

157 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Florida Power & Light Company

Docket No. EC16-148-000

ORDER AUTHORIZING PROPOSED TRANSACTION

(Issued October 13, 2016)

1. On July 13, 2016, pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² Florida Power & Light Company (Florida Power & Light) submitted an application requesting Commission authorization for a transaction in which Florida Power & Light would purchase all of the upstream ownership interests in Palm Power, LLC (Palm Power) and Toyan Enterprises, LLC (Toyan) (together, the Acquired Entities) currently held by Calypso Energy Holdings LLC (Seller), the upstream owner of a 330 megawatt (MW) qualifying cogeneration facility located in Indiantown, Florida (Indiantown Facility) (Proposed Transaction).

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.³ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ 16 U.S.C. § 824b(a)(1) (2012).

² 18 C.F.R. pt. 33 (2016).

³ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (1996 Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); see also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289

(continued...)

I. Background**A. Description of the Parties to the Proposed Transaction, the Indiantown Facility, and the Power Purchase Agreement****1. Florida Power & Light**

3. Florida Power & Light is a wholly owned subsidiary of NextEra Energy, Inc. and a vertically integrated, rate-regulated electric utility primarily engaged in the generation, transmission, distribution, and sale of electric energy in Florida. Specifically, Florida Power & Light states that it provides service to more than 4.8 million retail customers through an integrated transmission and distribution system that links its generation facilities to its customers. Florida Power & Light's load consists primarily of retail customers, although wholesale power sales customers comprise a relatively small percentage of its total load.

4. Florida Power & Light states that it maintains interconnection facilities with neighboring utilities and wholesale power providers that enable it to buy and sell wholesale electricity outside its service territory and to enhance the reliability of its own network and support the reliability of neighboring networks. Florida Power & Light represents that it has market-based rate authority that applies to sales outside of Peninsular Florida, and inside of Peninsular Florida with regard to certain balancing authority areas.⁴

2. Seller

5. Florida Power & Light states that Seller is a subsidiary of Ares EIF Management, LLC, which has exclusive management interests in several private equity investment funds that own power projects in the United States. None of these funds or any of their affiliates currently is directly or indirectly engaged in the generation or sale of electric power in the United States, other than from Qualifying Facilities or eligible facilities of Exempt Wholesale Generators. Similarly, Florida Power & Light states that none of the funds or their affiliates currently owns a 10 percent or greater voting interest in, operates, or controls any electric facilities in the United States other than Qualifying Facilities or eligible facilities of Exempt Wholesale Generators.

(2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁴ Application at 5-7.

6. According to Florida Power & Light, Seller owns 100 percent of the membership interests in the Acquired Entities, and the Acquired Entities directly and indirectly hold 100 percent of the interests in Indiantown Cogeneration, L.P. (Indiantown Cogen), the owner of the Indiantown Facility.⁵

3. The Indiantown Facility

7. Florida Power & Light explains that the Indiantown Facility is interconnected with the Florida Power & Light transmission system at the adjacent Florida Power & Light Warfield Substation pursuant to an Interconnection and Transmission Service Agreement originally executed in February 1992. U.S. Operating Services, LLC (U.S. Operating Services), a wholly owned subsidiary of Seller, manages the Indiantown Facility's operations pursuant to an operation and maintenance agreement.⁶

4. Power Purchase Agreement

8. Florida Power & Light states that it and Indiantown Cogen are parties to an existing Power Purchase Agreement under which Florida Power & Light purchases all of the firm capacity and electric power produced by the Indiantown Facility while the steam is sold to a nearby citrus processing facility.⁷ Florida Power & Light notes that the Power Purchase Agreement was originally executed in 1990, has since been amended several times, and is scheduled to terminate in 2025.

9. Florida Power & Light represents that pricing under the agreement was based on state-wide avoided costs required by the Florida Public Service Commission (Florida Commission) at the time the Power Purchase Agreement was executed. According to Florida Power & Light, annual capacity payments are fixed under the Power Purchase Agreement and slowly reduce each year until the end of 2025. However, if the Indiantown Facility's availability performance meets a contractual threshold, the facility is eligible for a bonus capacity payment of up to an additional 10 percent. Energy prices under the Power Purchase Agreement are based on the unit cost for coal, priced at a published index multiplied by a fixed heat rate.

