

134 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Power Corporation Docket No. ER11-2584-000

Carolina Power & Light Company Docket No. ER11-2579-000

ORDER ACCEPTING DEPRECIATION RATES

(Issued February 28, 2011)

1. On December 30, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ Florida Power Corporation (Florida Power) and Carolina Power & Light Company (Carolina Power) separately filed revised depreciation rates for use in the formula rates contained in each of their Open Access Transmission Tariffs (OATT). In this order, we accept the revised depreciation rates to be effective January 1, 2010, as requested, for the reasons discussed herein.

I. Background

2. As the result of a merger consummated in 2000, Florida Power and Carolina Power operate pursuant to two individual but identically maintained tariffs that contain separate depreciation rates for each individual company and rates for their transmission services.²

¹ 16 U.S.C. § 824d (2006).

² See *CP&L Holdings, Inc.*, 92 FERC ¶ 61,023, at 61,051, 61,059-61,061 (2000). The OATTs are designated as Carolina Power & Light Company, Fourth Revised Volume No. 3 and Florida Power Corporation, Third Revised Volume No. 6.

On July 14, 2010, Florida Power and Carolina Power each filed their OATTs in separate baseline eTariff filings.³

3. In their December 30 filings, Florida Power and Carolina Power propose to revise only Florida Power's depreciation rates, which are included in Schedule 10 of the respective OATTs, to reflect the depreciation rates approved by the Florida Public Service Commission (Florida Commission).⁴ The Florida Commission requires jurisdictional utilities to file remaining life depreciation rates every four years.⁵ The depreciation rates approved by the Florida Commission are based upon a depreciation study conducted by Florida Power in early 2009 that used projected 2008 and projected 2009 plant balances (2009 Depreciation Study),⁶ with modifications for plant lives, reserve allocations, net salvage and interim retirement ratios as deemed appropriate by the Florida Commission as a result of a fully litigated rate case proceeding.⁷ Florida Power states that the approved rates were calculated using the straight line remaining life depreciation method, with the average service life procedure, and were prepared in accordance with generally accepted practices in the field of depreciation.

4. Florida Power explains that, in accordance with the 2009 Depreciation Study, the depreciation rates for all of its transmission plant accounts, as well as the depreciation rate for one general plant account, Account 390, Structures and Improvements, have been revised. It states that the depreciation rates for transmission and general plant directly impact the formula rate because the formula rate recovers depreciation expense and a return on the net book value associated with these types of plant. The formula rate also uses a net plant allocator to allocate some very limited costs in the formula rate and the net plant allocator is indirectly and minimally impacted by changes in depreciation rates for production and distribution plant. Accordingly, Florida Power also submitted the

³ See *Carolina Power & Light Co.*, ER10-1774-000, Sept. 2, 2010 (delegated letter order); *Florida Power Corp.*, Docket Nos. ER10-1775-000 & ER10-1775-001, Oct. 8, 2010 (delegated letter orders).

⁴ Florida Power December 30, 2010 Filing at 3.

⁵ *Id.* at 3 (citing Fla. Admin. Code Ann. R. 25-6.0436(8)(a) (2011) ("Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.")).

⁶ Florida Power December 30, 2010 Filing at 3.

⁷ *Id.*

Florida Commission-approved changes to depreciation rates for production and distribution plant for Commission approval.

5. Florida Power states that, consistent with the Florida Commission order, Florida Power implemented the revised retail depreciation rates effective as of January 1, 2010, and additionally adopted them for wholesale accounting purposes as of the same date. Florida Power requests Commission approval to implement the revised depreciation rates effective as of January 1, 2010 for the 2011 Annual Update of the OATT formula rate on June 1, 2011. Florida Power also notes that the revised depreciation rates would be reflected in its 2010 FERC Form No. 1 annual report, which is used as the basis for Florida Power's June 1, 2011 Annual Update and true-up of its OATT formula rate for 2010 service.⁸ Florida Power states that Exhibit Nos. PEF-3 and PEF- 4 show that Florida Power's proposed depreciation rates result in a decrease of \$839,704 based on calendar year 2009.⁹

