August 21, 2007
Docket Nos. IN07-31-000
and EC07-109-000

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COMMISSION APPROVES SETTLEMENT WITH GEXA ENERGY FOR $500,000 CIVIL PENALTY FOR FAILURE TO FILE MERGER AUTHORIZATION

The Federal Energy Regulatory Commission today approved a settlement with New England-based Gexa Energy, L.L.C. and, in a separate order, authorized the indirect transfer of Gexa's jurisdictional assets to FPL Energy (FPLE) in a transaction in which FPLE purchased all the equity of Gexa's parent company.

Under terms of the settlement, for Gexa's failure to file for merger authorization in advance of the merger and other violations of Commission regulations, Gexa will pay a $500,000 civil penalty and disgorge nearly $12,500 in profits with interest.

FPLE acquired Gexa in June 2005, but at that time Gexa did not file for merger authorization. Gexa was at the time subject to Commission jurisdiction by virtue of its possession of jurisdictional assets such as a market-based rate tariff on file with the Commission and related books and records, and its actions violated the Federal Power Act (FPA) and Commission regulations. In addition, Gexa was late in seeking its market-based rate authorization and was delinquent in filing electric quarterly reports. FERC Order No. 652 directs any entity with market-based rates to file a change in status and file a revised tariff reflecting the change in status. Gexa failed to file the change in status report or tariff filing at the time of the merger.

"Some Federal Power Act section 203 transactions are highly complicated, and violations can be innocent. This was not a complicated transaction. There were two parties to the transaction, only one of whom was innocent. FPL Energy took measures to comply with Commission rules and regulations, immediately self reported, and cooperated with our investigation. FPL Energy proved itself committed to compliance," said Commission Chairman Joseph T. Kelliher. "Regrettably, the other party to the transaction, Gexa Energy, proved, at best, indifferent to compliance. Here, Gexa's violations were knowing and deliberate. It is necessary to sanction Gexa for its blatant violations."

In February 2006, FPLE self-reported that its new subsidiary, Gexa, had violated FPA provisions and the Commission's regulations. The Commission's Office of Enforcement conducted an investigation of Gexa's actions and confirmed that Gexa had failed to file a merger application and engaged in unauthorized wholesale power transactions, along with other violations of Commission regulations.

The root cause of the merger violation was that Gexa did not disclose to FPLE that it was making market- based rate wholesale power sales at the time of the merger. By virtue of these sales, Gexa was a public utility and the transaction required Commission approval under FPA section 203. Since these sales were hidden from FPLE, it had no reason to believe Commission approval was required.

“This was an instance of self-reported violations of the Commission’s rules, and we carefully weighed FPLE’s prompt investigation and the steps already taken by Gexa’s new owners to prevent any future violations, including the removal of Gexa’s senior management involved in the violations” said Chairman Kelliher. “A civil penalty was appropriate because the rules violated -- the requirement for prior review of mergers and our oversight of market-based rates — are rules central to our regulatory mission.”

In a separate, but related order, the Commission approved on a going-forward basis the belated merger application filed by Gexa Energy and FPLE. Under section 203 of the Federal Power Act, the Commission must approve a transaction if it is consistent with the public interest. The Commission reviews such transactions by analyzing the effect on competition, rates and regulation. The Energy Policy Act of 2005 requires the Commission to ensure that the transactions will not result in cross-subsidization of a non-utility associate company or pledge of encumbrance of utility assets for the benefit of an associate company.

Gexa is a retail electricity provider operating in the ISO New England market and serves up to 17 megawatts of load. FPL Energy, a wholly-owned subsidiary of the FPL Group, Inc., has public utility subsidiaries and provides nearly 14,000 megawatts of electric generation capacity in 25 states.

R-07-48

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