⁵ *Id.* at 7-8.

⁶ *Id.* at 8.

⁷ Florida Power & Light notes that the Power Purchase Agreement was not executed under the Federal Power Act, but rather is a Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 824a-3 (2012), agreement that is not subject to the FPA's ratemaking provisions. Application at n.4.

10. Florida Power & Light notes that, pursuant to the Florida Commission's rules governing Qualifying Facilities, its fixed operations and maintenance expense and capacity payments to Indiantown Cogen were determined based on the approved "avoided unit" at the time the parties entered into the Power Purchase Agreement, an integrated coal gasification combined cycle unit. As a result, the fixed operations and maintenance expense and capacity payments are above today's current and projected market prices, and "well above"⁸ Florida Power & Light's current avoided costs. In 2015, the "all in" price of energy from the Indiantown Facility was over \$264/MW hour (MWh), compared to an average Florida Power & Light avoided cost of \$18/MWh in that same year.

B. Description of the Proposed Transaction

11. Florida Power & Light states that it will purchase 100 percent of the equity interests in the Acquired Entities and their subsidiaries from Seller at a purchase price of \$451 million (including existing debt), making Florida Power & Light the sole owner of the Indiantown Facility.⁹ Florida Power & Light explains that because the existing bonds financing the project are not callable or defeasible before 2020, the debt must remain in place following consummation of the Proposed Transaction until that time. Florida Power & Light explains further that the Power Purchase Agreement must also be maintained due to bond covenants.

12. Florida Power & Light states that, following consummation of the Proposed Transaction, it will acquire the existing Power Purchase Agreement as the Indiantown Facility owner and the Power Purchase Agreement counterparty. U.S. Operating Services will continue to operate the Indiantown Facility under Florida Power & Light's direction. Florida Power & Light plans to maintain the Qualifying Facility status of the Indiantown Facility, and, as owner, would continue to be entitled to economically dispatch the facility as needed to meet its system needs. Florida Power & Light anticipates that the Indiantown Facility will be economically dispatched no more than five percent of the time, and that it will operate the facility through the end of 2018 to meet its capacity needs. The Indiantown Facility will be available to operate through the life of the bonds, but Florida Power & Light does not expect to need the capacity after 2018, and does not anticipate the facility operating after 2018.¹⁰

⁸ Application at 9.

⁹ Florida Power & Light adds that it will also purchase the working capital of Indiantown Cogen (fuel inventory, spare parts, tools, etc.) and record it at fair value. *Id.*

¹⁰ *Id.* at 9-10.

II. Notice of Filing and Responsive Pleadings

13. Notice of the Application was published in the *Federal Register*, 81 Fed. Reg. 47,164 (2016), with interventions and protests due on or before August 3, 2016.

14. Timely motions to intervene and comments were filed by Florida Keys Electric Cooperative Association, Inc. (Florida Keys) and Lee County Electric Cooperative, Inc. (Lee County).

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

1. Standard of Review under FPA Section 203

16. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.¹² The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹³ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization,

¹¹ 18 C.F.R. § 385.214 (2016).

¹² 16 U.S.C. § 824b(a)(4). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application, Exhibit L. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

¹³ 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

pledge, or encumbrance will be consistent with the public interest.”¹⁴ The Commission’s regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹⁵

2. Analysis of the Proposed Transaction

a. Effect on Horizontal Competition

i. Florida Power & Light’s Analysis

17. Florida Power & Light asserts that the Proposed Transaction will not have an impact on horizontal competition in the relevant market since Florida Power & Light currently contractually controls the output of the Indiantown Facility pursuant to the long-term Power Purchase Agreement. Therefore, its generation market share will not increase due to the Proposed Transaction. Florida Power & Light notes that while the Proposed Transaction involves a change in ownership of the Indiantown Facility, there is no change in the disposition of the output of the facility or its treatment as a resource controlled by Florida Power & Light. Based on these facts, Florida Power & Light concludes that the Proposed Transaction will have no effect on horizontal market power in the relevant geographic market, and that there is no need to submit an Appendix A analysis¹⁶ under the Commission’s regulations.¹⁷

ii. Commission Determination

18. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.¹⁸

¹⁴ 16 U.S.C. § 824b(a)(4).

