

133 FERC ¶ 61,120
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 3, 2010

In Reply Refer To:
Florida Power & Light Company
Docket Nos. ER10-251-001
ER10-251-002
ER10-252-001
ER10-252-002

Florida Power & Light Company
801 Pennsylvania Avenue, NW
Suite No. 220
Washington, DC 20004-2604

Attention: Gunar Birgisson, Esq.
Attorney for Florida Power & Light Company

Reference: Rehearing Request

Dear Mr. Birgisson:

1. On January 13, 2010, in Docket Nos. ER10-251-001 and ER10-252-001, you filed requests for clarification or, in the alternative, rehearing of two letter orders issued by the Director, Division of Electric Power Regulation-East, on December 14, 2009.¹ The letter orders accepted for filing two executed interconnection agreements, one between Florida Power & Light (Florida Power) and the Okeelanta Corporation (Okeelanta) (Docket No. ER10-251-000), and the other between Florida Power and Lee County, Florida (Lee County) (Docket No. ER10-252-000). These interconnection agreements govern electric generation from qualifying facilities that interconnect with Florida Power's system. Formerly, Florida Power was contractually obligated to buy the facilities' entire output and there were no sales to third parties. Thus, the Commission did not exercise jurisdiction over these interconnection agreements.

¹ The Director acted under delegated authority. *See* 18 C.F.R. § 375.307 (2010).

2. The letter orders accepted the interconnection agreements, effective sixty days after filing, i.e., January 8, 2010, pursuant to the Commission's policy announced in *Central Hudson Gas & Electric Company*.² Each letter order stated, regarding time-value refunds for the time periods prior to Florida Power submitting the interconnection agreements, "If Florida Power collected any payments under the I[nterconnection]A[greement] before that effective date, Florida Power must refund the time value of the payments actually collected for the time period during which the rates were charged without Commission authorization, with the refunds limited so as not to cause Florida Power to suffer a loss." The letter orders also required Florida Power to file refund reports with the Commission within 30 days of the date of the letter orders or to demonstrate that the time value refunds would result in a loss to Florida Power. You filed these required refund reports on February 12, 2010, in Docket Nos. ER10-251-002 and ER10-252-002.

3. In your requests for clarification or rehearing, you state that the letter orders' directives to submit refund reports could be construed in two ways – either to require time-value refunds for the entire time that these facilities were selling power, including when, as qualifying facilities, their output was sold only to the host public utility, or for the shorter time periods starting when the facilities began making third-party sales, thus bringing the interconnection agreements under the Commission's jurisdiction. You ask the Commission to clarify that the directive to pay time-value refunds applies only to the shorter time periods that start with commencement of the third-party sales. Should the Commission not grant this clarification, you request rehearing of the directive that time-value refunds are required for the entire time that the facilities were selling power.

4. We decline to make the requested clarification and we deny the request for rehearing.³ The letter orders required Florida Power to make time value refunds for a

² 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

³ In an order issued concurrently, in Docket No. EL10-43-000, *Florida Power & Light Company*, 133 FERC ¶ 61,121 (2010), we address Florida Power's request for a declaratory order reversing certain Commission orders concerning the scope of Commission jurisdiction over interconnection agreements between a public utility and a qualifying facility. We find there that prior Commission precedent articulating jurisdiction over these interconnection agreements is consistent with the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.* (2006) and the Federal Power Act, 16 U.S.C. § 824 *et seq.* (2006), as well as Commission policies and decisions issued thereunder. In the concurrently issued order, we further articulate instances in which the Commission's jurisdiction would be triggered pursuant to a QF manifesting a "plan to sell" output to third parties. *See Florida Power & Light Company*, 133 FERC ¶ 61,121 at P 21-22.

period different than either of those proffered above. Given the specific facts of this proceeding, the period of time-value refunds under these interconnection agreements starts when the generating facilities first had contractual authority to make third-party sales and the interconnection agreements thus came under the Commission's jurisdiction.⁴ It is unclear from the record when the generating facilities first had such contractual authority, which could have been earlier than the dates that they actually began to make such sales.

5. However, the Commission's policy is to require time-value refunds unless the monies received did not include any profit and time-value refunds would result in a loss.⁵ We see from the filed refund reports that Florida Power collected, under each interconnection agreement, only the costs for actual operation and maintenance of the interconnection facilities and no profit. To require time-value refunds in these instances would result in Florida Power performing its obligations under the interconnection agreements at a loss. Therefore, we will accept the filed refund reports and remove the obligation for Florida Power to make time-value refunds to Okeelanta and Lee County.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ See *Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,183, at P 13 (2007), *reh'g denied*, 123 FERC ¶ 61,061 (2008). See also *Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,143, at P 11 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,241, at P 24-26 (2010). We note that while the contractual provision of authority to make third-party sales is adequate to trigger the Commission's jurisdiction in this case, such contractual authority is not the exclusive trigger of our jurisdiction under applicable precedent.

⁵ See *Florida Power & Light Co.*, 98 FERC ¶ 61,276, at 62,150-51 (2002).