

111 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Power Corporation

Docket No. PA04-10-000

Carolina Power & Light Company

Docket No. PA04-12-000

ORDER APPROVING AUDIT REPORT AND
DIRECTING COMPLIANCE ACTIONS

(Issued May 25, 2005)

1. In this order, we approve the attached Audit Report (Report) prepared by the Division of Operational Audits (Operational Audits), Office of Market Oversight and Investigations. The Report contains Operational Audit staff's findings and recommendations with respect to Carolina Power & Light Company (CP&L) and Florida Power Corporation's (FPC) (collectively, Progress Energy) compliance with the Commission's rules, regulations, and requirements. The Commission directs Progress Energy to enact the Report's recommended corrective actions, including the procedural remedies outlined in this order. In addition, in order to resolve this audit, Progress Energy has agreed to make the refunds/credits outlined in this order. This order is in the public interest because the recommendations made in the Report provide appropriate remedies for the findings in the Report, and also require the establishment of strict procedures to help ensure future compliance with applicable requirements of law and the Commission's rules and regulations.

Background

2. On November 20, 2003, Operational Audits issued a letter to FPC in Docket No. PA04-10-000 and CP&L in Docket No. PA04-12-000 announcing that it was commencing an audit to determine whether CP&L and FPC were in compliance with: (1) Standards of Conduct and Open Access Same Time Information System (OASIS) requirements; (2) Codes of Conduct requirements; and (3) FPC and CP&L's Open Access Transmission Tariff (OATT) provisions. The audit period was from January 1, 2002, through October 31, 2003, and the audit measures compliance with Commission rules, regulations, and requirements in existence during that time.

3. Operational Audits issued data requests, conducted thorough site visits, and held multiple meetings with Progress Energy's counsel, officials, and staff.

Discussion

4. Operational Audits determined that Progress Energy did not fully comply with Commission rules, regulations, and requirements, and made recommendations to correct the identified areas of non-compliance or departures from best practices.

5. The Principal Report findings are:

Codes of Conduct Findings

- A. *Coordination of Wholesale Marketing Strategies:* During the summer and fall of 2003, Progress Energy staff exchanged market information and failed to make a simultaneous posting of this exchange, as required under its Codes of Conduct. The exchange of market information occurred as part of Progress Energy's strategic evaluation of alternative organizational structures for its marketing operations. Market information was exchanged during meetings at which both wholesale merchant function (WMF) and affiliated power marketer (APM) staff participated, when participants identified specific wholesale customers that would be targeted by either the WMF or APMs. The coordination of wholesale marketing strategies that occurred, including the sharing of market information between the WMF and APMs, is inconsistent with the explicit requirement in Progress Energy's Codes of Conduct that WMF and APMs operate separately to the maximum extent practical.
- B. *Opportunity for Exchange of Market Information via Combustion Turbine (CT) Operations:* Progress Energy organized its CT Operations group in a manner that creates the opportunity for the exchange of market information between the APMs and the Operating Companies and is inconsistent with the Codes of Conduct requirement that the APMs and Operating Companies operate separately. CT Operations, a unit within the generation function, is responsible for the operation and maintenance of Progress Energy's entire fleet of CTs, including the CT fleet owned by the Operating Companies and the CT fleet owned by APMs. One employee does outage planning for both fleets. Other

employees in the company's Raleigh headquarters that may work on only the Operating Companies' fleet work side-by-side with employees who work on only the APMs' fleet. These employees perform operational functions (rather than support functions) and have access to market information for both fleets of CTs.

- C. *Access to Market Information via the Company's Intranet:* On several occasions, Progress Energy's WMF and APMs had access, via the company's intranet, to prohibited outage, cost and operations data for generating plants owned by the APMs and the Operating Companies.
- D. *Potential Exchange of Market Information via Forward Curves:* Employees of Progress Ventures' risk analytics group creates and distributes forward curves to traders in both WMF and APM. In part, these forward curves are based on price data collected separately by the WMF and APM trading groups. The price data collected separately by the Operating Companies' trading group is market information, under the definition of market information in the company's Codes of Conduct. By providing access to these price data in the shared forward curves, the shared employees of the risk analytics group act as a conduit of market information.
- E. *Charges to Affiliated Power Marketers for Brokering Services:* Progress Energy's brokering activities prior to March 2002 were inconsistent with the requirements of Codes of Conduct and Commission Orders. Progress Energy has provided no evidence that the charges for brokering activities were set equal to the higher of cost or market value and that the actual charges were posted on the company's EBB.
- F. *Exchange of Market Data and Insufficient Disclosure of the Exchange:* During a February 2003 meeting that both WMF and APM employees attended, market information was exchanged. Codes of Conduct require that when market information is exchanged, simultaneous posting of the market information is required. Nine days after the market information was shared, a redacted version of a presentation made at the meeting was posted on Progress Energy's Electronic Bulletin Board (EBB).
- G. *Lack of Oversight of Instant Messaging between Wholesale Merchant Function and APM Employees:* RCO and CCO traders use instant messaging (IM) to survey the market and initiate trades. Progress Energy's lack of oversight over instant messaging inhibits its ability to verify that marketing employees do not

use instant messages to exchange market information, which would be inconsistent with the Codes of Conduct.

Standards of Conduct Findings

- H. Information Exchange during Daily Unit Commitment Phone Calls:* Employees of the WMF and the transmission function take part in a teleconference each morning that could lead to the exchange of transmission information off-OASIS, which would be inconsistent with the Standards of Conduct. Staff's primary concerns are that these conversations could facilitate such inappropriate off-OASIS communications.
- I. Information Exchange during Hourly Phone Calls between Generation Dispatcher and Hourly Traders:* A WMF hourly trader and the generation dispatcher/AGC operator at the Energy Control Centers talk by phone each hour to discuss the capacity on-line and available to sell. These phone calls could lead to the exchange of transmission information off-OASIS, which would be inconsistent with the Standards of Conduct.
- J. Frequent Visits by Merchant Function Employees to the ECCs:* WMF and APM employees frequently visit the ECCs operated by Progress Energy, particularly the ECC in Raleigh. While such visits are not *per se* violations of the Standards of Conduct, such visits increase the opportunity for marketing employees to gain access to commercially-valuable transmission information that is not publicly available. The controls in place at the ECCs are not sufficient to demonstrate the purpose or the details of such visits, which exacerbates staff's concerns that such visits may facilitate marketing employees having off-OASIS access to transmission information.
- K. FPC's Transmission Function Does Not Log or Post Uses of Discretion:* FPC does not log or post on OASIS instances when its dispatchers ask its senior engineer to recalculate ATC in order to confirm a pending transmission service request. FPC dispatchers do not consider this an act of discretion and thus do not keep a log of such requests or post documentation of the requests on OASIS. In staff's view, such a request is an act of discretion and should be logged and posted on OASIS.
- L. Inappropriate Access to Market and Transmission Data:* On several occasions, WMF employees have had direct or indirect access to market or transmission data via the Energy Management System (EMS). The WMF had access to the generation levels of independent merchant generators in Florida Power Corporation's control area for at least two months. In addition, a plant

operator at one of FPC's peaker plants had unlimited access to the transmission data available on FPC's EMS.

OASIS Findings

M. *Carolina Power and Light OASIS Issues:* CP&L did not adequately comply with three OASIS posting requirements: posting reasons for denied service requests, posting employee transfers, and posting exercises of discretion under the open access transmission tariff.

N. *Florida Power Corporation OASIS Issues:* FPC did not adequately comply with certain OASIS requirements: posting schedule information, posting available transmission capability and total transmission capability appropriately assigning transmission service requests status, and providing meaningful reasons that transmission service requests were refused.

6. The Report includes procedural remedies to address the identified instances of non-compliance and to help ensure future compliance with the Commission's rules, regulations, and requirements. Those remedies are as follows:

- A. Progress Energy must implement all of the corrective actions recommended in the Report.
- B. Within 30 days of the date of this Order, the Progress Energy affiliated power marketers must refile all Codes of Conduct so that they are uniform, and so that all Codes of Conduct on file define market information and support employees.
- C. Progress Energy will send e-mails to all of its employees reporting the Audit Report findings.

7. In addition, in order to resolve the audit, Progress Energy agreed as follows:

- A. Progress Energy will refund/credit \$6.4 million to rate payers of CP&L and/or FPC. This \$6.4 million will not be recoverable through any regulated rates. The state/retail component of this amount (\$5.4 million) will be implemented through a fuel adjustment charge mechanism. To the extent practicable, Progress Energy will attempt to flow-through some or all of the \$5.4 million to retail customers by the end of calendar year 2005, but under no circumstances shall it be completed later than October 1, 2006. The remaining \$1 million of this amount will be allocated to CP&L's and/or FPC's wholesale customers. This amount will be flowed-through to wholesale customers no later than the end of calendar year 2005.
- B. In addition to the \$6.4 million refund/credit, Progress Energy shall return to its native load customers a sum of \$100,000, implemented through a fuel

adjustment charge mechanism, to reflect the amount of brokering services provided to the affiliated power marketers but not paid for by them. This \$100,000 will not be recoverable through any regulated rates. To the extent practicable, Progress Energy will attempt to flow through the entire \$100,000 to customers by the end of calendar year 2005, but under no circumstances shall it be completed later than October 1, 2006.

The Commission orders:

- (A) The attached Report is approved in its entirety without modification.
- (B) Progress Energy is directed to implement the corrective action recommended in the Report, file an implementation plan within 30 days of the date of this order and to submit quarterly reports of its implementation activities, commencing with the third quarter of 2005. Progress Energy and Commission staff will meet during the fourth quarter of 2006 to assess whether the quarterly reporting requirements in the Audit Report shall continue after 2006.
- (C) Progress Energy is directed to implement the procedural remedies outlined above.
- (D) Progress Energy is directed to make the refunds/credits outlined above.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

FEDERAL ENERGY REGULATORY COMMISSION

Audit of Standards of Conduct, Codes of Conduct, and OASIS Progress Energy, Inc. Operating Companies and Affiliated Power Marketers

Audit Period: January 2001 through October 2003



Audit Report

Office of Market Oversight and Investigations
Division of Operational Audits

Docket No. PA04-10-000
Docket No. PA04-12-000

Date: May 25, 2005

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I. EXECUTIVE SUMMARY

A. Audit Objective

The Division of Operational Audits within the Office of Market Oversight and Investigations has completed an audit of Progress Energy's Operating Companies (Florida Power Corporation or FPC and Carolina Power and Light or CP&L) and Affiliated Power Marketers (APM). The audit covers the period from January 1, 2001 through October 31, 2003. The audit focuses on:

- Compliance with Part 37 of the Commission's rules¹, which requires the transmission function to operate independently from the wholesale merchant function (WMF) and APMs, and dictates the operation of an Open Access Same-Time Information System (OASIS).
- Provision of transmission services consistent with the Operating Companies' Open Access Transmission Tariffs (OATT)²
- Compliance with the requirements for separate operations of the Operating Companies and APMs under the Codes of Conduct filed at the Commission.³

The time frame for the audit covers a period prior to the effective date of Order No. 2004.⁴ Therefore, the audit measures compliance with then-existing rules, regulations,

¹ Unless noted otherwise, all references to Part 37 of the Commission's rules were from 18 CFR §37 (2003).

² Both CP&L's OATT and FPC's OATT were initially approved on January 29, 1997, *American Electric Power Service Corp.*, 78 FERC ¶ 61,070 (1997)(AEP).

³ Progress Energy has Codes of Conduct for the following entities: Progress Ventures, Inc. approved effective January 25, 2002 by letter order in Docket No. ER01-2928, Effingham County Power, LLC (May 4, 2001, letter order in Docket No. ER01-1418), MPC Generating, LLC (May 27, 1999, letter order in Docket No. ER99-2324), Rowan County Power, LLC (May 4, 2001, letter order in Docket No. ER01-1419), Walton County Power, LLC (April 4, 2001, letter order in Docket No. ER01-1310), and Washington County Power, LLC (April 17, 2003, letter order in Docket No. ER03-398).

⁴ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

and requirements (*e.g.*, Part 37 of the Commission's rules), not with the requirements of Order No. 2004. The audit staff has made recommendations for the company's activities on a going-forward basis that are wholly consistent with Order No. 2004. The company must ensure that their detailed implementation of any such recommendations is consistent with all new requirements under Order No. 2004.

B. Overview of Progress Energy

Progress Energy Inc. is a registered holding company with electric operations principally in North Carolina, South Carolina, and Florida. The portions of its corporate structure relevant to this audit are:

- Two operating companies (CP&L and FPC)
- A business segment (Progress Ventures, Inc.) made up of unregulated businesses (rail, fuel production and extraction), and the trading organizations of the Operating Companies and affiliated power marketers, described below
- Regulated Commercial Operations (RCO), a business unit of Progress Ventures with responsibility for marketing the ratebased generation assets owned by the Operating Companies
- Competitive Commercial Operations (CCO), a business unit of Progress Ventures with responsibility for marketing the assets of Progress Energy's affiliated power marketers
- Six affiliated power marketers: DeSoto County Generating Co., LLC; Effingham County Power, LLC; MPC Generating, LLC; Rowan County Power, LLC; Walton County Power, LLC; and Washington County Power, LLC.

C. Summary of Compliance Findings

Staff has based its audit findings on materials provided by Progress Energy in response to data requests, interviews with Progress Energy staff members, site visits to both Operating Companies, and a review of publicly available documents.