6. In its separate filing, Carolina Power explains that the purpose of its filing is to incorporate Florida Power's revisions to its OATT in order to maintain Carolina Power's version of the OATT.¹⁰ Thus, Carolina Power's proposed revisions to its version of the OATT reflect Florida Power's proposed depreciation rates.¹¹

7. Florida Power and Carolina Power each request that the Commission allow their filings to become effective on January 1, 2010.¹² Florida Power requests waiver of the prior notice requirement, and argues that good cause exists for this waiver. It states that the Commission ordinarily finds good cause to grant waiver of the prior notice requirement if the effective date of the rate change is prescribed by contract. It explains

⁸ *Id.* at 3-4 & n.9. Florida Power also states that the depreciation rates for the other general plant accounts have not been changed, although some minor changes to the depreciation rates for the other general plant accounts are shown in Exhibit PEF-2. Florida Power states that these minor changes reflect the conversion from the existing blended (wholesale and retail depreciation) rates to the proposed retail rates.

⁹ *Id.* at 4 (citing Ex. PEF-3; Ex. PEF-4).

¹⁰ Carolina Power December 30, 2010 Filing at 3.

¹¹ *Id.* at 3.

¹² Florida Power December 30, 2010 Filing at 5; Carolina Power December 30, 2010 Filing at 3; *see also* 16 U.S.C. § 824d(d) (2006); 18 C.F.R. §§ 35.3(a), 35.11 (2010).

that the OATT formula rate requires Florida Power to use depreciation rates reflected in its FERC Form No. 1 annual report. Florida Power explains that when it completes on June 1, 2011 its Annual Update and true-up of its OATT formula rate for 2010 service, the formula rate true-up will be completed using 2010 data from Florida Power's FERC Form No. 1 (filed by April 1, 2011). Florida Power states that a January 1, 2010 effective date for the revised depreciation rates would enable it to reflect the revised depreciation rates in its June 1, 2011 Annual Update and true-up of its OATT formula rate for 2010 service. Florida Power also states that the Commission has granted waiver of the prior notice requirement in several similar circumstances which implemented revised transmission depreciation rates in OATT formula rates.¹³

II. Notice of Filing and Responsive Pleadings

8. Notices of Florida Power's and Carolina Power's filings were published in the *Federal Register*, 76 Fed. Reg. 1418 (2011); 76 Fed. Reg. 1416 (2011), with interventions or protests due on or before January 20, 2011. No interventions or protests were filed in response to Carolina Power's filing in Docket No. ER11-2579-000. Timely motions to intervene and protests were filed by the Florida Municipal Power Agency (Florida Municipal) and Seminole Electric Power Cooperative, Inc. (Seminole) (collectively, Protestors) in response to Florida Power's filing in Docket No. ER11-2584-000. On February 4, 2011, Florida Power filed an answer to the protests. On February 9, 2011, Protestors jointly filed an answer to Florida Power's answer (Protestors' Answer). On February 16, 2011, Florida Power filed an additional answer to Protestors' Answer (February 16 Answer). On February 17, 2011, Protestors filed a joint answer to Florida Power's February 16 Answer (February 17 Answer).

9. Protestors assert that Florida Power does not disclose or commit to make other depreciation adjustments accepted by the Florida Commission. Protestors explain that one result of setting new depreciation rates is that the depreciation reserves accumulated to date are viewed by the Florida Commission as either too high (if lower depreciation rates are set) or too low (if higher depreciation rates are set). This is because there is a theoretical reserve balance that is "the calculated balance that would be in the reserve if the life and salvage estimates now considered appropriate had always been applied."¹⁴

¹³ *Id.* (citing *Duke Energy Carolinas, LLC*, 130 FERC ¶ 61,079 (2010); *South Carolina Electric & Gas Co.*, 132 FERC ¶ 61,043 (2010); *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992)).

¹⁴ Seminole January 20, 2011 Protest at 4-5 (quoting *In re: Petition for Increase in Rates by Progress Energy Florida, Inc.*, Docket No. 090079-EI, at 45-46 (Fla. Pub. Serv. Comm'n Mar. 5, 2010)).

