

131 FERC ¶ 61,279  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Florida Power & Light Company

Docket No. ER10-1149-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 29, 2010)

1. On April 30, 2010, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> Florida Power & Light Company (FPL) filed revised tariff sheets to implement a cost-of-service formula rate for Network Integration Transmission Service (NITS) and Point-to-Point (PTP) service. It requests that the Commission accept the revised rates to become effective July 1, 2010. In this order, the Commission accepts for filing and suspends the tariff sheets for a nominal period to become effective July 1, 2010, subject to refund, and establishes hearing and settlement judge procedures.

**I. Filing**

2. FPL states that it will replace its existing transmission rates for NITS and PTP transmission service, which have been in effect since 1993, with a cost-of-service formula rate for determining its annual transmission revenue requirement (ATRR) and resulting charges, subject to true-up in Attachments E, H, and I and in Schedules 7 and 8 to its Open Access Transmission Tariff (tariff).<sup>2</sup> FPL states that the formula rate will incorporate inputs from its most recent FERC Form No. 1 as well as FPL's forecasted 13-month average net plant balances.<sup>3</sup> The proposed formula rate incorporates a true-up mechanism, with interest, that reconciles projected revenue requirement amounts with

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> FPL April 30, 2010 Transmittal Letter at 1-2 (FPL Letter).

<sup>3</sup> *Id.* at 4.

actual cost-of-service.<sup>4</sup> FPL believes that this approach is reasonable for projecting the revenue requirement for the upcoming year and consistent with Commission precedent.<sup>5</sup> FPL notes that its proposal results in a NITS rate increase of 38 percent and an increase to the existing firm PTP rate for yearly delivery of 56 percent.<sup>6</sup>

3. FPL states that the cost-of-service under the formula rate template is the sum of the return on rate base, operation and maintenance (O&M) expense, depreciation expense, taxes other than income taxes, income taxes, and revenue credits.<sup>7</sup> Further, it indicates that rate of return on common equity (ROE), depreciation rates, and post-retirement benefits other than pensions are stated values that can only be changed pursuant to FPA sections 205 and 206. It maintains that its formula rate template applies Commission-accepted methodologies for classifying, functionalizing, and allocating costs.<sup>8</sup>

4. FPL proposes an ROE of 11.3 percent, which it maintains is within the zone of reasonableness.<sup>9</sup> It also proposes to make accounting adjustments to the FERC Form No. 1 data necessary to reflect costs and benefits borne by FERC-jurisdictional transmission customers.<sup>10</sup> These adjustments include removing storm securitization bonds from its calculation of cost of capital, as well as all costs associated with the bond issuance.<sup>11</sup> In addition, FPL proposes an annual carrying charge for the radial line and other excluded facility costs to be developed in the proposed rate formula and applied to the net plant balances.<sup>12</sup>

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<sup>4</sup> *Id.* at 4, 13.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 14.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> FPL states that the 11.3 percent ROE represents the midpoint and median of the Discounted Cash Flow results for the six utilities in the ratings screen proxy group and falls between the midpoint and median values for the nine-member regional proxy group. FPL Letter at 9-10.

<sup>10</sup> *Id.* at 11-12.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 13.

5. At this time, FPL does not request incentive rate treatment.<sup>13</sup> However, in order to provide for incentive rate treatments that the Commission may later authorize, FPL's proposed formula rate includes placeholders for certain incentives.

6. FPL also proposes Formula Rate Implementation Protocols (protocols) that describe the mechanism for updating the inputs, the review procedures, the mechanism for resolving customer challenges, and how changes to the annual updates and the true-up mechanism will be implemented.<sup>14</sup> FPL maintains that these protocols allow interested parties to review each annual update and true-up adjustment, to submit reasonable requests for information and to submit specific challenges in accordance with the protocols.<sup>15</sup>

7. FPL requests that the Commission accept the revised rates for filing to become effective July 1, 2010, without suspension, or, alternatively, to accept the rates subject to nominal suspension and hearing or settlement proceedings.<sup>16</sup> It also requests waiver of various requirements under Part 35 of the Commission's regulations. Specifically, FPL requests waiver of sections 35.13(c)(6), 35.13(d)(1), (2), and (5), and 35.13(h)<sup>17</sup> to the extent that its filing requires waivers of the requirement to submit full Period I and Period II data and workpapers and cost-of-service statements.