Codes of Conduct Findings

- *Coordination of Wholesale Marketing Strategies:* During the summer and fall of 2003, Progress Energy staff exchanged market information and failed to make a simultaneous posting of this exchange, as required under its Codes of Conduct. The exchange of market information occurred as part of Progress Energy's strategic evaluation of alternative organizational structures for its marketing operations. Market information was exchanged during meetings at which both WMF and APM staff participated, when participants identified specific wholesale customers that would be targeted by either the WMF or APMs. The coordination of wholesale marketing strategies that occurred, including the sharing of market information between the WMF and APMs, is inconsistent with the explicit requirement in Progress Energy's Codes of Conduct that WMF and APMs operate separately to the maximum extent practical.
- *Opportunity for Exchange of Market Information via CT Operations:* Progress Energy organized its CT Operations group in a manner that creates the opportunity for the exchange of market information between the APMs and the Operating Companies and is inconsistent with the Codes of Conduct requirement that the APMs and Operating Companies operate separately. CT Operations, a unit within the generation function, is responsible for the operation and maintenance of Progress Energy's entire fleet of combustion turbines (CT), including the CT fleet owned by the Operating Companies and the CT fleet owned by APMs. One employee does outage planning for both fleets. Other employees in the company's Raleigh headquarters that may work on only the Operating Companies' fleet work side-by-side with employees who work on only the APMs' fleet. These employees perform operational functions (rather than support functions) and have access to market information for both fleets of CTs.
- *Access to Market Information via the Company's Intranet:* On several occasions, Progress Energy's WMF and APMs had access, via the company's intranet, to prohibited outage, cost and operations data for generating plants owned by the APMs and the Operating Companies.
- *Potential Exchange of Market Information via Forward Curves:* Employees of Progress Ventures' risk analytics group creates and distributes forward curves to traders in both WMF and APM. In part, these forward curves are based on price data collected separately by the WMF and APM trading groups. The price data collected separately by the Operating Companies' trading group is market information, under the definition of market information in the company's Codes of Conduct. By providing access to these price data in the shared forward curves, the shared employees of the risk analytics group act as a conduit of market information.

- *Charges to Affiliated Power Marketers for Brokering Services:* Progress Energy's brokering activities prior to March 2002 were inconsistent with the requirements of Codes of Conduct and Commission Orders. Progress Energy has provided no evidence that the charges for brokering activities were set equal to the higher of cost or market value and that the actual charges were posted on the company's EBB.
- *Exchange of Market Data and Insufficient Disclosure of the Exchange:* During a February 2003 meeting that both WMF and APM employees attended, market information was exchanged. Codes of Conduct require that when market information is exchanged, simultaneous posting of the market information is required. Nine days after the market information was shared, a redacted version of a presentation made at the meeting was posted on Progress Energy's Electronic Bulletin Board (EBB).
- *Lack of Oversight of Instant Messaging between Wholesale Merchant Function and APM Employees:* RCO and CCO traders use instant messaging (IM) to survey the market and initiate trades. Progress Energy's lack of oversight over instant messaging inhibits its ability to verify that marketing employees do not use instant messages to exchange market information, which would be inconsistent with the Codes of Conduct.

Standards of Conduct Findings

- *Information Exchange during Daily Unit Commitment Phone Calls:* Employees of the WMF and the transmission function take part in a teleconference each morning that could lead to the exchange of transmission information off-OASIS, which would be inconsistent with the Standards of Conduct. Our primary concerns are that these conversations could facilitate such inappropriate off-OASIS communications.
- *Information Exchange during Hourly Phone Calls between Generation Dispatcher and Hourly Traders:* A WMF hourly trader and the generation dispatcher/AGC operator at the Energy Control Centers talk by phone each hour to discuss the capacity on-line and available to sell. These phone calls could lead to the exchange of transmission information off-OASIS, which would be inconsistent with the Standards of Conduct.
- *Frequent Visits by Merchant Function Employees to the ECCs:* WMF and APM employees frequently visit the ECCs operated by Progress Energy, particularly the ECC in Raleigh. While such visits are not *per se* violations of the Standards of Conduct, such visits increase the opportunity for marketing employees to gain access to commercially-valuable transmission information that is not publicly available. The controls in place at the ECCs are not sufficient to demonstrate the purpose or the

details of such visits, which exacerbates staff's concerns that such visits may facilitate marketing employees having off-OASIS access to transmission information.

- *FPC's Transmission Function Does Not Log or Post Uses of Discretion:* FPC does not log or post on OASIS instances when its dispatchers ask its senior engineer to recalculate ATC in order to confirm a pending transmission service request. FPC dispatchers do not consider this is an act of discretion and thus do not keep a log of such requests or post documentation of the requests on OASIS. In staff's view, such a request is an act of discretion and should be logged and posted on OASIS.
- *Inappropriate Access to Market and Transmission Data:* On several occasions, WMF employees have had direct or indirect access to market or transmission data via the Energy Management System (EMS). The WMF had access to the generation levels of independent merchant generators in Florida Power Corporation's control area for at least two months. In addition, a plant operator at one of FPC's peaker plants had unlimited access to the transmission data available on FPC's EMS.

OASIS Findings

- *Carolina Power and Light OASIS Issues:* Our examination of CP&L's OASIS indicates that CP&L did not adequately comply with three OASIS posting requirements: posting reasons for denied service requests (§37.6(e)(2) (2003)), posting employee transfers (§37.4(b)(2) (2003)), and posting exercises of discretion under the open access transmission tariff (§37.4(b)(5)(iii) (2003)).
- *Florida Power Corporation OASIS Issues:* Our examination of FPC's OASIS indicates that FPC did not adequately comply with certain OASIS requirements: posting schedule information (§37.6(f) (2003)), posting available transmission capability (ATC) and total transmission capability (TTC) (§37.6(b)(3)(ii)(A) (2003)), appropriately assigning transmission service requests status (§37.6(a)(4) (2003)), and providing meaningful reasons that transmission service requests were refused (§37.6(e)(2)(i) (2003)).

D. Summary of Recommendations

We have two overarching recommendations—one dealing with operational separation and the other dealing with Codes of Conduct.

As discussed above, we find generally that the employees of the Progress Energy's APM do not operate separately from the employees of Progress Energy's operating companies to the maximum extent practical. We therefore recommend two specific enhancements to the manner by which Progress Energy operates: (1) Progress Energy must separate the operations of RCO and CCO to the maximum extent practical; and (2)

the Progress Energy shared employees with knowledge of maintenance scheduling for RCO's fleet of CTs must operate separately, to the maximum extent practical, from the individuals with knowledge of maintenance scheduling for CCO's fleet of CTs. In response to audit staff's first recommendation on operational separation, Progress Energy moved RCO outside of Progress Ventures, effective January 2005.

We further recommend that the Commission require refiling of all Codes of Conduct so that they are uniform, and so that all Codes of Conduct on file define market information and support employees. Progress Energy's Operating Companies and APMs have filed as many as eight separate Codes of Conduct with the Commission. Our review of the Codes of Conduct reveals subtle but important differences with respect to the requirements related to shared market information. We think these differences are unwarranted. Our primary concern is that the differences create ambiguity for Progress Energy employees required to comply with Codes of Conduct, and we think the differences may be a contributing factor with respect to Codes of Conduct problems we found.

We recommend the refiled Codes of Conduct include the following model language (taken directly from one or more of the eight Codes of Conduct Progress Energy has filed):

All market information shared between the Operating Companies and the APMs will be disclosed simultaneously to the public. This includes all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential. This policy will not apply to market information disclosed to employees engaged in support functions, including human resources, information resources, data processing, finance, legal, accounting, and other support personnel who do not participate in directing, organizing and executing the business decisions of the wholesale merchant or generation function of the Operating Companies or the APMs, provided that such employees do not serve as an improper conduit of information to non-support personnel.

Specific Codes of Conduct Recommendations

- (1) Progress Energy must separate the operations of RCO and CCO to the maximum extent practical. In response to audit staff's concerns, Progress Energy moved RCO outside of Progress Ventures, effective January 2005. Audit staff will monitor the implementation of this change, but it believes that it is consistent with our recommendation.
- (2) We recommend that Progress Energy develop additional procedures to ensure that CT Operations personnel communicate to either CCO or RCO only that

information necessary to facilitate efficient maintenance scheduling. These procedures should emphasize that CT Operations personnel may not serve as conduits of market information to employees at either RCO or CCO who direct, organize, or execute wholesale merchant transactions.

- (3) The Progress Energy shared employees with knowledge of maintenance scheduling for RCO's fleet of CTs must operate separately, to the maximum extent practical, from the individuals with knowledge of maintenance scheduling for CCO's fleet of CTs.
- (4) Progress Energy should develop a plan to enhance its current review of sources of market information. This plan should include a process by which changes to the company's intranet site will be audited to verify that the changes do not result in market information becoming available.
- (5) Progress Energy should conduct an audit of its intranet site as soon as possible, and then perform reviews at least annually or as necessitated by changes to intranet structure or content. Progress Energy should provide audit staff with copies of all audit reports based on these reviews. The work papers from the audit and reviews should be maintained for at least three years. In addition, Progress Energy should provide FERC audit staff with all work papers associated with all audits of Progress Energy's intranet site conducted between January 2002 and December 2004.
- (6) Staff recommends that to the extent Risk Analytics continues to create a single forward curve to distribute to both RCO and CCO, that this forward curve must rely solely on information developed independently of each of the marketing operations. This means that the "shared forward curve" can be based on sources such as market exchange information and price information services, *i.e.*, information that is widely available to market participants. However, the "shared forward curve" cannot be based on proprietary information or information that a trading operation would not normally share with its competitors, including market views, price offers made by RCO or CCO or the prices at which either organization actually executed a transaction, and specifically, quotes RCO or CCO receive from third-party brokers.
- (7) Progress Energy should return to its native load customers a sum of \$100,000 to reflect the amount of brokering services provided to the affiliated power marketers but not paid for by them, consistent with Codes of Conduct and Commission orders. Progress Energy must not recover the monies paid through any existing or future wholesale or retail rate recovery mechanism. Progress Energy should, in its implementation plan, describe how and when this sum will be flowed-through to native load customers.

- (8) On a going-forward basis, if Progress Energy or its subsidiaries or affiliates propose to engage in brokering activities in the future, Progress Energy should submit an implementation plan for Commission staff review. The implementation plan should demonstrate how Progress Energy will ensure that any future brokering activities are consistent with all Codes of Conduct requirements. Specifically, if the wholesale market function brokers power for APMs, the company must explicitly account for the costs of providing such services, and ensure that the actual charges for such brokering services are at the higher of cost or market value. Moreover, the company must simultaneously post on its EBB the actual price charged the APMs for the brokering services provided.
- (9) Progress Energy should create and implement a plan to improve the process by which it posts market information on either its OASIS or EBB. Details of this plan should be included in the Implementation plan that Progress Energy will provide to staff. This plan should include steps to retain items posted. If Progress Energy plans to continue utilizing its EBB as the means for simultaneously disclosing market information, this plan should also include provisions to publicize the existence of its EBB to market participants in order to ensure that it is a useful forum for posting market information.
- (10) Progress Energy should adopt a corporate policy that prohibits RCO employees from communicating by IM with CCO employees (and vice versa). In addition, we recommend that both CCO and RCO continue to archive instant messages so that the prohibition on IM across trading floors can be verified.

Specific Standards of Conduct Recommendations

- (11) We recommend that Progress Energy eliminate the scheduled daily phone calls and implement an alternative method (via an electronic medium) for transmitting the relevant information communicated during the meeting. If, on occasion, operational considerations require verbal supplementation of any such electronic communication, such supplementation must be over a recorded phone line, and notice of such conversation must be posted on OASIS within 24 hours of the call, consistent with the posting requirements for emergency circumstances under 18 C.F.R. §358.4(a)(2)(2004). The decision to engage in verbal supplementation should be made by company personnel pursuant to operational protocols developed by the company, to be included in the company's Implementation plan.
- (12) Consistent with our recommendation regarding the morning phone calls between the Energy Control Centers and RCO, we recommend that Progress Energy eliminate the scheduled hourly phone calls and implement an alternative method (via an electronic medium) for transmitting any information that is required by

ECC personnel on an hourly basis. If, on occasion, operational considerations require verbal supplementation of any such electronic communication, such supplementation must be over a recorded phone line, and notice of such conversation must be posted on OASIS within 24 hours of the call, consistent with the posting requirements for emergency circumstances under 18 C.F.R. §358.4(a)(2)(2004). The decision to engage in verbal supplementation should be made by company personnel pursuant to protocols developed by the company, to be included in the company's Implementation plan.

- (13) Progress Energy should maintain, on a going-forward basis, auditable records of WMF employee and APM employee visits to the ECCs. For example, the log-in for ECC visitors should include but not be limited to the purpose of the visit, the facilities at the ECC to be visited, and not only the escort, but the ECC person responsible for ensuring that the visit does not violate Standards of Conduct. We further recommend the ECC employee responsible, as well as the marketing employee visiting the ECC, maintain written notes that summarize the discussion that took place and the facilities visited, and that such notes be maintained for audit purposes for a minimum period of three years. If there is a disclosure of transmission information at such meetings, the notes would serve as support for an OASIS posting, if required, as described in 18 CFR §358.5(b)(3)(2004).
- (14) We recommend that Florida Power Corporation maintain a log of instances when the employee evaluating OASIS requests asks for a re-calculation of ATC. This log, and any other acts of discretion under its tariff, should be posted on FPC's OASIS.
- (15) Staff recommends that Progress Energy determine whether any WMF employees continue to have access to market information and transmission data via the EMS, and report its findings to staff in its Implementation plan. The company should also develop a procedure to audit changes to EMS screens when the changes occur to verify that WMF employees do not have access to restricted information. In addition, staff recommends that the FPC limit plant operators' access to EMS, given the potential for FPC peaking plant operators to be conduits of market information, and since the plant operators have no use for unlimited EMS access.