Seminole argues that where there is a theoretical reserve surplus, as there is with Florida Power, the Florida Commission requires the theoretical reserve surplus to be amortized over a period of years (usually four) to reduce depreciation expense. According to Seminole, this has the dual effect of reducing in the near term recorded depreciation reserve and depreciation expense.¹⁵ Although agreeing with Florida Power that Florida Power must reduce depreciation expense to reflect the amortization of the theoretical reserve imbalances, Seminole argues that Florida Power must obtain Commission authorization before implementing such amortization.¹⁶ Seminole argues that any changes that are made under the formula rate that affect the determination of the ultimate depreciation expense and depreciation reserve are subject to approval by the Commission under section 205 of the FPA.¹⁷

10. Florida Municipal similarly argues that FPA section 205 requires Florida Power to submit its anticipated depreciation adjustments in this proceeding because it will need to make depreciation-related adjustments to eliminate the theoretical depreciation reserve to comply with the Florida Commission's directive.¹⁸ In addition to the revised depreciation rates proposed here, Florida Municipal asserts that Florida Power plans to adjust its depreciation expense to reflect amortization of the excess depreciation reserve. According to Florida Municipal, any change to the depreciation expense will affect the price of transmission calculated by the formula rate contained in the OATT.

11. Protestors both argue that Florida Power's current proposal is inconsistent with Order No. 618 because its proposal does not address the amortization of the excess depreciation reserves.¹⁹ In Order No. 618, the Commission stated that utilities would first have to make a filing under FPA section 205 or 206 in order to reflect a change in depreciation rates for ratemaking purposes. Protestors rely on the Commission's statement in Order No. 618 that its intention was merely to authorize "utilities to change their method of depreciation for accounting purposes only; it [did] not authorize any utility to change prices charged for power sales or transmission services . . . to reflect a

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 6-7.

¹⁸ Florida Municipal January 20, 2011 Protest at 6-7.

¹⁹ *Id.* at 8; Seminole January 20, 2011 Protest at 7 (citing *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,104, at 31,695 n.25 (2000)).

change in depreciation.”²⁰ Thus, Protestors argue the Commission should require Florida Power to supplement its filing and require it to demonstrate that it is making the adjustments necessary to eliminate its excess depreciation reserve because “transmission rates will be affected by [those] adjustments to the transmission expense beyond the revised depreciation rates.”²¹

12. In its answer, Florida Power contends Protestors’ arguments should be dismissed because they are beyond the scope of this proceeding.²² Florida Power argues that the current proceeding concerns its request to adopt depreciation rate changes at wholesale in its OATT formula rate. Florida Power argues that Protestors’ arguments concerning theoretical reserves are “only properly heard in response to a Section 206 complaint brought by the Customers or in a Section 205 filing by the company.”²³ However, to eliminate further dispute concerning the theoretical reserves issue, Florida Power states that it:

[C]ommits to make a Section 205 filing to incorporate the impact of the “theoretical reserves” issue in the OATT Formula Rate for service in 2010 and to request a January 1, 2010 effective date for the filing
[Florida Power] commits to make this Section 205 filing after its 2010 [FERC Form No. 1] data becomes available in April 2011 and before its 2010 Annual Update begins on May 14, 2011.²⁴

Florida Power argues that its 2010 FERC Form No. 1 data will not be available until April 2011, and therefore, the data, facts and actual quantitative impact of this issue on the OATT formula rate for service in 2010 will not be available for the Commission’s consideration until that time.

²⁰ Order No. 618, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,104 at 31,695 n.25.

²¹ Florida Municipal January 20, 2011 Protest at 8; *see also* Seminole January 20, 2011 Protest at 7-8.

²² Florida Power February 4, 2011 Answer at 5.

²³ *Id.* at 5-6.

²⁴ *Id.* at 6.