## **II. Notice of Filing and Responsive Pleadings**

8. Notice of FPL's filing was published in the *Federal Register*, 75 Fed. Reg. 26,209 (2010), with interventions and comments due on or before May 21, 2010. Lee County Electric Cooperative, Inc. filed a timely motion to intervene and comments in support of FPL's filing. Tampa Electric Company, Georgia Transmission Corporation, and Orlando Utilities Commission filed timely motions to intervene. Florida Municipal Power Agency (FMPA) filed a timely motion to intervene and protest. Seminole Electric Cooperative, Inc. (Seminole) filed a timely motion to intervene, motion to reject, and protest. FPL filed an answer to Seminole's motion to reject and to the protests. Seminole and FMPA filed a motion for leave to file response and a response to FPL's answer. FPL filed a motion for leave to answer and answer to Seminole and FMPA's response.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> 18 C.F.R. § 35.13(c)(6), (d)(1), (2), (5), and (h) (2010).

### A. Protests

9. FMPA requests that the Commission suspend the filing for the maximum five months, set for evidentiary hearing all issues relevant to whether the proposed rate change is just, reasonable, and non-discriminatory, and provide for the designation of a settlement judge and postponement of hearing procedures to allow time for good faith settlement negotiations.<sup>18</sup> Seminole requests that the Commission: reject the filing or, alternatively, issue a deficiency letter; hold the filing in abeyance until FPL has supplied the appropriate information; assign a filing date commensurate with the cure of such deficiencies; and allow for additional protests.<sup>19</sup> Alternatively, Seminole asks the Commission to suspend the proposed formula rate for five months, and set the matter for hearing.<sup>20</sup>

10. FMPA and Seminole argue that FPL's proposed cost of capital is substantially excessive.<sup>21</sup> On this point, both contend that FPL's requested ROE exceeds the indicated cost of equity capital invested in FPL's transmission system.<sup>22</sup> FMPA asserts that FPL has not shown its proposal to remove storm securitization bonds from its cost of capital to be just and reasonable.<sup>23</sup> Seminole contends that FPL's removal of a net \$582.2 million from the long-term debt reported in its FERC Form No. 1 and associated expenses, in the determination of its cost of debt and weighted cost of capital, contravenes Commission policy and argues that the Commission should, therefore, not allow the adjustment.<sup>24</sup>

11. Regarding FPL's proposed ROE, FMPA states that FPL relied on a non-comparable proxy group by picking companies based upon geography, with no prior risk screen.<sup>25</sup> Both FMPA and Seminole recommend that the ROE be set at 9.28 percent.<sup>26</sup>

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<sup>18</sup> FMPA May 21, 2010 Protest at 50. (FMPA Protest).

<sup>19</sup> Seminole May 21, 2010 Motion to Intervene, Motion to Reject and Protest at 6 (Seminole Protest).

<sup>20</sup> *Id.* at 37.

<sup>21</sup> FMPA Protest at 3-9; Seminole Protest at 6-11.

<sup>22</sup> FMPA Protest at 3-6; Seminole Protest at 7-11.

<sup>23</sup> FMPA Protest at 6-8.

<sup>24</sup> Seminole Protest at 11 citing Seminole Aff. Ex. JBS-1 ¶ 20 (Solomon Affidavit).

<sup>25</sup> FMPA Protest at 5.

12. FMPA raises various issues with FPL's proposed formula rate structure. It states that: (1) FPL's filing is self-contradictory in defining its proposed true-up mechanism and that the true-up mechanism does not result in just and reasonable rates for long-term firm customers;<sup>27</sup> (2) the hybrid historical/projected basis for initial billing should be better balanced and not limited to anticipating new facilities that increase costs, especially in the absence of individualized refunds;<sup>28</sup> and (3) FPL's proposed placeholders for incentives have not been shown to be just and reasonable.<sup>29</sup>

13. FMPA argues that FPL's proposal to charge each non-retail transmission customer using intentionally asynchronous data is contrary to the Commission's longstanding policy.<sup>30</sup> According to FMPA, FPL's proposal would ignore numerous countervailing differences between historic and projected costs that will tend to decrease the rate.<sup>31</sup> FMPA recommends that the annual true-up compare the actual ATRR to the amount billed for wholesale transmission service during the same period.<sup>32</sup> In the alternative, FMPA states that if the Commission retains FPL's current refund approach, adjustments should be made to FPL's projection adjustments to better account for cost-reducing expected changes, and therefore more closely approximate the most likely updated cost-of-service.<sup>33</sup>

14. Further, FMPA requests that the Commission make clear that accruals that represent future cost projections should not flow through the formula without a

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<sup>26</sup> *Id.* at 5-6; Seminole Protest at 9-10 and Solomon Affidavit ¶¶ 16, 18.