Specific OASIS Recommendations

Carolina Power and Light OASIS Issues:

- (16) Staff recommends that CP&L develop and implement a management plan to ensure that it is in compliance with all OASIS posting requirements. In our view, an important element of such a plan is the designation of a single individual (and that individual's designees) with the technical expertise to ensure compliance with

OASIS requirements. The duties and responsibilities of this individual should be consistent with the requirements for Chief Compliance Officers under Order No. 2004.

- (17) Staff recommends that CP&L OASIS training be enhanced to reinforce the importance of accurately assigning a status to transmission service requests and providing meaningful comments when service has been refused. CP&L should describe its training proposals in its Implementation plan.
- (18) With respect to the requirement to post discretionary actions under the open access tariff, we recommend that CP&L retroactively post for 90 days on its OASIS its FERC LOG for the audit period. In addition, CP&L should develop, implement and train its staff on written procedures regarding when and how CP&L staff should exercise discretion, so that it can post acts of discretion on CP&L's OASIS on an on-going basis consistent with OASIS requirements.
- (19) With respect to the requirement that employee transfers between the merchant and transmission functions must be posted on OASIS, we recommend that OASIS training be enhanced to reinforce the importance of the timing requirements.

Florida Power Corporation OASIS Issues:

- (20) Staff recommends that FPC develop a management plan to ensure that it is in compliance with all OASIS requirements. In our view, an important element of such a plan is the designation of a single individual (and that individual's designees) with the technical expertise to ensure compliance with OASIS requirements. The duties and responsibilities of this individual should be consistent with the requirements for Chief Compliance Officers under Order No. 2004. Staff will review this plan to determine whether the plan provides for timely correction of the identified violations.
- (21) Staff recommends that FPC OASIS training be enhanced to reinforce the importance of accurately assigning a status to transmission service requests and providing meaningful comments whenever service has been denied. FPC's plans for enhanced training should be included in its Implementation plan.

E. Additional Actions Taken by Progress Energy

Progress Energy will refund/credit \$6.4 million to rate payers of CP&L and/or FPC. This \$6.4 million will not be recoverable through any regulated rates. The state/retail component of this amount (\$5.4 million) will be implemented through a fuel adjustment charge mechanism. To the extent practicable, Progress Energy will attempt to

flow-through some or all of the \$5.4 million to retail customers by the end of calendar year 2005, but under no circumstances later than October 1, 2006. The remaining \$1 million of this amount will be allocated to CP&L's and/or FPC's wholesale customers. This amount will be flowed-through to wholesale customers no later than the end of calendar year 2005.

F. Implementation Plan

We recommend that Progress Energy file an implementation plan with audit staff detailing the company's plans to come into compliance with respect to the findings and recommendations summarized above, including the overarching recommendations. The implementation plan should be filed within 30 days of the date of the order issuing this audit report. The implementation plan should include discussion of how Progress Energy will train its staff on new procedures that result from implementation of the audit recommendations. In addition, we recommend that Progress Energy file quarterly status reports, commencing at the start of the third quarter in 2005, detailing progress on the implementation plan, to continue until Progress Energy has taken all the corrective actions directed in the audit report.

II. COMPLIANCE FINDINGS

1. Coordination of Wholesale Marketing Strategies

During the summer and fall of 2003, Progress Energy staff exchanged market information and failed to make a simultaneous posting of this exchange, as required under its Codes of Conduct. The exchange of market information occurred as part of Progress Energy's strategic evaluation of alternative organizational structures for its marketing operations. Market information was exchanged during meetings at which both WMF and APM staff participated, when participants identified specific wholesale customers that would be targeted by either the WMF or APMs. The coordination of wholesale marketing strategies that occurred, including the sharing of market information between the WMF and APM, is inconsistent with the explicit requirement in Progress Energy's Codes of Conduct that WMF and APM operate separately to the maximum extent practical.

Background

The WMF within Progress Energy, Regulated Commercial Operations (RCO), started to develop a business plan in the Spring of 2003. In a July 2003 presentation made as part of this process, RCO identified a number of weaknesses in its current market orientation. One such weakness was that RCO was competing with Progress Energy's APMs, (*i.e.*, Competitive Commercial Operations (CCO)), in the same markets. One of the strategic initiatives discussed during a meeting in July 2003 was an examination of a "means to minimize RCO/CCO direct competition." The RCO managers in charge of long-term business development were tasked with evaluating "alternatives to minimize/eliminate direct RCO/CCO competition for term business."

On August 19, 2003, a summary of the RCO Business Plan was presented to the Group President of Progress Ventures (PV), a business segment within Progress Energy that includes RCO plus CCO and all unregulated businesses. This presentation also identified competition between CCO and RCO - both business units that report to PV's Group President - as a weakness. To address this weakness, the business plan suggested moving two generating units owned by the APM located in Florida (DeSoto) into the RCO fleet as well as brokering the CCO plant in North Carolina (Rowan) and the other generating unit at DeSoto through RCO. It is audit staff's understanding that Progress Energy has not implemented either of the competition-minimizing strategies identified in the August 19, 2003 presentation

At roughly the same time RCO was developing its business plan, PV began a review of future business practices. This initiative, internally called PV05, began in July 2003. As part of this review, PV considered several proposals for reorganizing its

wholesale trading operation. In September 2003, PV senior management, including the Vice Presidents of RCO and CCO, attended an offsite meeting to discuss the reorganization options. The possibility of combining long-term sales origination from both the assets of the WMF and the APMs into one group, organized by geographic market, was discussed during this meeting.

The presentation given at the offsite meeting states that “geographic alignment of marketing coverage eliminates potential overlap.” Handwritten notes taken during this meeting by the Vice President of RCO indicate that “coordinating in the market is a goal.” Additionally, handwritten notes by the Vice President of RCO taken sometime within a month after the offsite meeting indicate that one of the goals of a “single-trading floor” is achieving “marketing synergies (lack of direct competition resulting in lower revenue).” Another set of notes taken by the Vice President of RCO sometime within the month following the offsite meeting indicate that a disadvantage of two trading floors was “some market competition” that could “be managed w/o combining floors.”

A September 22, 2003 PV presentation created by consultants hired by Progress Energy suggested the manner by which competition between RCO and CCO would be managed. This presentation, given to the Vice Presidents of RCO and CCO and the President of PV, presents three options to “optimize market opportunities for assets in VACAR and FRCC.” One of the options was to “Direct RCO/CCO to compete in markets/with customers which do not intersect.” The presentation indicates that RCO’s budgeted margin, (*i.e.*, the level of profits to shareholders from wholesale power trading) on the sale to [redacted] was at risk if [redacted] obtained capacity elsewhere. This included focusing “(by mandate) marketing of Rowan in Duke/Southern control areas and *away from* [redacted]” (emphasis in original). While the copy of the presentation given to the Vice President of CCO did not include the phrase “*away from* [redacted],” the general directive is still clear. By targeting specific markets, CCO necessarily avoided the markets RCO was targeting. Progress avoided explicitly sharing positive market information by omitting “*away from* [redacted],” it nonetheless shared negative market information, as described below. In addition, the thrust of the discussion also constitutes coordination. Another option discussed in the presentation called for brokering the unregulated generating units Rowan and DeSoto through RCO. The September 22, 2003 presentation indicates that this arrangement “would result in minimizing marketing of Rowan against PEC assets.”⁵

An October 2003 presentation created by a consultant hired by Progress Energy and given to the Vice President of RCO and RCO long-term sales managers discussed the integration of the DeSoto generating units into the Florida Power Corporation fleet. The

⁵ The names of the customers involved have been redacted to preserve the customers’ anonymity.

presentation lists as a key driver of the strategy the desire to “avoid ‘cannibalizing’ margins through direct competition (RCO and CCO); particularly re: [redacted] and [redacted].”⁶

Progress Energy has indicated that none of the competition-minimizing strategies addressed as part of the PV05 initiative was pursued or implemented, but staff has found no evidence one way or another to support the company’s claim. However, the general desire to minimize competition between the WMF and the APMs was repeatedly discussed in the presence of the Vice Presidents of RCO and CCO. Simply identifying target markets for each trading organization mitigates much of the need to make structural changes to the trading organizations.

In addition to coordinating the marketing of RCO and CCO assets, knowledge of particular RCO customers to whom CCO was marketing represents the exchange of market information. For example, Progress Energy’s Codes of Conduct procedures identify “Customer acquisition strategies” as a type of market information that should not be exchanged. Progress Energy indicated in response to data requests that the presentations that discussed competition-minimizing strategies did not communicate to CCO the RCO customers they should avoid. However, the fact that the RCO and CCO Vice Presidents were together to discuss strategies to avoid competition raises the concern that the specific customers in question were discussed verbally. Staff asked for the notes taken with respect to these discussions. We did receive some notes from the company, but critically, we were not provided with any notes from the Vice President of CCO from the September 2003 off-site meeting, so we have no way to verify what directions he was given outside of the presentations prepared as part of the strategic initiative.

Commission Regulations and Requirements

All the Progress Energy affiliates with market-based rates have a provision in their Codes of Conduct that requires the APM to operate separately from the WMF to the maximum extent practical. The Codes of Conduct for Progress Ventures, Inc. indicates that “To the maximum extent practical, the Operating Companies’ employees who operate the Operating Companies’ system or engage in power purchasing or selling on behalf of the Operating Companies will operate separately from Progress Ventures’

⁶ The names of the customers involved have been redacted to preserve the customers’ anonymity.

employees performing power sales activities.”⁷ Moreover, the Codes of Conduct require that all market information shared between the Operating Companies and the APM will be disclosed simultaneously to the public.

The Commission has made clear the types of market information subject to Code of Conduct restrictions. For example, in *UtiliCorp*, the Commission unequivocally stated: “All market information shared with an affiliated power marketer must be disclosed simultaneously. This includes information on sales or purchases that will not be made (what Clearinghouse calls negative information). If there is any communication between the two concerning the utility’s power or transmission business --broker-related or not, present or future, positive or negative, concrete or potential, significant or slight-- it must be simultaneously communicated to all non-affiliates.” (emphasis in original)⁸

Recommendation

Staff’s audit findings support a recommendation for Progress Energy to reorganize its marketing function. Progress Energy’s lack of compliance with Codes of Conduct ultimately stems from the fact that employees in RCO report to the Progress Ventures Group President. This organizational structure facilitates the sharing of market information (as in the February 2003 joint meeting discussed below) and provides a vehicle for the coordination of marketing efforts.

- (1) Progress Energy must separate the operations of RCO and CCO to the maximum extent practical. In response to audit staff’s concerns, Progress Energy moved RCO outside of Progress Ventures, effective January 2005. Audit staff will monitor the implementation of this change, but it believes that it is consistent with our recommendation.

⁷ Codes of Conduct for Progress Ventures were filed on August 24, 2001 in Docket No. ER01-2928 and approved by the Commission by letter order on January 25, 2002.

⁸ *Utilicorp United, Inc.* 75FERC ¶ 61,168 at 61,557 (1996)(*Utilicorp*).

2. Opportunity for Exchange of Market Information via CT Operations

Progress Energy organized its CT Operations group in a manner that creates the opportunity for the exchange of market information between the APMs and the Operating Companies and is inconsistent with the Codes of Conduct requirement that the APMs and Operating Companies operate separately. CT Operations, a unit within the generation function, is responsible for the operation and maintenance of Progress Energy's entire fleet of combustion turbines (CT), including the CT fleet owned by the Operating Companies and the CT fleet owned by APMs. One employee does outage planning for both fleets. Other employees in the company's Raleigh headquarters that may work on only the Operating Companies' fleet work side-by-side with other employees that work on only the APMs' fleet. These employees perform operational functions (rather than support functions) and have access to market information for both fleets of CTs.

Background

A unit within Progress Energy's generation function (called CT Operations) is responsible for the operation and maintenance of Progress Energy's entire fleet of combustion turbines (CT), including the CT fleet owned by the Operating Companies and the CT fleet owned by APMs. The organizational chart for CT Operations reveals that CT Operations contains five groups: Combined Cycle Systems; Carolina Plant Operations and Florida Plant Operations, which operate the regulated fleet; PV Plant Operations, which operates the unregulated fleet;⁹ and CT Services, which provides technical support, planning, and related services to the other groups.

Most of the employees in CT Operations are plant operators (or associated personnel) located on-site at the numerous CT units owned or operated by Progress Energy in Florida, Georgia, and the Carolinas. Some CT Operations employees work at Progress Energy headquarters in Raleigh, on the 7th floor at 410 South Wilmington Street.

We toured the 7th floor work space and observed private offices for a few managers and senior staff around the perimeter of the floor and a large open carrel work area for the majority of the staff. We noted that employees working in PV Plant Operations responsible for the unregulated CT fleet and employees working in Carolina Plant Operations and Florida Plant Operations responsible for the regulated CT fleet work side-by-side.

⁹ Progress Energy characterizes the regulated fleet as those ratebase CT units from which Progress Energy's wholesale merchant function (RCO) makes off-system sales, and characterizes the unregulated fleet as those non-ratebase CT units that are controlled by Progress Energy's affiliated power marketer (CCO).

We interviewed one staff member of CT Operations who works in the CT Services group. He said his primary responsibility is outage planning and outage scheduling, to which he devotes about $\frac{3}{4}$ of his time. He said he does outage scheduling for both the regulated and unregulated CT fleets, mostly for the regulated fleet. He said that CCO, which markets capacity and energy from the unregulated fleet, does some of the outage scheduling for the unregulated fleet, and on occasion he will coordinate with CCO staff.

