

125 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Progress Energy, Inc.

Docket Nos. OA07-53-001
OA07-53-002
OA08-67-001
OA08-67-002

ORDER ACCEPTING FILING

(Issued October 2, 2008)

1. On March 3, 2008, as amended on March 31, 2008, pursuant to section 206 of the Federal Power Act (FPA),¹ Progress Energy, Inc. (Progress Energy), on behalf of its subsidiaries Carolina Power & Light Company (Carolina Power & Light), and Florida Power Corporation (Florida Power), submitted its filing in accordance with the Commission's January 31, 2008 order² and in partial compliance with Order No. 890-A.³ In this order, we will accept Progress Energy's filing, as in compliance with the directives of the January 31 Order and Order No. 890-A, as discussed below. Progress Energy's remaining Order No. 890-A compliance filing is currently pending before the Commission in OA08-67-000 and will be addressed in a separate order.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and

¹ 16 U.S.C. § 824e (2006).

² *Progress Energy, Inc.*, 122 FERC ¶ 61,078 (2008) (January 31 Order).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007).

coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. On July 13, 2007, Progress Energy filed revised tariff sheets with the Commission in compliance with Order No. 890. In the January 31 Order, the Commission accepted Progress Energy's compliance filing, as modified. The Commission directed Progress Energy to file a compliance order within 30 days of the date of the order making changes to some of its proposed tariff revisions, and adding or removing other tariff provisions.

II. Filing

A. March 3 Filing

4. On March 3, 2008, Progress Energy filed revisions to its OATT to comply with the directives of the January 31 Order (March 3 Filing).⁴ Progress Energy also included in the March 3 Filing, revisions to schedule 4 (Energy Imbalance Service) and schedule 9 (Generator Imbalance Service) that it explains are intended to partially comply with Order No. 890-A. Progress Energy made another filing on March 17, 2008 to comply with the remainder of the requirements in Order 890-A. The Commission will address that filing in a separate order under Docket No. OA08-67-000.

5. Progress Energy submitted tariff revisions to its Attachment T (Methodology for Clustering Transmission Studies) to comply with the January 31 Order. In particular, Progress Energy proposes: (1) clustering of studies based on service requests that are for overlapping time periods of service and that are limited by some of the same facilities; (2) not allowing otherwise eligible customers to join a cluster after the first draft of a System Impact Study; (3) allowing a customer whose System Impact Study has already commenced to join a cluster if it pays applicable costs; (4) posting an explanation on its Open Access Same-Time Information System when it cannot accommodate an eligible customer's request to cluster; (5) sharing costs of cluster studies equally among eligible customers in the cluster; (6) removing the language that allowed Progress Energy to demonstrate that an extenuating circumstance can excuse it from being penalized for failing to complete a cluster study within 60 days; and (7) determining which transmission customers pay for Network Upgrades and Direct Assignment Facilities and describing how the costs of both are determined.

⁴ The March 3 Filing was initially assigned Docket No. OA07-53-001, as it was filed in compliance with the Commission's order in Docket No. OA07-53-000. However, since the March 3, 2008 filing also included provisions intended to partially comply with Order No. 890-A, the Commission issued an Errata Notice and added Docket No. OA08-67-001 to the March 3, 2008 filing.

6. In addition, Progress Energy submitted the following tariff revisions in its March 3 Filing: (1) revised tariff sheets for schedule 8 (Non-Firm Point-to-Point Transmission Service), schedule 10 (Network Integration Transmission Service), Attachment H (Annual Transmission Revenue Requirement for Network Integration Transmission Service) regarding penalties for unreserved use; (2) a new section 19.10 (Credits for Late Study Penalty Revenues), revisions to schedule 7 (Long-Term and Short-Term Firm Point-to-Point Transmission Service) and schedule 8, and a new section 9.2 (Annual Informational Filings) regarding late study and unreserved use penalty revenue distribution; (3) a revised Attachment D (System Impact Studies) replacing the language rejected in the January 31 Order with the originally approved language; (4) a revised schedule 4 (Energy Imbalance Service) and schedule 9 (Generator Imbalance Service) to include an Imbalance Penalty Revenue Distribution Mechanism; and (5) a revised Attachment N (Procedures for Addressing Parallel Flows) to include specific language identified by the Commission.

B. March 31 Filing

7. On March 31, 2008, Progress Energy amended its filing (March 31 Filing) in response to a joint protest filed by Seminole and FMPA, as discussed below.⁵ The March 31 Filing includes a provision in schedule 9 to distribute penalty revenues, which Progress Energy agrees had been inadvertently omitted. It also includes revised tariff language to correct certain typographical errors.

C. Effective Dates

8. Progress Energy requests that the Commission accept the revised tariff sheets filed in the March 3 Filing, effective March 3, 2008, with the exception of the penalty revenue distribution mechanisms in Schedules 4 and 9 for Energy and Generator Imbalances, section 19.10 - Credits for Late Study Penalty Revenues, and Schedules 7 and 8 for Unreserved Use. Progress Energy explains that for the penalty revenue distribution mechanisms, a March 3, 2008 effective date would occur during the middle of the billing cycle. Therefore, it requests that those mechanisms be made effective April 1, 2008, which is the first day of the next billing cycle. Progress Energy requests that the Commission accept the revised tariff sheets filed in the March 31 Filing effective March 31, 2008.