13. In their answer to Florida Power's answer, Protestors reiterate their position that Florida Power is obligated to obtain Commission authorization for the amortization of the excess reserve imbalances.²⁵ Protestors characterize Florida Power's commitment to submit a section 205 filing later this year as being "purely discretionary," and they argue that this commitment does not bind Florida Power to make a filing next year to track the impact on 2011 rates.²⁶ Protestors assert that if Florida Power elects not to submit the section 205 filing, they will be denied the opportunity to review the depreciation-related changes in 2011.²⁷ Protestors also argue that Florida Power is attempting to bifurcate the depreciation rate and excess reserve amortization issues, which will result in differing practices between the Florida Commission and this Commission. Protestors claim that this separation would produce erroneous formula rate results or inaccurate reporting on Florida Power's FERC Form No. 1.²⁸ Protestors urge the Commission to require Florida Power to supplement its filing so that "the entirety of the [Florida Commission] depreciation rate order" may be reviewed "to determine the just and reasonable depreciation expense" for Florida Power.²⁹

14. In its February 16 Answer, Florida Power restates its position that its proposed revisions to its depreciation rates are the only issue before the Commission and that neither Florida Power nor the Commission are obligated to address the "theoretical reserves" issue at this time.³⁰ Further, Florida Power observes that Protestors have not challenged the justness or reasonableness of the proposed depreciation rates themselves.³¹ With respect to the effect of the revised depreciation rates, Florida Power acknowledges that the revisions will affect 2010 OATT rates, however, it maintains the "theoretical reserves" issue is beyond the scope of this proceeding.³² Florida Power commits to submit a separate section 205 filing in the future to address these effects.

²⁵ Protestors February 9, 2011 Answer at 2-3.

²⁶ *Id.* at 3.

²⁷ *Id.* at 2.

²⁸ *Id.* at 4.

²⁹ *Id.*

³⁰ Florida Power February 16, 2011 Answer at 3-4.

³¹ *Id.*

³² *Id.* at 4-5. Florida Power does not know the effect of its revisions on the OATT formula rate for service in 2011 or 2012. *Id.*

Florida Power adds that the Commission has the right to establish wholesale depreciation rates that are the same or diverge from retail depreciation rates.³³ Moreover, Florida Power notes that if the December 30 filings are accepted, then there will be no disparity between the wholesale and retail depreciation rates.³⁴

15. In their February 17 Answer, Protestors repeat their position that “to the extent that [Florida Power] is purporting to track the depreciation expense determination of the [Florida Commission] in its 2010 depreciation order, it must do so without parsing the depreciation rate from the amortization of excess reserves, as both are integral to the determination of the depreciation expense.”³⁵ Further, Protestors assert that the issue that must be addressed in the current proceeding is “the principle of tracking the amortization of the excess reserves.”³⁶

III. Discussion

A. Procedural Matters

16. 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.

17. 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 and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Florida Power and the Protestors because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

18. Based on our review of the 2009 Depreciation Study, we find that Florida Power’s proposed depreciation rates are just and reasonable. We will therefore accept the proposed depreciation rates as well as the revisions to Carolina Power’s version of the OATT to reflect Florida Power’s proposed depreciation rates. Further, we will grant

³³ *Id.* at 3.

³⁴ *Id.* at 5.

³⁵ Protestors February 17, 2011 Answer at 1-2.

³⁶ *Id.* at 2.

waiver of the prior notice requirement to allow these depreciation rates to be effective January 1, 2010, as requested.³⁷

19. Under Order No. 618, a utility is allowed to change its depreciation rates for accounting purposes without Commission approval. However, in order to change its rates for jurisdictional power sales or transmission services (whether determined by stated or formula rates) to reflect a change in depreciation, the utility must make a filing pursuant to section 205 of the FPA.³⁸ In Order No. 618, the Commission required “utilities to use for accounting purposes methods of depreciation that allocate the cost of utility property over its useful service life in a systematic and rational manner.”³⁹ Further, the Commission noted it has traditionally used the straight-line depreciation method to allocate an asset’s service value over its remaining life.⁴⁰ Florida Power’s proposed revisions to its depreciation rates are based on the 2009 Depreciation Study, which uses plant balances, net salvage values and plant retirement data as adjusted by the Florida Commission.⁴¹ The resulting depreciation rates were calculated by allocating gross plant and estimated net salvage, less the accumulated reserve for depreciation, on a straight-line basis over the estimated remaining service life.⁴² We find this to be a systematic and rationale method of determining depreciation rates that complies with the requirements of Order No. 618 and is appropriate for wholesale ratemaking purposes. In addition, we note that Protestors do not oppose the proposed revisions to Florida Power’s depreciation rates.