Our concerns are twofold. One concern is that the close physical proximity of staff exacerbates the opportunity for the exchange of market-valuable information, whether the exchange is inadvertent or purposeful. For example, information related to the performance of the regulated CT units could be inadvertently exchanged with staff working on the fleet of unregulated CT units, and this information could ultimately flow to the trading function for the unregulated CT fleet. A related concern is that a single individual does outage planning and scheduling for the regulated and unregulated CT units, which could affect the independence of these efforts. The result could be that the regulated CT units could be operated, or scheduled for maintenance, in such a way that would place the unregulated CT units in a more favorable competitive position vis-à-vis the regulated CT units.

We discussed these concerns with Progress Energy staff and their counsel, and they believe that these concerns are not salient. They suggest that state regulatory oversight creates incentives for CT Operations staff to operate the fleet of regulated CT units so that Progress Energy reliably serves native load, a point with which we agree. They also suggest the unregulated CT units do not compete in the same markets with the regulated CT units, because the unregulated CT units are not interconnected with Progress Energy's transmission facilities. We understand this to mean that even if CT Operations staff were to exchange market information, or were to collectively schedule regulated and unregulated CT outages, there would nevertheless be no effect on competition.

Although there has been little direct competition in the past between RCO and CCO, Progress Energy concedes that both marketing operations are now approaching the same customers. For example, the RCO Vice President told us that he has learned from RCO's customers that "...CCO has been pitching longer-term deals to them." Moreover, we think there are limited markets in which the regulated CT fleet and the unregulated CT fleet could compete directly to make sales of capacity and/or energy, *e.g.*, within control areas that are adjacent to Progress Energy-Carolina's control areas and are also within one wheel away from the unregulated CT units located in the Carolinas and Georgia. To the extent this potential competition occurs, the unregulated CT fleet could be advantaged by having access to commercially-valuable operating information or maintenance schedules for the regulated CTs.

Commission Regulations and Requirements

We reviewed six different Codes of Conduct governing the operation of Progress Energy's six APMs, as well as the procedures developed by Progress Energy to implement the Codes of Conduct. In our view, the organizational structure of CT Operations provides opportunities for the sharing of market information, and is therefore inconsistent with the Codes of Conduct requirements.

Codes of Conduct require APMs to operate separately from employees that operate the system and engage in wholesale merchant functions to the maximum extent practical, and prohibit the exchange of market information between the APMs and such employees without simultaneous public disclosure of such information. The Codes of Conduct make an exception to this rule for employees engaged in support functions, which are defined in one of Progress Energy's Codes of Conduct as "...including human resources, information resources, data processing, finance, legal, accounting, and other support personnel who do not participate in directing, organizing and executing the business decisions of the wholesale merchant or generation functions of the Operating Companies...".¹⁰ The Codes of Conduct prohibit such employees from acting as conduits to pass market information obtained from Progress Energy's Operating Companies to the APMs.

Progress Energy staff and counsel told us that CT Operations staff that work in the company's Raleigh headquarters are shared employees and are therefore exempt from the market information rule, and have been trained on and are familiar with the Codes of Conduct requirements, particularly the "No Conduit Rule". However, based on our interviews with CT Operations staff, some of them are engaged in actual decisionmaking with respect to the scheduling of plant operations and outages of the CT fleet. In staff's view, these employees perform functions that are more consistent with the definition of Operating Employees, and are therefore not covered by the exception created for employees engaged in support functions.

In cases such as this, where there is virtually no physical separation between employees with responsibilities to operate and maintain the CTs devoted to the Operating Companies and the APMs, reliance on an individual's performance under the "No Conduit Rule" may not be sufficient. In our view, reliance on the "No Conduit Rule" is not a substitute for, but is rather a complement to, the need for physical separation of staff that may inadvertently exchange information.

¹⁰ See Codes of Conduct of Rowan County Power, LLC, FERC Electric Tariff Second Revised Volume No. 1, Original Sheet No.4, Effective: November 25, 2003.

Recommendation

There should be more complete physical and functional separation of the generation function associated with the unregulated CT fleet and the System Planning & Operations Department, which is responsible for both the generation and transmission functions used to serve native load and to support the WMF.

- (2) To remedy these concerns, we recommend Progress Energy develop additional procedures to ensure that CT Operations personnel communicate to either CCO or RCO only that information necessary to facilitate efficient maintenance scheduling. These procedures should emphasize that CT Operations personnel may not serve as conduits of market information to employees at either RCO or CCO who direct, organize, or execute wholesale merchant transactions.
- (3) The Progress Energy shared employees with knowledge of maintenance scheduling for RCO's fleet of CTs must operate separately, to the maximum extent practical, from the individuals with knowledge of maintenance scheduling for CCO's fleet of CTs.

3. Access to Market Information via the Company's Intranet

On several occasions, Progress Energy's WMF and APMs had access, via the company's intranet, to prohibited outage, cost and operations data for generating plants owned by the APMs and the Operating Companies.

Background

From March 2002 until November 2002, wholesale merchant function and affiliated power marketing employees had access to prohibited generator outage and cost data and generator operations reports via the company's intranet and Outlook public folders. The intranet sites maintained by the Nuclear Generation Group, the Energy Control Center, and System Planning and Operations each contained market information regarding the APMs' and Operating Companies' generating plants, including outage data, cost data and operating reports. Progress Energy says it interviewed APM employees after discovering the problem in the fall of 2002 to determine if any one had accessed the available market information. Based on these interviews, Progress Energy believes no employee accessed the intranet sites in question.

Progress Energy indicates that the WMF and APM access to this information was eliminated in the first quarter of 2003. At that time, Progress Energy says it created user groups (*e.g.*, wholesale merchant function employees, affiliated power marketer employees) to specify the access each group would have to individual department intranet sites and/or portions of department intranet sites. At the same time, Progress Energy indicates it also initiated a series of periodic reviews of the access APM and WMF employees had to market information via the company's intranet site. These reviews are based on an internal review of the data available on its intranet sites during which Progress Energy identified relevant market data. In particular, Progress Energy says it monitors access to intranet sites maintained by Energy Supply, the Nuclear Generation Group, System Planning and Operations, Regulated Commercial Operations, the Energy Control Center and the Fossil Fuels Department. In addition, Progress Energy says it verifies that APM employees do not have access to some CT Operations reports, System Planning and Operations System reports, and Portfolio Management Reports.

Progress Energy identified another instance during which market data was available on its intranet site. Prior to October 2003, Progress Energy's WMF had non-restricted access to the Energy Supply intranet site. On or about October 21, 2003 Progress Energy's Associate General Counsel with responsibility for affiliate rules learned that the Energy Supply business unit was posting information regarding the APM's plants on its intranet site. Progress Energy indicated that this information was available for a limited time period prior to the point that Progress Energy's Associate

General Counsel was made aware of Energy Supply's posting practices. As a result of this discovery, Progress Energy eliminated WMF access to the Energy Supply intranet site effective October 21, 2003.

In addition, Progress Energy expanded the set of intranet sites to which APM employees had restricted access effective October 23, 2003. Prior to October 23, 2003, APM employees were able to access portions of the intranet sites maintained by Energy Supply, Combustion Turbine Operations, Nuclear Generation and System Planning and Operations. Progress Energy decided to restrict APM employees' access to the entirety of these intranet sites because the intranet sites were being expanded and Progress Energy felt that tracking each new item posted would be extremely difficult.

Progress Energy did not interview any of its employees to determine if any one had accessed the market information data posted in the intranet sites in question. Audit staff is not independently aware that any Progress Energy employee had access to prohibited market information.

Commission Regulations and Requirements

According to Progress Energy's Codes of Conduct, Progress Energy Operating Companies may not provide access to market information to APM employees unless the Operating Companies simultaneously disclose the same information to the public. For example, the Statement of Policy and Code of Conduct for Washington County Power, LLC indicates that "All market information shared between the operating companies and the marketing affiliate will be disclosed simultaneously to the public. This includes all market information, including but not limited to, any communication concerning power or transmission business, present or future, positive or negative, concrete or potential."¹¹

Recommendations

We recommend that the company take additional steps to ensure that the APM and WMF do not exchange market information via the intranet in the future. We recommend:

- (4) Progress Energy should develop a plan to enhance its current review of sources of market information. This plan should include a process by which changes to the company's intranet site will be audited to verify that the changes do not result in market information becoming available.
- (5) Progress Energy should conduct an audit of its intranet site as soon as possible, and then perform reviews at least annually or as necessitated by changes to intranet

¹¹ Codes of Conduct for Washington County Power, LLC, FERC Electric Tariff Second Revised Volume No. 1, Original Sheet No. 5, Effective: November 25, 2003.

structure or content. Progress Energy should provide audit staff with copies of all audit reports based on these reviews. The work papers from the audit and reviews should be maintained for at least three years. In addition, Progress Energy should provide FERC audit staff with any work papers associated with all audits of Progress Energy's intranet site conducted between January 2002 and December 2004.

4. Potential Exchange of Market Information via Forward Curves

Employees of Progress Ventures' risk analytics group creates and distributes forward curves to traders in both WMF and APM. In part, these forward curves are based on price data collected separately by the WMF and APM trading groups. In our view, the price data collected separately by the Operating Companies' trading group is market information, under the definition of market information in the company's Codes of Conduct. By providing access to these price data in the shared forward curves, the shared employees of the risk analytics group act as a conduit of market information.

Background

The Risk Analytics group within the Progress Ventures mid-office produces forward electricity price forecasts ("forward curves") for use by both the regulated wholesale merchant function (RCO) and the affiliated power marketers (CCO). The Risk Analytics group produces forward price forecasts for the next day, balance of week, next week, balance of month and each of the next 40 months for four regions: PJM, Cinergy, Southern Company and Entergy. The forward curves include both a bid and an ask price. In producing the forward curves, Risk Analytics staff survey prices reported by a number of market exchanges and price information services. Risk Analytics supplements these publicly available prices with price surveys of market observations by RCO and CCO as they transact during the day. In each case, these price surveys also are based on reported prices from market exchanges and price information services, as well as quotes widely available in the market that RCO or CCO (like other trading organizations) receives from third-party brokers.

According to the written procedures explaining the creation of forward curves, the broker and exchange prices serve as the primary sources. At trading points where the exchanges are not liquid, Risk Analytics constructs the forward curves from market fundamentals, like natural gas prices and prices at liquid trading hubs, and the proprietary prices reported by RCO and CCO. Progress Energy uses the forward curves to price products, calculate a Mark to Market valuation of positions entered into by the Origination and Trading Organizations, and value the company's physical assets.

We reviewed the forward curves for May 10, 2004, as well as the inputs used to create them. For several regions, there is generally very sparse publicly available price information. For instance, there were no publicly available Southern Company regional prices for any period other than the balance of month. There were no publicly available Entergy regional or PJM forward prices from September 2004 into the future. When there were no publicly available forward prices, the forward curves appeared to correspond to the price information supplied by RCO and CCO. For example, the balance of week and next week bid and ask prices for the Southern Company region were

identical to the prices for those periods provided separately to risk analytics staff by RCO. For a number of the monthly Southern Company region forecasts, the forward curves correspond closely to the average between the RCO and CCO price views.¹²

Progress Energy's Codes of Conduct, detailed below, prohibit shared employees, like Risk Analytics staff, from acting as a conduit of market information. The question then becomes whether the price information collected by RCO and CCO that is used in the creation of the shared forward curves is market information. In our view, the price information that RCO and CCO pass on to Risk Analytics may be market information because it may be available to the traders based on the trading activities of each group, and/or the relationships traders in each group have developed with other market participants. Some of the price information collected by RCO and CCO may be commercially valuable because it is not publicly available. And even price information that is publicly available may be considered to be market information when it is shared between the WMF and APM, according to Progress Energy's own procedures.¹³ The end result, that CCO has use of market data they otherwise would not have access to, is the same. An analogous argument can be made when RCO- and CCO-reported prices are collectively the primary determinant of the forward curve. In that case, both RCO and CCO have use of a forward curve that is arguably more accurate than the forward curve to which they would otherwise have access.

Commission Regulations and Requirements

Progress Ventures' Codes of Conduct indicates that "(n)o employee of the Operating Companies will share market information with any employee of Progress Ventures unless all such information is simultaneously made available to the public. This policy will not apply to market information disclosed to employees of Progress Ventures or the Operating Companies who are engaged in support functions ... *provided* that such employees are prohibited from acting as conduits to pass the market information obtained from the Operating Companies to Progress Ventures." (emphasis added)¹⁴

¹² For instance, the July 2004 and August 2004 Southern Company forward curve bid and ask prices seem to be generated by taking the single price forecast from CCO and averaging it against the mid-point between RCO's reported bid and ask prices, and then applying the same bid-ask spread as reported by RCO to generate forecast bid and ask prices.

¹³ See FERC Codes of Conduct 2002: Procedures to Implement the FERC Codes of Conduct of Carolina Power & Light Company, Florida Power Corporation and Their Wholesale Marketing Affiliates.

¹⁴ Codes of Conduct for Progress Ventures were filed on August 24, 2001 in docket ER01-2928 and approved by the Commission by letter order on January 25, 2002.