<sup>27</sup> FMPA Protest at 9.

<sup>28</sup> *Id.* at 16-20.

<sup>29</sup> *Id.* at 24-26. The Commission notes that FPL's formula template is blank (i.e., has no values) with respect to incentive placeholders, but that the parties may resolve this issue during the hearing process.

<sup>30</sup> FMPA Protest at 16 citing *Kansas City Power & Light Co.*, 130 FERC ¶ 61,009, at P 33 (2010); *Carolina Power & Light, Co.*, 47 FERC ¶ 61,160, at 61,530 (1989); *Delmarva Power & Light Co.*, 38 FERC ¶ 61,098, at 61,257 (1987).

<sup>31</sup> FMPA Protest at 17.

<sup>32</sup> *Id.* at 19.

<sup>33</sup> *Id.* at 19-20.

section 205 filing.<sup>34</sup> It adds that, if the Commission authorizes inclusion of such accruals, it should clarify that FPL must exclude the accrual from rate base.<sup>35</sup>

15. FMPA points out that FPL's proposed formula rate implementation protocols state that the Annual True-up shall "include as applicable: (a) identification of any changes in the formula references in the FERC Form No. 1."<sup>36</sup> FMPA states that this language suggests that FPL may alter the formula rate in an annual update through an Annual True-up instead of a FPA section 205 filing. Because of this confusion, FMPA requests that the Commission clarify that FPL must make a FPA section 205 filing to change the formula rate on file, even if the filing purports only to update references to the FPL FERC Form No. 1.<sup>37</sup> FMPA also asks the Commission to defer full examination of FPL's placeholders for a hearing and not to presume that FPL's formula should allow 100 percent recovery of abandoned costs.<sup>38</sup>

16. Both FMPA and Seminole take issue with FPL's proposed formula rate review protocols.<sup>39</sup> FMPA argues that the protocols deprive interested parties of any opportunity to meaningfully review the projected ATRR and provide no mechanism for determining whether FPL's underlying projections are just and reasonable.<sup>40</sup> Seminole indicates that there are a number of serious issues regarding the rights, protections and limitations of the Commission and interested parties involving the operation of the formula rate.<sup>41</sup> FMPA asks that the Commission clarify that FPL cannot require interested parties to bring a preliminary challenge before bringing a formal challenge to inputs to, or implementation of, the formula rate.<sup>42</sup> It also asks the Commission to clarify that FPL cannot limit when interested parties can bring such a formal challenge and to clarify the

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<sup>34</sup> *Id.* at 20-21.

<sup>35</sup> *Id.* at 21.

<sup>36</sup> *Id.* at 22 quoting Section III.D.3.b.iii(a) of the Formula Rate Implementation Protocols (proposed Original Sheet No. 245AN).

<sup>37</sup> FMPA Protest at 23.

<sup>38</sup> *Id.* at 25-26.

<sup>39</sup> *Id.* at 26-34; Seminole Protest at 33-36.

<sup>40</sup> FMPA Protest at 27.

<sup>41</sup> Seminole Protest at 33.

<sup>42</sup> FMPA Protest at 29-32.

burden of proof applicable to a formal challenge.<sup>43</sup> In particular, FMPA asks the Commission to require FPL to amend its burden of proof statement in protocol section V.C.1 to include the phrase “and to demonstrate the justness and reasonableness of the charges resulting from the application of the formula rate.”<sup>44</sup> FMPA asks, in the alternative, that the Commission construe the protocols so that “FPL continues to bear the ultimate burden of proof, i.e., to demonstrate the justness and reasonableness of the charges resulting from application of the formula rate.”<sup>45</sup>

17. Seminole argues that FPL’s formula rate fails to exclude certain O&M expenses that are already recovered pursuant to Schedule No. 1 of the tariff (Ancillary Service).<sup>46</sup> Instead, FPL proposes to treat the revenues from Schedule No. 1 as a revenue credit. Seminole argues that since revenue crediting reflects only wholesale transmission customer revenues, at a minimum, the expenses recorded in Account Nos. 561 and 561.1-561.4 should be excluded from transmission O&M expenses to be recovered under the transmission formula rate.<sup>47</sup> Seminole avers that inclusion of the associated costs and FPL’s proffer of only a partial crediting of such cost recovery would result in partial double recovery.