³⁷ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh’g*, 61 FERC ¶ 61,089 (1992) (“We will generally grant waiver of the 60-day prior notice requirement in the following instances: . . . (2) filings that reduce rates and charges”). Florida Power argues, and Protestors do not dispute, that the proposed revisions to the depreciation rates will result in a rate decrease. See Florida Power December 30, 2010 Filing at 1. Thus, waiver of the 60-day prior notice requirement is consistent with Commission precedent. See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,338.

³⁸ Order No. 618, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,104 at n.25.

³⁹ *Id.* at 31,694.

⁴⁰ *Id.*

⁴¹ See Ex. PEF-5A.

⁴² See Ex. PEF-5B at 3-9.

20. However, we emphasize that we are only approving in this order the proposed depreciation rates, and not any adjustments to eliminate the theoretical depreciation reserve surplus. Protestors urge the Commission to require Florida Power to supplement its instant depreciation rate change filing so that they may address whether the Florida Commission's approval of amortizations of the theoretical depreciation reserve adjustments are just and reasonable for purposes of Florida Power's jurisdictional rates contained in the OATT.⁴³ In response, Florida Power commits to make a section 205 filing to address this issue. We agree with Protestors that consistent with Order No. 618, a utility must obtain authorization from this Commission to change prices charged for transmission services to reflect a change in depreciation.⁴⁴ We also agree with Protestors that the excess reserve amortizations could impact the reserve balances and depreciation expense, and consequently the formula rate for transmission service. We believe that additions or reductions of depreciation expense to reflect theoretical depreciation reserve amortization clearly falls within depreciation changes that must be filed with the Commission. As the Commission stated in Order No. 618, utilities are not authorized to change prices charged for power sales or transmission service to reflect a change in depreciation.⁴⁵ However, we agree with Florida Power that amortization of any excess depreciation reserves can be addressed separately from the determination of whether the proposed depreciation rates themselves are just and reasonable. Thus, we will not require Florida Power to supplement its December 30 filing to address such amortizations.

⁴³ Specifically, the Florida Commission approved a settlement that, *inter alia*, grants Florida Power the discretion to credit depreciation expense over three years (2010, 2011, and 2012) with a reserve surplus of at least \$647 million based upon a theoretical reserve calculation. *See* Seminole January 20, 2011 Protest, Att. 1; *Id.* Att. 2, at 2-3. In addition, the Florida Commission approved a four-year amortization of a reserve surplus in the annual amount of \$5.8 million. *See* Seminole January 20, 2011 Protest, Att. 1; *Id.* Att. 2, at 2-3.

⁴⁴ In this regard we note that this Commission has addressed any alleged excess or deficiency in depreciation reserves through adjustment of depreciation rates that eliminate such excess or deficiency over the remaining life of a utility's plant, rather than any shorter period. *See, e.g., Virginia Electric and Power Co.*, 11 FERC ¶ 63,028 (1980), *aff'd in relevant part*, 15 FERC ¶ 61,052 (1981) *Municipal Light Boards of Reading and Wakefield, Mass. v. Boston Edison Co.*, 53 FPC 1545, 1558-59, (1975), *modified*, 54 FPC 440, 442 (1975), *aff'd sub nom. Towns of Norwood v. FPC*, 546 F.2d 1036, 1038 (D.C. Cir. 1976)

⁴⁵ Order No. 618, FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,104 at 31,695 n.25.

The Commission orders:

(A) Florida Power's proposed depreciation rates are hereby accepted for filing to become effective January 1, 2010, as discussed in the body of this order.

(B) Carolina Power's revisions to its version of the OATT are hereby accepted, to be effective January 1, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.