Recommendation

- (6) Staff recommends that to the extent Risk Analytics continues to create a single forward curve to distribute to both RCO and CCO, that this forward curve must rely solely on information developed independent of each of the marketing operations. This means that the “shared forward curve” can be based on sources such as market exchange information and price information services, *i.e.*, information that is widely available to market participants. However, the “shared forward curve” cannot be based on proprietary information or information that a trading operation would not normally share with its competitors, including market views, price offers made by RCO or CCO or the prices at which either organization actually executed a transaction, and specifically, quotes RCO or CCO receive from third-party brokers. Alternatively, Progress Energy could post as market information the forward curves provided to RCO and CCO. Forward curves that Progress Ventures mid-office employees use to perform functions other than operating functions can continue to incorporate RCO and CCO price information, and proprietary information, so long as mid-office employees do not serve as a conduit.

5. Charges to Affiliated Power Marketers for Brokering Services

Progress Energy's brokering activities prior to March 2002 were inconsistent with the requirements of Codes of Conduct and Commission Orders. Progress Energy has provided no evidence that the charges for brokering activities were set equal to the higher of cost or market value and that the actual charges were posted on the company's EBB.

Background

Progress Energy says it decided to split its trading operation at the end of 2001 as a result of the growth of its fleet of assets owned and controlled by its APMs. The first such asset, Monroe Generating LLC, came on-line in Georgia in 1999, and units at other sites in North Carolina, Georgia, and Florida, have come on-line since. By March 2002, when the split occurred, the company had seven subsidiaries and affiliates with market-based rate authority, all of which had filed separate Codes of Conduct with the Commission.

From May 1999 through March 2002, the WMF was authorized to provide brokering services on behalf of the APMs. The Commission approved this arrangement in a 1999 Order, noting that "...CP&L has taken the brokering rules established by the Commission for the opposite situation (when the marketer is brokering for the utility), and modified them to apply to its situation. Specifically, instead of the no-fee rule when a marketer brokers for its affiliate, for brokering service CP&L provides to Monroe, CP&L will charge Monroe the higher of CP&L's costs for that service or the market rate for such services."¹⁵

We reviewed Codes of Conduct for the APMs, which require brokering charges charged by the Operating Companies to the APMs to be the higher of cost or market, with market being the fee that CP&L or FPC would charge a non-affiliate for such brokering services. In addition, the Codes of Conduct require the Operating Companies to post on an electronic bulletin board (EBB) and/or the Internet the actual price they charge for brokering services.

The company provided us with a list of brokered transactions—Long Term Merchant Deals Brokered by CP&L Marketers prior to March 2002. The list includes five different deals involving two APMs (Monroe and DeSoto), and three different counter-parties. When we interviewed Progress Energy staff, they suggested that the charges for brokering services were not based on explicit records of the number of hours spent by employee; rather, the charges were based on *a priori* direct assignment and indirect allocations by function.

¹⁵ 87 FERC ¶61,209 at 61,828 (1999).

We asked the company to provide evidence that the brokering activities were consistent with the Commission's 1999 order and the Codes of Conduct filed with the Commission. The company provided certain data, but these data do not demonstrate that the company has accounted for all of the brokering activities that were provided, that the charges for brokering services were at the higher of cost or market value, or that the brokering charges were posted on the company's EBB.

The company states that the only brokering activities that took place prior to March 2002 were with respect to Monroe Power Company (also known as MPC) and DeSoto County Generating, and that the services for DeSoto were provided only for a brief start-up period from the end of 2001 up to March 2002. The company suggests that no brokering took place for other APMs for a variety of reasons. The evidence staff reviewed does not indicate whether brokering activities were provided to support other wholesale power sales, e.g., multi-year contracts that Progress Ventures either has or did have in March 2002 with wholesale customers in the Carolinas.

The company has provided no evidence whatsoever that the APMs were charged the higher of cost or market value for the brokering services that were provided. The company's responses to our data requests are silent on whether the company ever considered the market value of the brokering services provided. As such, there is no reason to believe that the brokering charges were set equal to the higher of cost or market value, unless the cost exceeds the market value.

We asked the company to document that brokering charges were posted on the company's EBB. The company provided the following response: "In late 1999 CP&L built the EBB required by the Code of Conduct for Monroe Power. CP&L revamped the EBB in the Spring 2002 and did a complete overhaul of the EBB over the summer and fall of 2003 with the final roll out of the new EBB in November 2003. To date Progress has been unable to retrieve documentation from the system with respect to the posting of brokering services provided by CP&L to Monroe Power. (Subsequent to March 2002, there were no other brokering services provided by CP&L to Monroe Power.) However, two employees who were power traders for CP&L during this time frame remember posting the brokering fees charged by CP&L to Monroe Power on the EBB. Both employees have signed verifications regarding this response."

In the view of audit staff, Progress Energy does not have the accounting records that would allow a reasonable estimation of the cost and the market value of the brokering services provided by the Operating Companies on behalf of the affiliated power marketers. In lieu of staff conducting a broad investigation of Progress Energy's brokering activities, which staff believes would not likely be fruitful given the lack of records, Progress Energy has used a proxy mechanism to calculate the difference between

the cost and market value of brokering. Staff has reviewed the proxy mechanism and believes it is a reasonable means to approximate the value of the brokering services that were provided but were not charged.

Commission Regulations and Requirements

Prior to the merger of FPC and CP&L, the Commission accepted the brokering arrangement proposed by CP&L when CP&L brokered for Monroe, its marketing affiliate. The Commission said "...CP&L will charge Monroe the higher of CP&L's costs for that service or the market rate for such services. CP&L will also market its own power first, simultaneously make public any information shared with Monroe during brokering, and post on its Internet site the actual brokering charges imposed."¹⁶ The Commission's directives are reflected in all of the Codes of Conduct on file for Progress Energy's APMs. For example, the Codes of Conduct for MPC Generating LLC (formerly Monroe) says: "Neither CP&L nor FPC will charge MPC Generating a brokering fee less than the higher of cost or market, with market being the fee that CP&L or FPC would charge a non-affiliate for such brokering services. CP&L and FPC will simultaneously post on an electronic bulletin board and/or the Internet the actual price they charge MPC Generating for its brokering services."¹⁷

Recommendation

- (7) Progress Energy should return to its native load customers a sum of \$100,000 to reflect the amount of brokering services provided to the affiliated power marketers but not paid for by them, consistent with Codes of Conduct and Commission orders. Progress Energy has agreed to return to its native load customers a sum of \$100,000, implemented through a fuel adjustment charge mechanism, to reflect the amount of brokering services provided to the affiliated power marketers but not paid for by them. This \$100,000 will not be recoverable through any regulated rates. To the extent practicable, Progress Energy will attempt to flow through the entire \$100,000 to customers by the end of calendar year 2005, but under no circumstances later than October 1, 2006.
- (8) The Codes of Conduct on file with the Commission permit the APMs to broker power for the Operating Companies, and permit the Operating Companies to broker power for the APMs. On a going-forward basis, if Progress Energy or its subsidiaries or affiliates propose to engage in brokering activities in the future,

¹⁶ 87 FERC ¶61,209 at 61,828 (1999)..

¹⁷ Statement of Policy and Codes of Conduct with Respect to the Relationships Between MPC Generating, LLC, Carolina Power & Light Company and Florida Power Corporation, FERC Electric Tariff Fourth Revised Volume No. 1, Original Sheet No.3, Effective: November 25, 2003.

Progress Energy should submit an implementation plan for Commission staff review. The implementation plan should demonstrate how Progress Energy will ensure that any future brokering activities are consistent with all Codes of Conduct requirements. Specifically, if the wholesale market function brokers power for APMs, the company must explicitly account for the costs of providing such services, and ensure that the actual charges for such brokering services are at the higher of cost or market value. Moreover, the company must simultaneously post on its EBB the actual price charged the APMs for the brokering services provided.

6. Exchange of Market Data and Insufficient Disclosure of the Exchange

During a February 2003 meeting that both WMF and APM employees attended, market information was exchanged. Codes of Conduct require that when market information is exchanged, simultaneous posting of the market information is required. Nine days after the market information was shared, a redacted version of a presentation made at the meeting was posted on Progress Energy's Electronic Bulletin Board (EBB).

Background

Progress Ventures held "all-hands" meetings (involving all of the Progress Ventures business units) on an approximately quarterly basis from April 2001 through February 2003. We reviewed the presentations made at these meetings. Typically, Progress Ventures business units presented financial material along with a narrative of recent developments. At meetings from April 2001 through April 2002, there was typically a discussion of recently consummated power contracts along with active marketing targets.

Even after Progress Energy split its trading organization in March 2002 into a regulated merchant organization (RCO) and an unregulated merchant organization (MCO at the time, CCO currently), Progress Ventures continued to have "all-hands" quarterly meetings where business strategies were discussed. Such meetings occurred in April, July and October of 2002, and in February of 2003. These quarterly meetings created opportunities for impermissible exchange of market information between WMF employees and APM employees. As such, these meetings are inconsistent with Codes of Conduct requirements to operate WMF and APM separately.

In a February 5, 2003 "all-hands" meeting, the WMF and APMs exchanged customer and financial information. During the February 2003 meeting, the WMF organization (RCO) discussed recently signed customers, while the APM organization (CCO) discussed both consummated and pending sales. In addition, both RCO and CCO presented financial information.

An individual attending the meeting reported the exchange of market information to Progress Energy's Associate General Counsel on February 10, 2003. As a result, Progress Energy chose to post a redacted version (minus third-party proprietary information) of the meeting presentation and an audio tape of the relevant parts of the meeting on its Electronic Bulletin Board (EBB) on February 14, 2003. Progress Energy said they could not find and therefore could not provide audit staff with part of the actual materials that were posted on the EBB, *i.e.*, the audio stream. Instead, Progress Energy provided us with the presentation used at the February 5th meeting, as well as the redacted

version it said was posted. We therefore have no way to verify whether the information Progress Energy posted on the EBB was all the market information shared at the February 5th meeting.

The EBB was chosen as the medium by which to post the disclosed market information because Progress Energy felt the OASIS site should be reserved to post disclosures of Standards of Conduct concerns, but not Code of Conduct concerns. We are unable to determine how many market participants became aware of the Codes of Conduct concern, because Progress Energy does not keep track of the number of visitors to its EBB. Based on interviews with Progress Energy staff, we know that Progress Energy did not believe that the EBB was used extensively by market participants. For example, managers of CCO told us the EBB was not a conducive trading forum prior to late 2003 or early 2004, and transmission staff at the Florida ECC told us that they were not even aware that FPC maintained an EBB. As a result, it is possible that very few market participants became aware of the Codes of Conduct concern, or were provided access to the information that RCO and CCO exchanged at the February 2003 meeting.

Commission Regulations and Requirements

Progress Venture's Codes of Conduct indicates that "to the maximum extent possible, the Operating Companies' employees who operate the Operating Companies' system or engage in power purchasing or selling on behalf of the Operating Companies will operate separately from Progress Ventures employees performing wholesale power sales activities."¹⁸ Joint meetings that include RCO and CCO staff where marketing strategies are discussed are inconsistent with this provision.

Progress Venture's Codes of Conduct also indicate that "no employee of the Operating Companies will share market information with any employee of Progress Ventures unless all such information is simultaneously made available to the public."¹⁹ The market information that was shared was not simultaneously made available to the public. Moreover, the potential dearth of visitors to the EBB calls into question the extent to which the market information that was exchanged between RCO and CCO was made available to the public *after the fact*.

¹⁸ Codes of Conduct for Progress Ventures were filed on August 24, 2001 in Docket No. ER01-2928-000 and approved by the Commission by letter order on January 25, 2002.

¹⁹ Id.

Recommendation

As discussed above, we think the appropriate remedy is to move RCO out of Progress Ventures to reduce the opportunity for exchange of market information (without simultaneous posting), activities that are prohibited under the Codes of Conduct. Since the current organizational structure of Progress Ventures facilitates the impermissible exchange of market information, we recommend this organizational change as the best way to ensure that RCO and CCO do not exchange market information (without simultaneous posting) in the future.

- (9) We also recommend that Progress Energy create and implement a plan to improve the process by which it posts market information on either its OASIS or EBB. Details of this plan should be included in the Implementation plan that Progress Energy will provide to staff. This plan should include steps to retain items posted. If Progress Energy plans to continue utilizing its EBB as the means for simultaneously disclosing market information, this plan should also include provisions to publicize the existence of its EBB to market participants in order to ensure that it is a useful forum for posting market information.

7. Lack of Oversight of Instant Messaging between Wholesale Merchant Function and APM Employees

RCO and CCO traders use instant messaging (IM) to survey the market and initiate trades. Progress Energy's lack of oversight over instant messaging inhibits its ability to verify that marketing employees do not use instant messages to exchange market information, which would be inconsistent with the Codes of Conduct.

Background

Traders in both RCO and CCO are allowed to use instant messaging (IM) to survey the market and initiate trades. During our tour of the CCO trading floor, we observed that one of the CCO traders had IM contacts at RCO, including a former manager of real-time trading, a supervisor of hourly traders, a next-day trader, and an hourly trader. We asked his manager whether he reviewed the traders' instant messages and we were told no. Both RCO and CCO began archiving instant messages in mid-April 2004, after we raised concerns during our site visit and requested all instant messages between RCO and CCO.

While contact between RCO and CCO traders is not a *per se* violation of the Codes of Conduct, the lack of oversight and archiving raises concerns. In particular, the lack of archiving limits the ability to review IM communications for compliance with the Codes of Conduct. In addition, the manager of CCO traders indicated during our site visit that he does not monitor his traders' instant messages. This lack of oversight by managers reduces the disincentive for traders to share inappropriate information.

Commission Regulations and Requirements

All of the Codes of Conduct require any market information exchanged between the Operating Companies and APMs to be posted on a publicly available forum. The use of un-monitored instant messages increases the chance that market information could be exchanged between RCO and CCO traders without the knowledge of their supervisors.

