

123 FERC ¶ 61,291
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.

Carolina Power & Light Company and
Florida Power Corporation

Docket Nos. ER08-831-000
ER08-831-001

ORDER ACCEPTING IN PART AND REJECTING IN PART PROPOSED
REVISIONS TO OPEN ACCESS TRANSMISSION TARIFF

(Issued June 20, 2008)

1. Progress Energy, Inc. (Progress Energy), on behalf of its subsidiaries Carolina Power & Light Company (Carolina Power) and Florida Power Corporation (Florida Power) (collectively, Progress Energy), filed proposed modifications to Carolina Power and Florida Power's Joint Open Access Transmission Tariff (Joint OATT)¹ under section 205 of the Federal Power Act (FPA),² Order No. 890,³ and Order Nos. 2006, 2006-A, and 2006-B.⁴ As discussed below, we will accept in part and reject in part Progress Energy's filing, and will require a compliance filing.

¹ Progress Energy filed the proposed modifications on April 14, 2008, and corrected its filing on April 22, 2008. The Joint OATT has been filed as Florida Power Corporation FERC Electric Tariff, Third Revised Volume No. 6 and Carolina Power & Light Company FERC Electric Tariff, Fourth Revised Volume No. 3.

² 16 U.S.C. § 824d (2000 & Supp. V 2005).

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).

⁴ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

I. Background

2. Progress Energy states that the purpose of its filing is to: (1) propose modifications that are “consistent with or superior to” the Commission’s *pro forma* OATT and Order No. 890; (2) correct clerical errors resulting from two earlier filings;⁵ and (3) comply with Order Nos. 2006, 2006-A, and 2006-B by incorporating the Commission’s Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA) into the Joint OATT.

3. The filing would revise the following provisions of the Joint OATT: (1) section 18.4 as it relates to the schedule for determining available transfer capability (ATC); (2) sections 36-46 as they relate to the availability of Network Contract Demand Service; (3) inclusion of redispatch charges in the form of service agreements as set forth in Attachments A and A-1; (4) detailed lists of transmission customers in Attachments E, I, and S; (5) modification of the aggregate minimum power factor adjustment procedures in the Network Operating Agreement set forth in Attachment G; and (6) placement of the North American Electric Reliability Corporation (NERC) Transmission Loading Relief (TLR) Procedures in Attachment N and reservation of Attachment Q for future use. The filing also would delete the contents of Attachment O (Generator Interconnection Procedures) and replace those procedures with the SGIP and SGIA and eliminate Attachment O-1 (Request for Interconnection of Generation with CP&L Transmission System).

4. Progress Energy requests that the Commission make its proposed modifications effective June 10, 2008, except for its proposed elimination of Network Contract Demand Service, which it requests that the Commission make effective April 11, 2008.

II. Notice of Filing and Responsive Pleadings

5. Notice of Progress Energy’s April 14, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 27,533 (May 13, 2008), with interventions and protests due on or before May 5, 2008. Notice of Progress Energy’s April 22, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 24,274 (May 2, 2008), with interventions and protests due on or before May 13, 2008. On May 8, 2008, the Commission issued a notice stating that its *Combined Notice of Filings #1* published on May 13, 2008 included an erroneous comment date, and extended the comment date to May 19, 2008.

⁵ Progress Energy’s July 13, 2007 filing in Docket No. OA07-53-000 (Order No. 890 Compliance Filing) and its October 29, 2007 filing in Docket No. ER08-105-000 (Formula Rate Filing). The Commission accepted the Order No. 890 Compliance Filing, subject to conditions. *Progress Energy, Inc.*, 122 FERC ¶ 61,078 (2008). The Commission also accepted the Formula Rate Filing. *Florida Power Corp.*, Docket No. ER08-105-000 (Dec. 17, 2007) (unpublished letter order).

6. The Public Works Commission of the City of Fayetteville, North Carolina filed a timely motion to intervene. Seminole Electric Cooperative, Inc. (Seminole) and Florida Municipal Power Agency (Florida Municipal) filed timely motions to intervene and protests. Reedy Creek Improvement District (Reedy Creek) filed a motion for leave to intervene out of time and protest.

7. Progress Energy filed an answer to the protests. It requests that the Commission reject Reedy Creek's protest, and agrees to withdraw the proposed modification protested by Florida Municipal and Seminole. Reedy Creek filed an answer to Progress Energy's answer.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant Reedy Creek's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Progress Energy's answer, but only as to its withdrawal of the proposed revisions to Attachment G. We are not persuaded to accept the rest of Progress Energy's answer and will, therefore, reject it, as well as Reedy Creek's answer.

