierce-Vero Beach 138 kV line, FP&L argued that the line "enables one city to receive power from the local generation of the other city." FP&L witness Adjemian testified that "from [FP&L's] transmission planning perspective, the line does not change the fact that Vero Beach and Fort Pierce consist of load and resources interconnected directly at [FP&L] delivery points," FP&L-1A at 51, that FP&L would not have built the 138 kV line to provide reliable service to Vero Beach and/or Fort Pierce, that the line has a negligible electrical impact on FP&L's ability to transmit power to and from the two cities, and that, even without the line, FP&L is able to deliver power to customers in that area and other FP&L load centers. FP&L June 10, 1994 Motion for Clarification in Docket No. TX93-4-002, Adjemian Affidavit (Adjemian Affidavit) at 13. He modeled the FP&L system with and without the line and ascertained that the line would not allow FP&L to defer or cancel any facilities then included in FP&L's ten-year transmission expansion plan. *Id.*

¹¹ *See, e.g.*, Adjemian Affidavit at 22-24.

number of times that load must be shed by underfrequency load shedding as a result of Florida separating from the eastern interconnection.

15. We also agree with FP&L's statement that Turkey Point lines should be included in the transmission rates, because they connect to the FP&L transmission system at numerous points and are part of multiple and nested loops. As FP&L explained, all of these lines are needed to reliably serve the loads located in southeast Florida, even when the Turkey Point Plant is not fully available or dispatched, and to provide reliable wholesale and transmission service to others independent of whether all the generation is available and dispatched at the Turkey Point Plant.¹²

16. The third TX factor maintains that, if a facility is integrated into the transmission provider's plans or operations, it is an indication that the facility is integrated with the transmission grid. The last, fourth TX factor, asserts that if a transmission facility is used to integrate resources and loads on the transmission provider's network, it is an indication that the facility is integrated. FMPA argues that these factors should be rejected because they only test the ownership, and not whether a given facility is integrated with the network. We disagree. FP&L points out that it has given credits to lines owned by Seminole Electric Cooperative, Inc. and Lee County Electric Cooperative, Inc. as part of the FP&L integrated transmission system, using these tests.¹³ Moreover, while FMPA is correct that these two factors test ownership, ownership alone is not enough; as proposed by FP&L, the four TX Case Factors must *all* be satisfied for an FP&L facility to be considered integrated.

2. Tariff Methodology

17. We will accept the FP&L proposed net plant methodology (NPM) for adjusting the network transmission rate through the use of a ratio, as a reasonable proxy for the traditional cost based adjustment, because of the lack of a traditional cost base rate.¹⁴

¹² See, e.g., Adjemian Affidavit at 27-31.

¹³ See *Florida Power & Light Company*, 107 FERC ¶ 61,176 (2004).

¹⁴ FP&L argues that a traditional method based on revenue is not applicable in this case, because the current rate for network service under FP&L's open-access transmission tariff was established by a black-box settlement. As a result, there is no body of cost, financial and/engineering data. Instead, FP&L proposes to use the NPM to adjust the network rate charged to FMPA. Under the NPM, FP&L computes the ratio of (a) the net plant of the FP&L facilities that are not integrated with the rest of the FP&L grid to (b) the net plant associated with all FP&L transmission facilities in service. FP&L then

(continued...)

The NPM assumes that the revenue requirements for the facilities at issue are proportional to the total network revenue requirements on a net plant basis. Using this method to remove the costs of the facilities at issue from the network service rate charged to FMPA, FP&L removes all costs associated with the excluded facilities, including any allocated administrative and general expenses, depreciation, and operations and maintenance expenses. Furthermore, FMPA does not object to the proposed method. Therefore, we will allow FP&L to use the proposed net plant method to adjust the settlement rate but will require FP&L to demonstrate the integration of its transmission facilities as of 1993 and adjust the settlement rate established in 2000 using 1993 plant cost data.

The Commission orders:

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

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

applies this ratio to the settlement agreement network service rate to determine the adjustment to the network rate charged to FMPA. That adjustment amount is then deducted from the current settlement rate to determine the new charge that will apply to FMPA on a going forward basis.