Recommendation

One option is to recommend that instant messages be archived, but we have concerns that simply requiring that instant messages be archived is an insufficient remedy given the nature of instant messages. Instant messages tend to be cryptic and prolific—much more so than e-mail messages. We are concerned that archived instant messages would be difficult to review. A more aggressive remedy would be to prohibit instant messaging between CCO and RCO employees. In our view, prohibiting CCO employees and RCO employees from sending instant messages to each other would not preclude efficient gains from trade that could result from RCO and CCO trading with each other,

consistent with Commission rules. Moreover, PE has stated that it does not appear that CCO and RCO need IM capabilities in order to undertake legitimate and permissible communications.

- (10) We recommend that Progress Energy adopt a corporate policy that prohibits RCO employees from communicating by IM with CCO employees (and vice versa). In addition, we recommend that both CCO and RCO continue to archive instant messages so that the prohibition on IM across trading floors can be verified.

8. Information Exchange during Daily Unit Commitment Phone Calls

Employees of the WMF and the transmission function take part in a teleconference each morning that could lead to the exchange of transmission information off-OASIS, which would be inconsistent with the Standards of Conduct. Our primary concerns are that these conversations could facilitate such inappropriate off-OASIS communications.

Background

RCO trading and portfolio management staff have a teleconference each morning with the Energy Control Centers (ECC) staff at both of the utilities to discuss unit commitment. The call between the CP&L ECC and RCO takes place at approximately 7:10 each morning and the call between the FPC ECC and RCO takes place at approximately 7:30 each morning.

During on-site visits to CP&L and FPC, we listened to these calls. We also reviewed recorded phone calls of a number of additional calls. The calls we reviewed took between 4 and 7 minutes, and were consistent with a standard outline.²⁰ The call starts with a discussion by ECC staff of the previous day actual load and the current day forecast load. ECC staff then discuss the short-term operating status and fuel burn for the generating units. In general, RCO portfolio management then discuss the long-term operating plan for the generation assets. The calls conclude with a discussion by the trading staff of the markets into which they bought and sold the previous day and the markets into which they expect to sell during the current day. During the calls we reviewed, the traders discussed transmission access on systems not controlled by either CP&L or FPC.

During the several calls we listened to, we did not hear an exchange of transmission information that constituted a *per se* violation of Standards of Conduct. And while we have no specific evidence that such communications did occur, we nevertheless have a general concern that these calls, which take place day-after-day, present a significant risk that transmission information will be exchanged.

The company should end these calls. The pertinent information discussed can be posted on the Energy Management System (EMS) or similar database to which resource managers have access. If Progress Energy were to post this information on an EMS-like system, the audit trail on unit commitment communications would be clear. In our view, elimination of daily unit commitment phone calls will not jeopardize reliability.

²⁰ Progress Energy provided a written template for the morning calls in response to staff request.

An alternative way to comply with the requirements of the Standards of Conduct would be for Progress Energy to allow market participants to participate in the morning calls, or to post the morning calls on its OASIS, to ensure that the information exchanged during the morning calls is not in violation of Standards of Conduct.

The Commission voiced a similar general concern regarding daily meetings between Duke Power Company's bulk power marketing (BPM) and system operating center (SOC) staff. The Commission order describes the communication between generation and transmission as a meeting to "discuss anticipated load demand for the day of the meeting and next several days; the availability of Duke Energy's generation portfolio for the day and next several days; and risk issues and risk management measures, such as risks related to weather and native load obligations."²¹ The content of this communication sounds very similar to the content of the recorded morning conference call between RCO and the utility companies' ECCs. However, as Progress Energy points out, the communication at issue in Duke was in face-to-face meetings, and the communications at issue here "were over recorded phone lines and thus subject to FERC review at any time."

In Duke, the Commission indicated that it was "concerned that the frequency of the meetings between the SOC and BPM employees could create an institutional off-OASIS information track that could be used to subvert the Order No. 889 restrictions on affiliate and WMF preferences."²² As a result of the Commission's concern, Duke was ordered to "submit a plan for the elimination of daily meetings between the SOC and BPM and for the implementation of some other method for transmitting the forward-looking information to the BPM."²³

In staff's view, the same concerns apply here. One of our specific concerns is that the extended discussion of target markets by the trading staff could lead to discriminatory actions by transmission function employees. Based on our interviews with the ECC managers at both FPC and CP&L, the ECC staff do not use the information they gather from the hourly and next-day traders, except to the extent that it may suggest bringing additional units on-line. However, RCO portfolio management staff are responsible for the initial unit commitment, so any trading information relevant to the commitment of units could be directly reported to them outside of the morning phone call. Thus, there seems to be no operational reason for the discussion of the WMF's target markets.

Another of our specific concerns is that the discussion by RCO traders of transmission access on systems not controlled by FPC or CP&L could lead to an

²¹ 86 FERC ¶61,079 at 61,288 (1999).

²² 87 FERC ¶61,145 at 61,601 (1999).

²³ *Id.*

inadvertent or deliberate disclosure of transmission market data. In particular, transmission function employees may acquire transmission market information from nonaffiliated transmission customers in the course of responding to requests for transmission. We are concerned that such information may find its way into the morning meetings as part of the discussion of transmission availability on other systems. We have been unable to identify any operational reason that WMF employees and transmission function employees need to discuss transmission availability on other systems.

Commission Regulations and Requirements

According to 18 C.F.R. §37.4(a)(1) (2003), “the employees of the Transmission Provider engaged in transmission system operations must function independently of its employees, or the employees of any of its affiliates, who engage in Wholesale Merchant Functions.” We understand that CP&L and FPC may choose to include employees responsible for generation dispatch and commitment in either the transmission function or the trading function. However, these employees are not to facilitate inappropriate off-OASIS communications.

The use of the target market information to provide transmission access to affiliate requests on a preferential basis would be inconsistent with 18 C.F.R. §37.4(b)(5)(iv) (2003). This provision states that “The Transmission Provider may not, through its tariffs or otherwise, give preference to sales for resale by the wholesale merchant function or by any affiliate, over the interests of any other wholesale customer in matters relating to the sale or purchase of transmission service (including issues of price, curtailments, scheduling, priority, ancillary services, etc.)”

Any inadvertent or deliberate disclosure of transmission market information acquired from actual or potential nonaffiliated transmission customers and developed in the course of responding to requests for transmission would be inconsistent with 18 C.F.R. §37.4(b)(4)(iii) (2003). This provision states that “A Transmission Provider may not share any market information, acquired from nonaffiliated Transmission Customers or potential nonaffiliated Transmission Customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS, with its own employees (or those of an affiliate) engaged in merchant functions, except to the limited extent information is required to be posted on the OASIS in response to a request for transmission service or ancillary services.”

Recommendation

- (11) Consistent with the Commission's requirement regarding Duke Power's daily meetings, we recommend that Progress Energy eliminate the scheduled daily phone calls and implement an alternative method (via an electronic medium) for transmitting the relevant information communicated during the meeting. If, on occasion, operational considerations require verbal supplementation of any such electronic communication, such supplementation must be over a recorded phone line, and notice of such conversation must be posted on OASIS within 24 hours of the call, consistent with the posting requirements for emergency circumstances under 18 C.F.R. §37.4(a)(2). The decision to engage in verbal supplementation should be made by company personnel pursuant to operational protocols developed by the company, to be included in the company's Implementation plan.

9. Information Exchange during Hourly Phone Calls between Generation Dispatcher and Hourly Traders

A WMF hourly trader and the generation dispatcher/AGC operator at the Energy Control Centers talk by phone each hour to discuss the capacity on-line and available to sell. These phone calls could lead to the exchange of transmission information off-OASIS, which would be inconsistent with the Standards of Conduct.

Background

The generation dispatcher/AGC operator at the Energy Control Center (ECC) calls one of the hourly traders at the WMF approximately one hour and 15 minutes prior to the operating hour.²⁴ These calls are typically very brief, usually lasting less than a minute.²⁵ During the call, the hourly trader and generation dispatcher discuss the quantity of energy available for sale for the relevant operating hour. In addition, the dispatcher and hourly trader sometimes discuss the price at which purchased power would economically replace the utility's own generation. The generation dispatcher/AGC operator maintains a log of the calls that includes: the projected change in load, the quantity sold going into the call, the additional quantity available for sale, and the quantity purchased to displace own generation.

Based on interviews with ECC and Regulated Commercial Operations (RCO) managers, the dispatcher and hourly trader may also discuss a number of additional topics. The dispatcher may explain the reasons for big changes in the capacity available for sale. The dispatcher and hourly trader may also discuss the operating cost of a sale. The call sometimes includes a discussion of the counterparty for a purchase or the control area into which a sale is going or from which a sale is coming. When RCO purchases power to displace generation, the dispatcher and hourly trader occasionally discuss the transmission service used to move the power into CP&L or FPC's control area.

We understand based on interviews with Progress Energy staff that these calls are motivated by at least three concerns. First, the CP&L and FPC ECCs ultimately have to verify that any sale using on-line generation can be accommodated from a reliability standpoint. Thus, there is some benefit derived from the ECCs validating the sales

²⁴ While the dispatcher at the ECC typically initiates the call, the hourly trader sometimes initiates the call. At CP&L, the job title of the ECC employee involved in the call is "AGC Operator." At FPC, the job title of the ECC employee involved in the call is "Generation Dispatcher."

²⁵ Audit staff reviewed approximately 10 recorded hourly calls on tape and listened in real-time to an hourly call during our site visit to both CP&L and FPC.

quantities prior to RCO consummating sales. In particular, RCO avoids the time and cost of unwinding sales that the ECC feels can not be made due to reliability concerns. Second, the hourly traders do not currently have access to the real-time unit operating status needed to determine the capacity available for sale. Thus, the AGC operator/generation dispatcher must collect this information in order to dispatch the units. The hourly traders would be duplicating the work of the AGC operator/generation dispatcher if they were to do an hourly survey of operating status. Third, a person-to-person call potentially eases the tension that can arise when the ECC limits the capacity available for sale due to reliability concerns.

Despite the fact that the hourly calls provide some potential cost savings, we are concerned that they also offer the opportunity for inappropriate off-OASIS communication. For instance, during a call on April 1, 2003, in the context of discussing the capacity available for sale, the hourly trader indicates that “it doesn’t look like there is any ATC for next hour.” To the AGC operator’s credit, he did not respond to the hourly trader’s comment in this instance. However, the mere existence of the hourly call provides the opportunity for the AGC operator to provide transmission information outside of the OASIS. In this sense, we view the hourly call in the same light as we view the morning phone calls between RCO and the ECCs. In addition, in all the calls we reviewed, the AGC operator/generation dispatcher simply indicated the capacity available for sale. Thus, it seems as though the information typically communicated during the hourly calls could be posted on EMS.

Commission Regulations and Requirements

Prohibited off-OASIS communications are discussed in 18 C.F.R. §37.4(a)(3) (2003) which indicates that

“Any employee of the Transmission Provider, or of any of its affiliates, engaged in wholesale merchant functions:

- (i) Shall have access to only that information available to the Transmission Provider’s open access transmission customers (*i.e.*, the information posted on an OASIS), and must not have preferential access to any information about the Transmission Provider’s transmission system that is not available to all users of an OASIS; and
- (ii) Is prohibited from obtaining information about the Transmission Provider’s transmission system (including information about available transmission capability, price, curtailments, ancillary services, and the like) through access to information not posted on the OASIS that is not otherwise also available to the general public without restriction, or through information through the OASIS that is not also publicly available to all OASIS users.”

Recommendation

- (12) Consistent with our recommendation regarding the morning phone calls between the Energy Control Centers and RCO, we recommend that Progress Energy eliminate the scheduled hourly phone calls and implement an alternative method (via an electronic medium) for transmitting any information that is required by ECC personnel on an hourly basis. If, on occasion, operational considerations require verbal supplementation of any such electronic communication, such supplementation must be over a recorded phone line, and notice of such conversation must be posted on OASIS within 24 hours of the call, consistent with the posting requirements for emergency circumstances under 18 C.F.R. §37.4(a)(2). The decision to engage in verbal supplementation should be made by company personnel pursuant to protocols developed by the company, to be included in the company's Implementation plan.

10. Frequent Visits by Merchant Function Employees to the ECCs

WMF and APM employees frequently visit the ECCs operated by Progress Energy, particularly the ECC in Raleigh. While such visits are not *per se* violations of the Standards of Conduct, such visits increase the opportunity for marketing employees to gain access to commercially-valuable transmission information that is not publicly available. The controls in place at the ECCs are not sufficient to demonstrate the purpose or the details of such visits, which exacerbates staff's concerns that such visits may facilitate marketing employees having off-OASIS access to transmission information.

Background

Progress Energy operates two control centers (called ECCs)—one in Raleigh, NC and one in St. Petersburg, FL. Physical access into the ECC parking lots is secured by gates with card key access. Once inside the ECC, access is controlled through a reception desk, and then by card key access into different parts of the ECC. The actual control rooms lie within the ECCs, so that access is through additional doors controlled by card key access.

At both ECCs, there are conference rooms near the reception desks. When there are meetings at the ECCs that include visitors from outside the ECC, we were told that meetings may take place in these conference rooms. However, due to the lack of records, staff cannot determine whether ECC visitors had access to parts of the ECC other than these conference rooms.

CP&L provided a list of visitors to the ECC from the WMF showing the individual at the ECC visited. We found that from 2001 through 2003 (roughly the audit period) there were over 150 visits to the ECC by employees of both RCO and CCO. Moreover, while the list shows the ECC employee visited, the list does not provide information on the purpose of the visits, *e.g.*, what issues were discussed. It is our understanding from interviewing ECC employees that there is no mechanism to record the purpose of the visits.