B. Substantive Matters

11. Order No. 890 allows transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890 if those provisions are consistent with or superior to the *pro forma* OATT.⁶ As discussed below, we will accept in part and reject in part Progress Energy's filing, effective June 14, 2008, which is after 60 days notice, and require Progress Energy to make a compliance filing, as discussed below.

⁶ Order No. 890 at P 135.

1. Regional Differences in Schedule for Determination of ATC

12. Order No. 890 required industry-wide consistency of all ATC components and certain definitions, data, and modeling assumptions and that each transmission provider include in Attachment C to its OATT detailed descriptions for calculating both firm and non-firm ATC.⁷ Progress Energy proposes to modify section 18.4 (Determination of ATC) of the Joint OATT to include provisions, which it states that the Commission has previously approved, to reflect regional differences in the submission of scheduled hourly service. It states that, in the past, some Florida Power customers have requested a start time of less than 30 minutes before the start of hourly service, and that it therefore seeks approval of a different schedule for ATC determination for hourly service in the Florida Power zone than in the Carolina Power zone.

13. We will accept Progress Energy's modification to section 18.4 of the Joint OATT. Section 18.4 of the *pro forma* OATT contemplates the use of "reasonable times" for the submission of schedules other than those provided for in the *pro forma*.⁸ We emphasize, however, that Progress Energy must implement the revised schedule deadline on a non-discriminatory basis.

2. Elimination of Network Contract Demand Service

a. Progress Energy Proposal

14. The Commission accepted Florida Power's proposal to offer Network Contract Demand Service shortly after issuance of Order No. 888.⁹ In that order, the Commission

⁷ *Id.* P 207, 210.

⁸ *See, e.g.*, Order No. 890-A, Appendix C, § 18.4 (Pro Forma Open Access Transmission Tariff) (setting forth specific timing requirements for the schedule for determination of ATC following receipt of a tendered schedule, but allowing for use of other "reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider.").

⁹ *See Florida Power Corp.*, 81 FERC ¶ 61,247 (1997) (*Florida Power*). In that order, the Commission conditionally accepted the addition of Network Contract Demand Service to Florida Power's OATT, directing Florida Power to further revise its OATT to "explicitly reflect [the] commitment that, . . . transmission customers' rates for network integration service and point-to-point service will not increase above what they would be absent the new network contract demand transmission service." *Id.* at 62,067. The Commission accepted Florida Power's compliance filing on February 25, 1998. The Commission found that with that change, Network Contract Demand Service would provide additional benefits beyond what Order No. 888 required.

explained that Network Contract Demand Service can be used as a substitute for network integration transmission service because it permits the integration of multiple resources. However, Network Contract Demand Service differs from *pro forma* OATT network service in the following respects: (1) the output of network resources is not limited to the amount of the customers' designated loads; (2) charges are assessed on the basis of the contract reservations at the point of delivery rather than customer loads at those points; (3) the service can be reassigned; (4) customers may use alternate points of delivery on a non-firm basis up to the amount of the reservation (headroom); (5) the transmission provider can use the service to make third-party sales; and (6) the minimum term is one day.¹⁰

15. Progress Energy now proposes to limit the availability of Network Contract Demand Service, as provided for in Joint OATT sections 36-46, for new service requests, effective April 11, 2008 (i.e., eliminate the service other than for customers with Network Contract Demand Service agreements in effect on or before April 11, 2008). It asserts that the service was not required by the Commission, but rather voluntarily offered by Florida Power, and therefore can be discontinued if it is no longer remunerative or compatible with current conditions.

16. Progress Energy states that it notified its existing Network Contract Demand Service customers of the proposed elimination of the service and that none of those customers objected. It also argues that there is good cause for the Commission to waive the 60-day notice period, reasoning that failure to do so would allow customers to defeat Progress Energy's objective of limiting Network Contract Demand Service by signing up during the notice period. Progress Energy states in support of its waiver request that the proposed change is not a rate increase, and otherwise satisfies the criteria for waiver of the 60-day notice requirement.

b. Reedy Creek Protest

17. Reedy Creek asserts that Progress Energy failed to provide adequate explanation or justification for the proposed revision. It protests Progress Energy's proposed elimination of Network Contract Demand Service, at least for Florida Power customers who might be eligible to take Network Contract Demand Service after exercising rollover rights under existing contracts. It states that it has a long-term, pre-OATT contract with Florida Power for firm (native load equivalent) transmission service and that it has the right to roll over its service under that contract to service under the Joint OATT when its contract expires. It asserts that the service it takes under its contract is similar to the

¹⁰ *Florida Power*, 81 FERC at 62,065.