¹⁵ 18 C.F.R. § 33.2(j).

¹⁶ Appendix A analyses are also referred to as Delivered Price Tests or Competitive Screen Analyses.

¹⁷ Application at 15-16.

¹⁸ *Nev. Power Corp.*, 149 FERC ¶ 61,079, at P 28 (2014).

19. Based on Florida Power & Light's representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. While the Proposed Transaction will result in a change in ownership of the Indiantown Facility, there will be no change in the disposition of its output since, pursuant to the long-term Power Purchase Agreement, Florida Power & Light contractually controls the entire output of the facility.¹⁹ Accordingly, the Proposed Transaction will have no effect on Florida Power & Light's market share, nor will it affect market concentration levels, in any relevant geographic market.²⁰

b. Effect on Vertical Competition

i. Florida Power & Light's Analysis

20. According to Florida Power & Light, the Proposed Transaction does not raise vertical market power concerns. Indiantown Cogen owns only limited interconnection facilities necessary to connect the Indiantown Facility to the transmission system in order to effectuate sales to Florida Power & Light under the Power Purchase Agreement. Further, Florida Power & Light states that the Proposed Transaction does not involve any new combination of transmission or gas assets.²¹

ii. Commission Determination

21. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by

¹⁹ See, e.g., *Cleco Power LLC*, 144 FERC ¶ 62,162 (2013) (finding no impact on concentration where purchaser of facility already controlled its output); *Pub. Serv. Co. of Colorado*, 132 FERC ¶ 62,032 (2010); *Black Hills Wyoming, Inc.*, 123 FERC ¶ 62,236 (2008); *Virginia Elec. & Power Co.*, 110 FERC ¶ 62,077 (2005).

²⁰ We agree with Florida Power & Light that there is no need for an Appendix A analysis. See *Supplemental Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at n.57 (no need to perform complete Appendix A analysis where overlap in combined relevant geographic market is *de minimis*).

²¹ Application at 16-17.

raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.²²

22. Based on Florida Power & Light's representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. Indiantown Cogen only owns limited interconnection facilities, and the Proposed Transaction does not involve any new combination of transmission or gas assets. Moreover, access to Florida Power & Light's transmission system is governed by its open access transmission tariff.

c. Effect on Rates

i. Florida Power & Light's Analysis

23. Florida Power & Light claims that the Proposed Transaction will not have an adverse impact on rates. With respect to transmission rates subject to the Commission's jurisdiction, Florida Power & Light explains that it has a stated rate for open access transmission service, and that the Proposed Transaction involves no transmission plant. Florida Power & Light concludes that the Proposed Transaction will not have an impact on unbundled transmission rates.

24. Florida Power & Light also asserts that its wholesale requirements customers, Florida Keys and Lee County, will benefit from the cost savings due to the Proposed Transaction, and, all else being equal, will experience an overall rate decrease over the remaining term of the Power Purchase Agreement, subject to an FPA section 205²³ filing to recover the net regulatory asset created as a result of the Proposed Transaction. More specifically, Florida Power & Light estimates customer savings resulting from the Proposed Transaction to be \$129 million on a cumulative net present value revenue requirement basis, of which approximately \$6 million will accrue to its two long-term wholesale full requirements customers.²⁴ Florida Power & Light notes further that the

²² *Upstate New York Power Producers, Inc.*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

²³ 16 U.S.C. § 824d.