For the St. Petersburg ECC, FPC provided a list of WMF employees who entered the ECC from January 2001 through October 2003. The list shows only nine visits to the ECC by WMF employees. The FPC list also shows the purpose of each of the nine visits—either a discussion of load forecasting issues or cogeneration issues. We noted that at the reception desk at the St. Petersburg ECC, the log-in book does not require visitors to specify the purpose of the visit, but only to identify the ECC employee who would escort them. We asked ECC staff how they determined the purpose of each of the nine visits made by WMF employees, and we were told that they reconstructed the purpose of the visit from memory.

Commission Regulations and Requirements

The rules governing employee conduct prohibit any employee of the Transmission Provider, or any employee of an affiliate, engaged in WMF from “conducting transmission system operations or reliability functions and having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other open access transmission customers.” (18 CFR § 37.4 (b)(1) (2003))

Recommendation

Although we found no evidence that transmission information was shared with Progress Energy’s marketing employees when they visited ECCs in Raleigh or St. Petersburg, we are concerned that the number of such visits and the poor controls imposed on such visits increases the opportunity for merchant employees having access to commercially-sensitive transmission information. Progress Energy must reinforce its controls to ensure that such information sharing does not take place. The records that Progress Energy maintains are insufficient to support its assertion that “no information is shared with the wholesale merchant function” when merchant employees visit the ECCs.

- (13) We therefore recommend that Progress Energy maintain, on a going-forward basis, auditable records of WMF employee and APM employee visits to the ECCs. For example, the log-in for ECC visitors should include but not be limited to the purpose of the visit, the facilities at the ECC to be visited, and not only the escort, but the ECC person responsible for ensuring that the visit does not violate Standards of Conduct. We further recommend the ECC employee responsible, as well as the marketing employee visiting the ECC, maintain written notes that summarize the discussion that took place and the facilities visited, and that such notes be maintained for audit purposes for a minimum period of three years. If there is a disclosure of transmission information at such meetings, the notes would serve as support for an OASIS posting, if required, as described in 18 CFR §37.4(b)(4)(ii) (2003).

11. FPC's Transmission Function Does Not Log or Post Uses of Discretion

FPC does not log or post on OASIS instances when its dispatchers ask its senior engineer to recalculate ATC in order to confirm a pending transmission service request. FPC dispatchers do not feel this is an act of discretion and thus do not keep a log of such requests or post documentation of the requests on OASIS. In staff's view, such a request is an act of discretion and should be logged and posted on OASIS.

Background

Prior to April 21 2003, FPC had a policy that "allowed the dispatcher who approves nonfirm hourly and daily request approvals (sic) to approve more than the posted ATC value if the dispatcher was sure that the ATC posting was incorrect" (emphasis in original). FPC did not consider approvals in these cases an exercise of discretion, so they did not log or post them on OASIS.

Beginning April 21, 2003, FPC established a written policy requiring the dispatcher to refuse any request for capacity greater than ATC. Based on interviews with FPC Energy Control Center (ECC) managers, it is our understanding that the OASIS dispatcher can now request that ATC be recalculated in situations when the dispatcher feels there is likely enough ATC to approve a pending request. FPC does not consider requests to recalculate ATC an act of discretion, so the requests are not logged or posted on OASIS. FPC ECC managers indicated that the OASIS dispatcher makes a request to recalculate ATC several times a week.

The OASIS dispatchers' actions, both before and after April 21, 2003, seem to be clear acts of discretion. FPC's Open Access Transmission Tariff (OATT) does not provide for any leniency in accepting transmission service requests for more than the available transmission capacity. Thus, the OASIS dispatcher exercises discretion when he accepts a transmission reservation despite the fact that posted ATC is insufficient. Staff is not suggesting that the OASIS dispatcher should not accept service requests when he feels there is adequate ATC. Rather staff is noting that doing so is an act of discretion that FPC should have logged and posted on OASIS. Staff has no ability to determine whether FPC exercised its discretion in a discriminatory fashion because FPC did not log or post on OASIS instances when they accepted transmission service requests when ATC was not sufficient. In addition, staff feels the practice of accepting reservations in these circumstances should be formalized in a business practice and posted on OASIS so that all transmission customers are aware of the policy.

The decision to ask for a recalculation of ATC also seems to be an act of discretion. As detailed below, FPC effectively has discretion over the frequency with which it calculates ATC. Any time a dispatcher requests a recalculation of ATC, he is using his judgment that the conditions used to calculate ATC do not represent "the best

available information” regarding the physical state of the transmission system. Staff would agree that the dispatcher should use their judgment to request a recalculation of ATC when they feel a pending service request can be accommodated. Doing so maximizes the transmission capacity available to the wholesale market. However, this judgment must be exercised in a non-discriminatory fashion.

As we understand the process, these requests for recalculation are discrete actions by the OASIS dispatcher made outside the process by which FPC’s ECC typically calculates ATC. As a result, such requests are readily identifiable and do not occur so often that logging and reporting them would be burdensome.

Commission Regulations and Requirements

FPC’s OATT effectively stipulates that FPC has some discretion regarding the timing of ATC calculations. Attachment C of the OATT indicates that FPC will follow “the current NERC Planning Standards and guides dealing with transfer capabilities.” One of the NERC guides dealing with transmission capability (G1) indicates that “(a)ll TTC and ATC analyses should consider the best available information on anticipated system configuration and conditions (facility outages, reactive support, generation patterns, etc.) for the time period under study.” FPC clearly must use its judgment to determine what constitutes the “best available information.” As a result, FPC is bound by the requirement in 18 C.F.R. §37.4(b)(5)(iii) (2003) to “keep a log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on OASIS...”

Recommendation

- (14) We recommend that Florida Power Corporation maintain a log of instances when the employee evaluating OASIS requests asks for a re-calculation of ATC. This log, and any other acts of discretion under its tariff, should be posted on FPC’s OASIS.

12. Inappropriate Access to Market and Transmission Data

On several occasions, WMF employees have had direct or indirect access to market or transmission data via the Energy Management System (EMS). The WMF had access to the generation levels of independent merchant generators in Florida Power Corporation's control area for at least two months. In addition, a plant operator at one of FPC's peaker plants had unlimited access to the transmission data available on FPC's EMS.

Background

WMF employees have limited access to the data available on Florida Power Corporation's (FPC) Energy Management System (EMS). FPC limits access to EMS through the designation of EMS "modes." In particular, there is a transmission "mode" that offers unlimited access to the data available on EMS. There is also a trader "mode" that is supposed to limit the merchant function's view to only FPC-owned generation data and some system load, interchange and stability data. The Operations Support manager at FPC's Energy Control Center (ECC) identifies the data available in each mode. A Lead EMS Support Specialist implements the Operations Support manager's determination by defining filters for each EMS page that limit trader mode access to particular parts of the page.

FPC staff indicated during interviews that there are periodic (a few times a year) audits of the "mode access" performed by the Lead EMS Support Specialist. However, there is no after-the-fact audit by the Operations Support manager that his determinations have been accurately implemented.

From at least early December 2003 until January 28, 2004, the current generation level of merchant generators located in FPC's control area but not owned by FPC was visible in the trader "mode."²⁶ Based on interviews, FPC staff believe this inadvertent access was the result of a change in the EMS screen that displays control area generators' output. Apparently the trader mode filter for the screen was redefined when the screen was changed. This inconsistency with the Standards of Conduct was posted on FPC's OASIS site following the discovery.

In addition, the production manager at FPC's Intercession City peaking plant had unlimited access to EMS. The plant operators have regular contact with the employees in

²⁶ We know merchant generators were visible in early December because we viewed screen shots of the EMS page that displays generator output. We can tell from other screen shots that the response was produced in early December and we can see the generators in question on the screen shots we viewed.

Regulated Commercial Operations (RCO) and are a potential conduit of transmission data. During an interview with the plant manager in question, he indicated that he used EMS data primarily to determine the plant's operating schedule. As a result, he does not access real-time transmission data so there was no reason his access to EMS should not have been limited.

Commission Regulations and Requirements

Prohibited off-OASIS communications are discussed in 18 C.F.R. §37.4(b)(3)(2003) which indicates that

- (a)ny employee of the Transmission Provider, or of any of its affiliates, engaged in wholesale merchant functions:
 - (i) Shall have access to only that information available to the Transmission Provider's open access transmission customers (*i.e.*, the information posted on an OASIS), and must not have preferential access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS; and
 - (ii) Is prohibited from obtaining information about the Transmission Provider's transmission system (including information about available transmission capability, price, curtailments, ancillary services, and the like) through access to information not posted on the OASIS that is not otherwise also available to the general public without restriction, or through information through the OASIS that is not also publicly available to all OASIS users.

The production manager at Intercession City is prohibited from acting as a conduit of information by 18 C.F.R. §37.4(b)(4)(i)(2003), which indicates that

Any employee of the Transmission Provider, or any employee of an affiliate, engaged in transmission system operations or reliability functions may not disclose to employees of the Transmission Provider, or any of its affiliates, engaged in wholesale merchant functions any information concerning the transmission system of the Transmission Provider ... through non-public communications conducted off-OASIS that is not at the same time available to the general public without restriction, or through information on the OASIS that is not at the same time publicly available to all OASIS users (such as E-mail).

Recommendation

- (15) Staff recommends that Progress Energy determine whether any WMF employees continue to have access to market information and transmission data via the EMS, and report its findings to staff in its Implementation plan. The company should also develop a procedure to audit changes to EMS screens when the changes occur to verify that WMF employees do not have access to restricted information. In addition, staff recommends that the FPC limit plant operators' access to EMS, given the potential for FPC peaking plant operators to be conduits of market information, and since the plant operators have no use for unlimited EMS access.

13. Carolina Power & Light OASIS Issues

Our examination of CP&L's OASIS indicates that CP&L did not adequately comply with three OASIS posting requirements: posting reasons for denied service requests (§37.6(e)(2) (2003)), posting employee transfers (§37.4(b)(2) (2003)), and posting exercises of discretion under the open access transmission tariff (§37.4(b)(5)(iii) (2003)).

Background

Posting Reasons for Denied Service Requests

When a request for transmission service is denied, a Transmission Provider must post on OASIS the status of the request, and post the reason for denying service as part of any response to the request. The purpose of requiring the Transmission Provider to post reasons for denying service is to help customers understand why the Transmission Provider denied the service, and provide transparency to the service request process to help ensure that the Transmission Provider processes requests for service from all market participants on a non-discriminatory basis.

When the Transmission Provider denies a request because there is no ATC available, it must post the denied request as *Refused*. This is a final status for a request, defined as “assigned by Provider or Seller to indicate service request has been denied due to lack of availability of transmission capability. SELLER_COMMENTS should be used to communicate details for denial of service.”²⁷

We reviewed OASIS postings for transmission service requests made during the audit period. We identified a total of 84 requests for which the status was *Refused*. There are two fields in CP&L's OASIS that allows it to post the reason for denying service. We reviewed the comments in these fields and found that the comments were some variant of “no ATC available”, or “insufficient ATC”. In our view, when a request has a *Refused* status, meaning that the request was refused “due to lack of availability of transmission capability”, providing a comment that “no ATC is available” is inconsistent with the requirement to “communicate details for denial of service”.

We also noted that out of eighty-four requests for which the status was *Refused*, 42, or exactly half, were requests for hourly transmission service. In our view, the posting requirement is more important for longer-term service requests, but still has value with respect to hourly service requests. The longer the term of the service request, the more likely it is that the requestor may be able to use the information provided by the Transmission Provider to make alternative arrangements. For example, if the reason that

²⁷ See Order No. 638, 90 FERC ¶61,203 (2003), mimeo at 121.

ATC is not available is because a certain facility is out of service, this information may be useful to the service requestor, *e.g.*, in identifying an alternative transmission contract path, or an alternative generator to purchase from at a different location on the grid, such that the transaction would be unaffected by the facility outage. We note that while market participants arranging long-term service may be most able to take advantage of such information, it may also be useful to market participants seeking hourly transmission service, *e.g.*, those with options of buying economy energy from multiple sources.

Progress Energy provided the following written response to staff's analysis: "In response, Progress argues that --even assuming that OMOI has correctly interpreted the requirements of Order No. 638--OMOI does not point to any evidence of actual harm to any CP&L customer. In addition, Progress is aware of no customer complaints. More fundamentally, Progress states that the personnel generating the refusal notifications are not necessarily in a position at the time to determine why ATC is unavailable (as opposed to the fact of its unavailability). However, Progress states that it has enhanced its training to reinforce to its operators the importance of meaningful comments whenever service has been denied for any reason."

Based on additional information Progress Energy provided to audit staff, audit staff continues to believe that OASIS schedulers could include comments that indicate whether partial service is available even if the OASIS schedulers can not identify the limiting transmission element.

Posting Employee Transfers

The Standards of Conduct do not preclude employees from transferring from the WMF to the transmission function (or vice versa) so long as the Transmission Provider does not use the transfer as a means to circumvent the Standards of Conduct. A Transmission Provider must post notice of such transfers on OASIS, and the posting must include the name of the transferring employee, the respective titles held while performing each function, and the effective date of the transfer.

We asked CP&L to provide a list of employee transfers that were posted on the OASIS during the audit period. Their list included ten such transfers. The postings were consistent with the OASIS requirements except that six of the ten postings were made after the effective date of the transfer. Of the six late postings, two were posted within several days of the transfer, but four of the six were posted 69 days after the transfers were effective.