Network Contract Demand Service now offered under the Joint OATT,¹¹ and that because of such similarities and the flexibility and other benefits of Network Contract Demand Service, Network Contract Demand Service is a potential option for Reedy Creek's rollover of its existing contract.¹²

18. Reedy Creek argues that the proposed revision would "take [the Network Contract Demand Service] option off the table,"¹³ because while "rolled over service is in many respects not 'new' service,"¹⁴ Florida Power might deny Reedy Creek's request to roll over to Network Contract Demand Service because Reedy Creek's rollover request could constitute a new service request. Reedy Creek thus objects to elimination of Network Contract Demand Service if it would affect Reedy Creek's ability to roll over to Network Contract Demand Service from its existing contract. It argues that, once Progress Energy offered such service under the Joint OATT, Reedy Creek acquired the right to roll over its existing service to Network Contract Demand Service and that it would be unjust and unreasonable to permit Progress Energy to abrogate that right through a unilateral filing. It proposes as an alternative that the Commission condition acceptance of Progress Energy's proposed revision to allow customers under existing, pre-OATT contracts with rollover rights to roll over their service to Network Contract Demand Service, if applicable.

19. Reedy Creek further argues that the proposed revision would be unduly discriminatory. It says that it is similarly situated to the three current Network Contract Demand Service customers as a result of the similarities between its current service and

¹¹ For example, Reedy Creek states that it can designate resources to serve a portion of its load using transmission service under the contract, and that a Network Contract Demand Service customer can designate the amount of load to be served by designated resources using transmission capacity reserved under Network Contract Demand Service. Reedy Creek Protest at 4 (citing Florida Power OATT § 36.8). Reedy Creek also states that it can now submit day-ahead schedules for resources it will use to serve load using transmission capacity under its contract, while Network Contract Demand Service customers submit daily transmission schedules to the transmission provider. *Id.* (citing Florida Power OATT § 36.9).

¹² Citing *Texas-New Mexico Power Co. v. El Paso Elec. Co.*, 108 FERC ¶ 63,045, at P 29 (2004) (rollover rights customer "is entitled to nothing more (or less) than the same type of transmission service it was receiving under the [expired contract]").

¹³ Reedy Creek Protest at 5.

¹⁴ *Id.* at 5-6 (citing *Exelon Generation Co., LLC v. Southwest Power Pool, Inc.*, 101 FERC ¶ 61,226, at P 39-40 (2002) (rollover requests generally not to be treated as new service requests)).

Network Contract Demand Service. It argues that if those customers were to seek to roll over their service upon expiration of their service agreements, Florida Power presumably would be obligated to allow those customers to do so. There is no legitimate basis for treating Reedy Creek's contract differently from existing Network Contract Demand Service agreements if Reedy Creek's contract also is eligible for rollover to service under the Joint OATT, i.e., the Joint OATT does not distinguish between rollover of pre-OATT contracts and existing OATT contracts.

c. Commission Determination

20. We accept Progress Energy's proposal to eliminate Network Contract Demand Service effective June 14, 2008, which is after 60 days notice.¹⁵ Progress Energy voluntarily offered Network Contract Demand Service. That service is not required by the Commission under Order Nos. 888 or 890. Therefore, Progress Energy is entitled to no longer make Network Contract Demand Service available (beyond its customers currently receiving that service). Further, Reedy Creek's protest is premature because it concedes that its rights under its existing contract have not yet terminated, and it has not sought or been denied a rollover of its service.

3. Inclusion of Redispatch Charges in Attachments A and A-1

21. Progress Energy proposes to add a new section 8.5 to Attachments A (Form of Service Agreement for Firm Point-to-Point Transmission Service) and A-1 (Form of Service Agreement for Resale, Reassignment, or Transfer of Firm Point-to-Point Transmission Service) of the Joint OATT, to include Redispatch Charges as a potential charge in future service agreements. Progress Energy notes that Order No. 890 states that the relevant reliability redispatch costs for posting purposes are those costs that the transmission provider invoices to network customers based on their load ratio share under section 33.3 of the Commission's *pro forma* OATT.¹⁶ It states that the addition of section 8.5 to Attachments A and A-1 would allow such costs to be invoiced in future service agreements.

22. We will reject this proposal. The Commission's *pro forma* OATT does not provide for inclusion of redispatch charges in Attachments A or A-1. Order No. 890

¹⁵ Progress Energy has provided no persuasive rationale for an earlier effective date.