²⁴ Application at 11. Florida Power & Light explains that the estimated savings result from an economic evaluation of the revenue requirements to customers under the Power Purchase Agreement (including the fixed-cost components estimated at \$594 million on a net present value over the remaining term of the agreement) versus ownership of the Indiantown Facility (essentially the purchase price for the facility, with

(continued...)

Proposed Transaction is expected to lower fuel costs for its six stated rate wholesale power customers over the remaining life of the Power Purchase Agreement.²⁵ According to Florida Power & Light, the Proposed Transaction is expected to have a “salutary, non-adverse, impact”²⁶ on its wholesale customers, so additional ratepayer protections, such as a hold harmless commitment, are unnecessary to satisfy this prong of the Commission’s public interest analysis.

ii. Comments

25. Both Florida Keys and Lee County support Commission approval of the Proposed Transaction based on their understanding that the transaction will benefit Florida Power & Light’s customers and will result in a rate decrease under their formula rate full requirements contracts with Florida Power & Light.²⁷

iii. Commission Determination

26. Based on Florida Power & Light’s representations, we find that the Proposed Transaction will not have an adverse effect on rates. With respect to transmission rates, as Florida Power & Light explains, the Proposed Transaction does not involve the transfer of transmission facilities that are part of the bulk transmission system and Florida Power & Light has a stated rate for open access transmission service. Based on these factors, we find that the Proposed Transaction will not adversely affect transmission rates.

27. In addition, we find that the Proposed Transaction will not have an adverse effect on wholesale electricity rates. As represented by Florida Power & Light, the Proposed Transaction is expected to result in rate reductions and cost savings for customers. We

other adjustments). *Id.*, Attachment 4: Affidavit of Timothy W. Gerrish at 8-9 (Gerrish Aff.). Florida Power & Light further explains that, with regard to retail ratepayers, with Florida Power & Light on both sides of the Power Purchase Agreement, the consolidation of the Acquired Entities essentially causes the Power Purchase Agreement to “disappear.” *Id.* at 6:11.

²⁵ Gerrish Aff. at 6:19-21.

²⁶ Application at 18.

²⁷ Motion to Intervene and Comments in Support of Lee County Electric Cooperative, Inc. at 3, Docket No. EC16-148-000 (Aug. 2, 2016). Motion to Intervene and Comments in Support of Florida Keys Electric Cooperative Association, Inc. at 3, Docket No. EC16-148-000 (Aug. 3, 2016).

note that both Florida Keys and Lee County support the Proposed Transaction, and none of Florida Power & Light's other wholesale customers intervened or filed protests in this proceeding.

28. Florida Power & Light states that it intends to seek recovery of the regulatory asset associated with the Proposed Transaction from Florida Keys and Lee County, its two production formula rate customers.²⁸ In authorizing the Proposed Transaction, we make no determination in this FPA section 203 proceeding regarding recovery of such a regulatory asset. If Florida Power & Light seeks to recover the regulatory asset, it must submit an FPA section 205 filing.

d. Effect on Regulation

i. Florida Power & Light's Analysis

29. Florida Power & Light states that the Proposed Transaction will not have an adverse impact on federal or state regulation. First, Florida Power & Light notes that the Proposed Transaction will not diminish the Commission's regulatory authority over the Indiantown Facility because the Proposed Transaction will not change the *status quo* with regard to the facility's status as a Qualifying Facility. Second, Florida Power & Light states that it is seeking approval of the Proposed Transaction from the Florida Commission, which will ensure that the concerns of the applicable state regulatory authority will be addressed. Third, Florida Power & Light notes that the Power Purchase Agreement will remain subject to its PURPA terms and conditions.²⁹

ii. Commission Determination

30. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.³⁰ As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the 1996 Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises

²⁸ Application at 12.

²⁹ *Id.* at 18-19.