18. FMPA takes issue with FPL’s alleged failure to adjust a “stale and apparently excessive” loss factor, because FPL’s overall transmission and distribution losses have been trending down for a number of years.<sup>48</sup> Moreover, FMPA submits that FPL’s proposal to change the ATRR calculation and level of its ATRR, instead of modifying FPL’s existing stated loss factor, is inappropriate because the two issues are integrally related.<sup>49</sup> It points out, in this regard, that under FPL’s proposed rates, transmission customers will pay immediately for the costs of ongoing transmission additions and transmission customers can expect such transmission system improvements to immediately reduce transmission system losses. Because of this relationship, FMPA argues that transmission customers who pay for system additions as they enter service should receive the loss-reducing benefits of those additions as they enter service. In

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<sup>43</sup> *Id.* at 32-34

<sup>44</sup> *Id.* at 33.

<sup>45</sup> *Id.* at 34.

<sup>46</sup> Seminole Protest at 20-21.

<sup>47</sup> *Id.* at 20.

<sup>48</sup> FMPA Protest at 42-45.

<sup>49</sup> *Id.* at 44.

order to allow these customers to receive these benefits, FMPA states, FPL should be prohibited from updating its transmission rate base if it does not update its transmission loss factor to bring it into closer synchronism.

19. FMPA raises numerous issues with the specific formula elements including amortization, functionalization, direct assignment, transparency, and depreciation.<sup>50</sup> Similarly, Seminole challenges FPL's treatment of a number of specific formula elements including, but not limited to, its inclusion of prepaid pension assets in rate base, its alleged failure to support and justify changes to depreciation rates, failure to provide for rate base credits for unfunded reserve accounts, and accelerated cost recovery of oil-backout transmission facilities.<sup>51</sup> Seminole states, however, that its ability to thoroughly review and evaluate FPL's proposed formula rates was restricted due to the limited time it had to review FPL's filing, the lack of supporting documentation, and the lack of an opportunity for discovery. FMPA and Seminole argue that much of FPL's proposed rate increase has not been justified and that a five-month suspension is therefore appropriate.<sup>52</sup>

**B. FPL's Answer**

20. FPL's response to the protests largely reiterates the points made in its initial filing.<sup>53</sup> FPL joins FMPA in its request that the Commission invoke settlement judge proceedings prior to the commencement of hearing proceedings.<sup>54</sup> FPL requests that the Commission reject Seminole and FMPA's arguments and opposes Seminole and FMPA's request for five-month suspension. FPL explains that it began informal discussions with its customers prior to submitting the filing and that many of the concerns raised in the protests could be resolved through continuation of this informal discovery process.<sup>55</sup> It also reiterates that its proposed formula rate is in line with Commission precedent, and that its protocols, proposed ROE, and *pro forma* adjustments to the Form No. 1 data are just and reasonable.<sup>56</sup> In addition, FPL argues that its inclusion of prepaid pension asset

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<sup>50</sup> *Id.* at 35-41.

<sup>51</sup> Seminole Protest at 12-27.

<sup>52</sup> FMPA Protest at 46-48; Seminole Protest at 27-32.

<sup>53</sup> FPL June 7, 2010 Answer to Motion to Reject and Answer to Protests (FPL Answer).