⁵ The March 31, 2008 filing, which made revisions to provisions in both Docket Nos. OA07-53-001 and OA08-67-001, was assigned Docket Nos. OA07-53-002 and OA08-67-002.

III. Notice of Filing and Responsive Pleadings

9. Notice of Progress Energy's March 3, 2008 filing, Docket No. OA07-53-001, was published in the *Federal Register*, 73 Fed. Reg. 13,876 (2008), with interventions, protests and comments due on or before March 24, 2007. The Commission issued an errata notice on March 25, 2008, adding Docket No. OA08-67-001 to the proceeding. The Commission also issued a Notice of Extension of Time on March 27, 2008, extending the comment date for Docket Nos. OA07-53-001 and OA08-67-001 to April 10, 2008. Notice of Progress Energy's March 31, 2008 filing, Docket Nos. OA07-53-002 and OA08-67-002, was published in the *Federal Register*, 73 Fed. Reg. 19,201 (2008), with interventions, protests and comments due on or before April 10, 2008.

10. Reedy Creek Improvement District filed a timely motion to intervene. Seminole Electric Cooperative, Inc. (Seminole) and Florida Municipal Power Agency (FMPA) filed a joint timely motion to intervene and limited protest.

11. Seminole and FMPA claim that Progress Energy inadvertently omitted a mechanism for distributing the penalty revenues that are collected under schedule 9. They state that there is a penalty revenue distribution mechanism in schedule 4 but no similar mechanism in schedule 9, and that the Commission should direct Progress Energy to include a provision in schedule 9 that provides a "mechanism to credit revenues above the transmission provider's incremental costs."⁶ As discussed below, Progress Energy's March 31 Filing addresses their concern.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

B. Commission Determination

13. We will accept Progress Energy's filing to be effective July 13, 2007, March 31, 2008, and April 1, 2008, as discussed below. We find that the proposed revisions to its tariff sheets comply with the directives of the January 31 Order and Order No. 890-A.

14. As noted above, in its March 31 Filing, Progress Energy amended its filing to include the imbalance penalty revenue distribution mechanisms in schedule 9, in response to a protest from Seminole and FMPA. Accordingly, we find that the proposed penalty revenue distribution mechanisms comply with the directives of the January 31 Order.

⁶ Protest at 1, *citing* January 31 Order, 122 FERC ¶ 61,078 at P 40.

15. With respect to Progress Energy's requested effective dates, we deny Progress Energy's request for a March 3, 2008 effective date for the proposed tariff sheets in the March 3 Filing. The January 31 Order established a July 13, 2007 effective date for the tariff sheets accepted in that order. Therefore, tariff sheets filed in compliance with the January 31 Order will be effective July 13, 2007. Moreover, we accept Progress Energy's request that the penalty distribution mechanisms, be made effective on April 1, 2008. In Order 890-A, the Commission clarified that each transmission provider "must submit a one-time compliance filing under FPA section 206 proposing the transmission provider's methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties."⁷ The Commission also stated that "this one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties. Transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if the Commission alters the distribution mechanism on review."⁸ Although Progress Energy filed the penalty distribution mechanisms on March 3, 2008, as Progress Energy explains, that date is in the middle of the billing cycle. Therefore, we find that it is just and reasonable for Progress Energy to make its penalty distribution mechanisms effective April 1, 2008, which is the start of the next billing cycle after the March 3, 2008 filing date.

16. In addition, we accept Progress Energy's requested March 31, 2008 effective date for the proposed tariff sheets correcting typographical errors submitted in the March 31 Filing. We also accept the proposed tariff sheets submitted in the March 31 Filing that contain revisions to the penalty distribution mechanisms to be effective April 1, 2008, as requested.

17. Therefore, we will require Progress Energy to make a compliance filing, to be filed within 30 days of the date of this order, revising its tariff sheets to reflect the correct effective dates. This compliance filing should consist of two parts: (1) a filing of all tariff revisions made under Order No. 890 to be effective July 13, 2007; and (2) a filing of all tariff revisions to penalty distribution mechanisms made under Order No. 890-A to be effective April 1, 2008.⁹

⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

⁸ *Id.*

⁹ To the extent there are tariff provisions that contain revisions under both Order No. 890 and Order No. 890-A, Progress Energy should file two separate versions of the specific tariff provision in its compliance filing: (1) a version containing only the revisions under Order No. 890 to be effective July 13, 2007; and (2) a superseding version containing all revisions to be effective April 1, 2008.

The Commission orders:

(A) Progress Energy's filing is hereby accepted to be effective July 13, 2007, March 31, 2008, and April 1, 2008, as discussed in the body of this order.

(B) Progress Energy is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.