³⁰ 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.³¹

31. Based on Florida Power & Light's representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. As Florida Power & Light explains, both the entities involved in the Proposed Transaction and the Indiantown Facility will remain subject to the same pre-transaction regulatory jurisdiction, and the Power Purchase Agreement remains subject to its PURPA terms and conditions. We note also that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect of the Proposed Transaction on state regulation.

e. Cross-Subsidization

i. Florida Power & Light's Analysis

32. Florida Power & Light states that the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. According to Florida Power & Light, the Commission has recognized three classes of transactions that are unlikely to raise cross-subsidization concerns. Florida Power & Light states that the Proposed Transaction falls within one of those classes, specifically, the class of transactions where a franchised public utility is involved in a transaction with entities that are not its affiliates. While Florida Power & Light acknowledges that it is a franchised public utility, it states that it is not affiliated with Seller or Seller's affiliates.

33. Florida Power & Light also represents that there are no existing pledges and/or encumbrances of the assets of traditional utilities involved in the Proposed Transaction, and that the Proposed Transaction will not result in: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate

³¹ *Id.*

company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206³² of the FPA.³³

ii. Commission Determination

34. Based on Florida Power & Light's representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

3. Accounting

35. In Attachment 2 of the Application, Florida Power & Light provides proposed accounting entries recording the effects of the Proposed Transaction on Florida Power & Light's books. As noted above, Florida Power & Light proposes to record a regulatory asset related to loss on the investment in Palm Power and Toyon, the Acquired Entities, in the amount of \$451.5 million. Florida Power & Light states it has filed a petition with the Florida Commission requesting approval to treat the loss on investment as a regulatory asset that would be recovered through Florida Power & Light's retail Capacity Cost Recovery Charge.³⁴ Florida Power & Light also indicates that it will file for Commission authorization under section 205 of the FPA to recover a *pro rata* share of the regulatory asset associated with the Proposed Transaction from its two production formula rate customers.³⁵

36. We will approve Florida Power & Light's proposal to record a regulatory asset for \$451.5 million. This approval is for accounting purposes only and subject to a determination by a regulatory body (e.g., the Commission, Florida Commission) that such amounts are recoverable for ratemaking purposes. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of the disallowance.

³² 16 U.S.C. § 824e (2012).

³³ Application, Ex. M.

³⁴ *Id.* at 10, 27.

³⁵ *Id.* at 11.

37. Florida Power & Light incorrectly uses Account numbers and titles throughout the proposed accounting entries. Florida Power & Light must correct the proposed accounting entries to use the correct account numbers and titles. For example, Florida Power & Light proposes to debit Account 182 to record the regulatory asset. The Commission's Uniform System of Accounts provides Account 182.3, Other Regulatory Assets, for recording regulatory-created assets resulting from the ratemaking actions of regulatory agencies. We note similar errors for accounting entries recording accumulated deferred income taxes: Florida Power & Light incorrectly titles Account 190, as Deferred Tax Asset, instead of Accumulated Deferred Income Taxes, and incorrectly titles Account 283, as Deferred Tax Liability, instead of Accumulated Deferred Income Taxes – Other. Our approval for accounting purposes of Florida Power & Light's recording of deferred taxes is subject to our review of the final accounting entries.

38. Florida Power & Light must submit its proposed final accounting for the Proposed Transaction within six months of the consummation of the Proposed Transaction. The accounting submission must provide all accounting entries made to the books and records of Florida Power & Light related to the Proposed Transaction, including appropriate narrative explanations describing the basis of such entries.

4. Other Considerations

39. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

40. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to the Public Utility Holding Company Act of 2005³⁶

³⁶ Public Utility Holding Company Act of 2005, 42 U.S.C. §§ 16451 - 16463 (2012).

(PUHCA 2005) are subject to the record-keeping and books and records requirements of PUHCA 2005.

41. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³⁷ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Florida Power & Light must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Florida Power & Light shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

³⁷ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). See 18 C.F.R. § 35.42 (2016).

(G) Florida Power & Light shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

(H) Florida Power & Light must submit its proposed final accounting for the Proposed Transaction within six months of the consummation of the Proposed Transaction. The accounting submission must provide all accounting entries made to the books and records of Florida Power & Light related to the Proposed Transaction, including appropriate narrative explanations describing the basis of such entries.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.