The purpose of the prompt posting of employee transfers is to help ensure that the Transmission Provider abides by the Standards of Conduct, and to provide all market participants with information about the duties of the Transmission Provider's staff.

Posting Exercises of Discretion

A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, and must apply all tariff provisions in a fair and impartial manner that treats all customers in a non-discriminatory manner if the tariff provisions involve discretion. The Transmission Provider must keep a log detailing its exercises of discretion, and post the log on its OASIS.

CP&L maintains a “FERC LOG”—a daily log sheet which a staff member working in the transmission function filled out on a daily basis . On the FERC LOG printed sheet, the purpose of the log is printed—“CP&L must keep a log, available for FERC Commission audit, detailing the circumstances and manner in which CP&L exercised its discretion under any terms of the tariff.”

During the audit period, CP&L transmission staff filled out a daily log sheet on over 70 days. We reviewed these daily log sheets and believe many of the events do involve CP&L exercising discretion under its tariff. For example, the listed events include: CP&L accepting late reservations, accepting reservations in advance of its timeline for reservations, making changes to the path on request of the customer, allowing a reservation to be honored even when there was insufficient ATC posted, and taking reservations when OASIS was down.

None of these events were posted on OASIS. We told CP&L staff that many of the events in the FERC LOG, though not necessarily all, were in our view exercises of discretion under the tariff. When we asked CP&L staff why they were not posted on OASIS as is required under the Commission’s rules, staff indicated that they were not aware of the posting requirement, and at least in some case they did not believe that their actions were exercises of discretion that required posting on OASIS.

The purpose of posting exercises of discretion is to create a transparent record, to help ensure that a Transmission Provider exercises discretion in a non-discriminatory manner. When we reviewed descriptions of events in the FERC LOG, we did not see direct evidence of discriminatory or preferential action. However, based on our review, we cannot rule out that such action took place, because some event descriptions were incomplete, and in some cases, the parties involved were not clearly identified.

Progress Energy provided the following written response to staff’s analysis: “...in response, Progress states that CP&L staff began posting the FERC LOG on March 23, 2004.

Commission Regulations and Requirements

18 CFR §37.6(e)(2) (2003) says that “...when a request for service is denied, the Responsible Party must provide the reason for that denial as part of any response to the request. Information to support the reason for the denial, including the operating status of relevant facilities, must be maintained for 60 days...” And as noted above, Order No. 638 requires a Transmission Provider to use the SELLER_COMMENTS field on their OASIS “...to communicate details for denial of service.”

18 CFR §37.4(b)(2) (2003) requires that employees transferring between wholesale merchant functions and transmission functions must be noticed on OASIS, and the information to be posted must include the name and title of person transferring, and the effective date of the transfer. Moreover, in *Carolina Power & Light*, the Commission instructed CP&L that with regard to §37.4(b)(2), “transfers must be posted before the transferred employees start their new duties. Carolina’s procedures state that it will post transfers within 24 hours. The procedures do not state when the 24 hour period begins, but Carolina must implement the procedures so as to post transfers before the transferred employees begin their new duties.”²⁸

18 CFR §37.4(b)(5)(iii) (2003) says that the Transmission Provider “...must keep a log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS as provided in §37.6(g)(4).” Moreover, in Carolina Power & Light, the Commission instructed CP&L that in its revised filing, Carolina must follow the revised Standards of Conduct requirements of Order No. 889-A, specifically that “...the log required to be kept under section 37.4(b)(5)(iii) must now also be posted on the OASIS.”²⁹

Recommendation

- (16) Staff recommends that CP&L develop and implement a management plan to ensure that it is in compliance with all OASIS posting requirements. In our view, an important element of such a plan is the designation of a single individual (and that individual’s designees) with the technical expertise to ensure compliance with OASIS requirements. The duties and responsibilities of this individual should be consistent with the requirements for Chief Compliance Officers under Order No. 2004.

²⁸ *Carolina Power & Light Co.*, 82 FERC ¶61,193 at 61,743 (1998).

²⁹ *Id.*

- (17) Staff recommends that CP&L OASIS training be enhanced to reinforce the importance of accurately assigning a status to transmission service requests and providing meaningful comments when service has been refused. CP&L should describe its training proposals in its Implementation plan.
- (18) With respect to the requirement to post discretionary actions under the open access tariff, we recommend that CP&L retroactively post for 90 days on its OASIS its FERC LOG for the audit period. In addition, CP&L should develop, implement and train its staff on written procedures regarding when and how CP&L staff should exercise discretion, so that it can post acts of discretion on CP&L's OASIS on an on-going basis consistent with OASIS requirements.
- (19) With respect to the requirement that employee transfers between the merchant and transmission functions must be posted on OASIS, we recommend that OASIS training be enhanced to reinforce the importance of the timing requirements

14. Florida Power Corporation OASIS Issues

Our examination of FPC's OASIS indicates that FPC did not adequately comply with certain OASIS requirements: posting schedule information (§37.6(f) (2003)), posting available transmission capability (ATC) and total transmission capability (TTC) (§37.6(b)(3)(ii)(A) (2003)), appropriately assigning transmission service requests status (§37.6(a)(4) (2003)), and providing meaningful reasons that transmission service requests were refused (§37.6(e)(2)(i) (2003)).

Background

Posting Schedule Information

FPC is required to post transmission service schedules no later than seven days from the start of the service. Based on staff's review of FPC's OASIS and queries made during our site visit to FPC, schedule information is not available as required. FPC's OASIS has a "Schedules" page, but a query for schedules produces no information.

Posting ATC and TTC

Our review indicates that FPC did not consistently report available transmission capability (ATC) or total transmission capability (TTC) as required. When staff queried firm monthly service along paths F/FPC/FPC-FPL and F/FPC/FPC-TEC, the TTC values for August 2004, September 2004 and October 2004 appear blank. In addition, when staff queried non-firm hourly service along path F/FPC/SEC-TEC the available transmission capability (ATC) is greater than TTC. Finally, when staff queried non-firm hourly service along path F/FPC/SEC-FPC all the fields appeared blank, including ATC and TTC.

Assigning Transmission Service Request Status

FPC occasionally assigns invalid service requests a status of "refused." FPC reported a number of such occasions in response to data request number 8. In some of the cases identified by FPC, there was no indication in either the status comment or seller comment field that the request was invalid rather than refused. As a result, absent a phone call to FPC, the customer would not have known to submit a corrected request. In addition, a spot check of recent requests identified that request 625219, queued on January 12, 2004 was assigned a status of refused, though the status comment field indicated "no source or sink identified." Mistakes in assigning a status to a transmission service request are of concern because they potentially foreclose beneficial trading opportunities. Staff interviewed FPC transmission customers who indicated that they

have occasionally had to unwind a short-term sale when a transmission request was inappropriately refused. To this point, the company provided a written comment: “Progress notes that it is aware of no customer complaints.”

FPC indicated in response to data request number 8 that they had integrated into their operator training a module on the assignment of status to transmission service requests. These additional training materials included status definitions paraphrased from the *Standards and Communication Protocols for OASIS* and a worksheet that tests the operators’ knowledge of the definitions.

Posting Reasons for Denied Service Requests

FPC occasionally provides no explanation for the denial of service. FPC provided the details, including final status, of all requests for hourly or daily transmission service flowing in August 2002 and 2003. Of these requests, 24 requests were refused. FPC provided no comment in either the status comment field or the seller comment field for 3 of the 24 refused requests. For 18 of the remaining 21 requests the comment fields included something similar to “No ATC” or “insufficient ATC.” Such comments do not meet the requirement of providing the reason for a denial. The protocols found in *Standards and Communication Protocols for OASIS* dictate that Transmission Providers should assign the status “refused” to indicate that the “service request has been denied due to lack of availability of transmission capability.” As a result, a seller comment of “no ATC” or “insufficient ATC” is redundant to assigning the status “refused” and thus fails to communicate the details of the denial of service. The seller comment and status comment field should be used to provide information sufficient to inform the transmission customer’s decision-making process. For instance, if a request for 100 MW of hourly non-firm service is made for hours 8 to 19 and there is only 75 MW of service available from hours 11 to 16, then the Transmission Provider should use the comment to indicate something like “only 75 MW available from 11 to 16.”

FPC managers indicated during our site visit that company policy dictates that FPC make a counter-offer any time a portion of the service requested is available. As long as FPC follows this policy in all cases, then a status of refused would imply that there was absolutely no ATC to provide the requested service. In addition to the details provided for short-term service requests, FPC provided information for all long-term (month or longer) transmission service requests submitted between January 1, 2001 and October 30, 2003. Of the provided requests that were ultimately refused, FPC provided a complete status history. None of the refused requests was ever counter-offered.³⁰ In one

³⁰ A request that was counter-offered and then not acted upon by the customer should have received a status of “retracted.” A request that was counter-offered and then declined by the customer should have received a status of “declined.” There were no declined month or longer requests. All of the retracted month or longer requests had

case, request 565889, the comment status indicates that “69 is max ATC.” Thus in at least one case, FPC did not follow its policy of counter-offering when some but not all of the requested capacity is available. In this case, the lack of a counter-offer may have had little effect on the customer because the comment provided sufficient information to allow the customer to modify its request. Given at least occasional lapses in its counter-offer policy, FPC should start to provide more detailed comments when it refuses a request.

Progress Energy provided the following written response to staff’s analysis: “However, in response, Progress argues that --even assuming that OMOI has correctly interpreted the requirements of Order No. 638—OMOI does not point to any evidence of actual harm to any FPC customer. In addition, Progress is aware of no customer complaints. More fundamentally, and as was the case with CP&L, Progress states that the personnel generating the refusal notifications are not necessarily in a position at the time to determine why ATC is unavailable (as opposed to the fact of its unavailability). However, Progress states that it has enhanced its training to reinforce to its operators the importance of meaningful comments whenever service has been denied for any reason.”

Based on additional information Progress Energy provided to audit staff, audit staff continues to believe that OASIS schedulers could include comments that indicate whether partial service is available even if the OASIS schedulers can not identify the limiting transmission element.

Posting Deviations from the Standards of Conduct and Offers to Redispatch

We reviewed FPC’s OASIS and found there is no place to disclose emergencies that required FPC to deviate from the Standards of Conduct, as required under 18 C.F.R. (§37.4(a)(2)(2003), or to post offers to redispatch its system in order to accommodate a denied transmission service request, as is required under 18 C.F.R. §37.6(e)(2)(iii)(2003). FPC explained that it has experienced no such emergencies to date, and had never received a request to redispatch its system. FPC staff suggested that since no postings were required, FPC was not in violation of OASIS requirements.

We expressed concern that FPC’s OASIS was not configured to allow it to make such OASIS postings if it were required to do so. In updating their OASIS site to come into compliance with Order No. 2004, Progress Energy notes that FPC has experienced no emergencies to date, and had never received a request to redispatch its system. It asserts that it met the Commission’s posting requirements. It nevertheless added a field

capacity granted equal to the capacity requested, thus they could not have been counter-offered.

from emergencies requiring deviations to its OASIS on October 19, 2004. With respect to redispach requests, Progress states that FPC will create an OASIS field by December 31, 2004.

Commission Regulations and Requirements

FPC is required to post transmission service schedules no later than seven calendar days from the start of the service per 18 C.F.R. §37.6(f). FPC is required to post daily ATC and TTC values on uncongested paths for the current day and the next 6 days and monthly ATC and TTC values for the next 12 months per 18 C.F.R. §37.6(b)(3)(ii)(A). 18 C.F.R. §37.6(a)(4) requires the information posted on the OASIS must be in such detail and have such capabilities to allow transmission customers to clearly identify the degree to which transmission service requests or schedules were denied or interrupted. This provision requires FPC to assign transmission status request status in a manner consistent with the protocols found in *OASIS Standards and Communications Protocol*. These protocols include assigning the status of “invalid” to a request with an invalid field. In addition, 18 C.F.R. §37.6(e)(2)(i) requires that a status designation of “refused” must include “the reason for that denial as part of any response to the request.” Thus, the seller comment or status comment field should have some meaningful description of the reason a status request has been refused.

FPC is required to post emergencies that result in deviations from the Codes of Conduct as specified in 18 C.F.R. §37.4(a)(2). FPC is required to post any offer to re-dispatch its system in order to accommodate a denied transmission service request as specified in 18 C.F.R. §37.6(e)(2)(iii).

Recommendation

- (20) Staff recommends that FPC develop a management plan to ensure that it is in compliance with all OASIS requirements. In our view, an important element of such a plan is the designation of a single individual (and that individual’s designees) with the technical expertise to ensure compliance with OASIS requirements. The duties and responsibilities of this individual should be consistent with the requirements for Chief Compliance Officers under Order No. 2004. Staff will review this plan to determine whether the plan provides for timely correction of the identified violations.
- (21) Staff recommends that FPC OASIS training be enhanced to reinforce the importance of accurately assigning a status to transmission service requests and providing meaningful comments whenever service has been denied. FPC’s plans for enhanced training should be included in its Implementation plan.

III. IMPLEMENTATION PLAN

We recommend that Progress Energy file a compliance plan with audit staff detailing the company's plans to come into compliance with respect to the findings and recommendations summarized above, including the overarching recommendations with respect to restructuring the marketing operation and the refiling of Codes of Conduct. The compliance plan should be filed within 30 days of the date of the order issuing this audit report. The implementation plan should include discussion of how Progress Energy will train its staff on new procedures that result from implementation of the audit recommendations. In addition, we recommend that Progress Energy file quarterly status reports, commencing at the start of the third quarter in 2005, detailing progress on the compliance plan, to continue until Progress Energy has satisfied audit staff that it has remedied all of the inconsistencies with Commission requirements.