<sup>54</sup> *Id.* at 3.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 6, 19, 20, and 24.

in rate base is just and reasonable and does not violate Commission precedent.<sup>57</sup> Additionally, it states that the Commission should reject protestors' challenge to its ancillary services or transmission losses, because it is beyond the scope of this proceeding and procedurally and substantively improper.<sup>58</sup> FPL argues that Seminole and FMPA's challenges to its proposed omission of storm securitization bonds from capital structure ROE are legally unfounded and that FPL's omission does not conflict with Commission precedent.<sup>59</sup>

### **C. Seminole and FMPA's Response**

21. Seminole and FMPA generally agree with FPL's suggestion that the protested matters are appropriate for discovery and for either settlement or litigation. However, Seminole and FMPA maintain that the requested 11.3 percent ROE is almost 100 basis points above what FPL could justify if current data were substituted for the stale data.<sup>60</sup> Seminole also argues that FPL's answer fails to satisfactorily address its arguments against inclusion of prepaid pension asset in rate base and that FPL's proposal violates Commission precedent. Seminole states that the Commission should reject the inclusion of the prepaid pension asset accruals for historical periods, without prejudice to including such accruals on a prospective basis upon the implementation of FPL's proposed transmission formula rate.<sup>61</sup> FMPA explains that its protest did not address prepaid pension assets but FMPA supports Seminole's treatment of this issue. Seminole and FMPA explain that their silence as to other issues not addressed in their June 11, 2010 answer is not acquiescence to FPL's previous answer as to such issues. Rather, FPL's answer to such other issues is rebutted by the facts and arguments presented in Seminole's and FMPA's previous answers.

### **D. FPL's Answer**

22. In its answer, FPL responds to the arguments made in Seminole and FMPA's response. Specifically, it argues that the Commission should reject the protestors' efforts to remove the pension asset from rate base for any purpose.<sup>62</sup> FPL also argues that the

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<sup>57</sup> *Id.* at 17.

<sup>58</sup> *Id.* at 26.

<sup>59</sup> *Id.* at 13.

<sup>60</sup> Seminole and FMPA June 11, 2010 Motion and Response at 2-5.

<sup>61</sup> *Id.* at 6.

<sup>62</sup> FPL June 21, 2010 Motion for Leave to Answer and Answer to Response at 2-5.

Commission should not accept the protesters' alternative ROE proposals, because FPL's filing is cost-justified, fully supported with witness testimony, and well within the range of reasonableness.<sup>63</sup>

### **III. Discussion**

#### **A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by FPL and Seminole and FMPPA, because they have provided information that assisted us in our decision-making process.

#### **B. Commission Determination**

##### **1. Hearing and Settlement Judge Procedures**

25. FPL's proposed revised tariff sheets raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

26. Our preliminary analysis indicates that FPL's proposed revised tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept FPL's filing, suspend it for a nominal period to become effective July 1, 2010, subject to refund, and set it for hearing and settlement judge procedures.<sup>64</sup>

27. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing

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<sup>63</sup> *Id.* at 5-7.

<sup>64</sup> We will deny FMPPA's and Seminole's requests for a five-month suspension. In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in that order, we would generally impose a nominal suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues.

procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>65</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>66</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

## 2. Waivers

28. FPL requests any necessary waivers of section 35.13 of the Commission regulations, including waivers of the requirements to submit full Period I and Period II data and workpapers and cost of service statements in sections 35.13(c)(6), 35.13(d)(1), (2), and (5), and 35.13(h). The Commission has granted waivers of the requirements to provide such data previously in a series of cases involving transmission formula rates.<sup>67</sup> Thus, we will grant FPL the requested waivers. Nonetheless, to the extent that parties at the hearing ordered below can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information, consistent with our orders in other similar cases.<sup>68</sup>

### The Commission orders:

(A) FPL's proposed tariff sheets are hereby accepted for filing and suspended for a nominal period, to become effective July 1, 2010, subject to refund, as discussed in the body of this order.

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<sup>65</sup> 18 C.F.R. § 385.603 (2010).

<sup>66</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

<sup>67</sup> *E.g. PPL Elec. Utils. Corp.*, 125 FERC ¶ 61,121, at P 40-41 (2008); *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 23 (2008); *Oklahoma Gas & Elec. Co.*, 122 FERC ¶ 61,071 (2008); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007).

<sup>68</sup> *Id.*

(B) FPL's request for waiver of the requirements of section 35.13 to provide full Period I and period II data, and waiver of sections 35.13(c)(6), 35.13(d)(1), (2), and (5), and 35.13(h) is hereby granted, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning FPL's revised tariff sheets and related service agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish

procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.