¹⁶ Order No. 890 n. 707.

provides that agreements for point-to-point service that incorporate planning redispatch charges are non-conforming service agreements and must be filed with the Commission under FPA section 205.¹⁷

4. Removal of Detailed Lists of Transmission Customers

23. Progress Energy proposes to replace its detailed lists of transmission customers in Attachment E (Index of Point-to-Point Transmission Service Customers), Attachment I (Index of Network Integration Transmission Service Customers), and Attachment S (Index of Network Contract Demand Service) with references and links to Progress Energy's Electric Quarterly Report (EQR), filed quarterly with the Commission. Progress Energy states that maintaining the detailed customer lists would require frequent updates and would duplicate efforts by Progress Energy and Commission staff.

24. We will accept this proposal. We find that this revision is consistent with or superior to the *pro forma* OATT because, as Progress Energy states, referring interested parties to the companies' EQRs will reduce the burden on Progress Energy to update, and on Commission staff to review updates to the indices.

5. Network Operating Agreement

a. Progress Energy Proposal

25. Progress Energy's Joint OATT states that, for the Florida Power zone, "the Transmission Customer shall maintain a minimum aggregate power factor for transmission Points of Delivery . . . of 95% lagging at the time of the Transmission Provider's system peak for the months of June through September of each year."¹⁸ Progress Energy proposes to revise Attachment G (Network Operating Agreement) "to provide flexibility to adjust the minimum aggregate power factor at Transmission Delivery Points," noting that any change will be limited to no more than one percent in any calendar year and that any change will be applied on a non-discriminatory basis for all network transmission customers. Progress Energy's filing adds the following language:

¹⁷ *Id.* P 960 ("The service agreement shall specify the relevant congested transmission facilities and whether the transmission provider will provide planning redispatch, a mix of planning redispatch and conditional firm [service], or conditional firm [service] in order to provide the point-to-point transmission service. . . . We deem that any service agreement that incorporates planning redispatch . . . is a non-conforming agreement and must be filed by the transmission provider pursuant to section 205 of the FPA.").

¹⁸ *See, e.g.*, Florida Power OATT, Attachment G, §5.0.

By June 30 of each year the Transmission Provider will notify the Transmission Customer of any intent to raise the required minimum aggregate power factor The required minimum aggregate power factor will be raised no greater than 1% in any calendar year. The Transmission Customer and the Transmission Provider shall comply with the increase by December 31 of the next full calendar year following written notice of an increase in the required minimum aggregate power factor.¹⁹

b. Seminole and Florida Municipal Protests

26. Seminole and Florida Municipal protested this proposed revision, arguing that the change would facilitate unilateral changes to the power factor requirement and that such a modification is neither consistent with nor an improvement to the *pro forma* OATT. They also argue that Progress Energy failed to provide sufficient evidence, support, or explanation for the proposed change and that it represents an attempt to circumvent FPA section 205,²⁰ which would require power factor adjustments to be perfected in a filing made with the Commission. Florida Municipal states that, while it supports reasonable efforts to ensure reliability and welcomes the opportunity to work with Progress Energy to develop reasonable procedures, consistent with the FPA, to achieve that end, the Commission cannot find the proposed change to be consistent with or superior to the *pro forma* OATT.

27. Both Seminole and Florida Municipal note that they have communicated informally with Progress Energy regarding their concerns and that Progress Energy authorized each to state that all three parties will be working toward a mutually-acceptable resolution, with the expectation that such resolution would be reflected in an amended filing.

c. Progress Energy Answer

28. Progress Energy agrees to make a compliance filing to withdraw its proposed changes to Attachment G, stating that it, Florida Municipal, and Seminole are working toward a mutually-acceptable resolution of the Attachment G issue, and upon resolution of that issue, Progress Energy will make an appropriate filing.

¹⁹ *Id.*

²⁰ Florida Municipal notes that Progress Energy is not seeking in this proceeding to increase the aggregate minimum power factor, but simply seeking the option to do so at some point in the future.

d. Commission Determination

29. We will accept Progress Energy's withdrawal in its answer of the proposed revision to Attachment G, and reject the proposed revision. Progress Energy is hereby directed to submit a compliance filing, within 30 days of the date of this order, withdrawing the proposed revision to Attachment G.

6. NERC TLR Procedures

30. Progress Energy states that, in Docket Nos. OA07-53-001 and OA08-67-001, it proposed to revise Attachment N, which then contained the entire text of the NERC TLR Procedure-Eastern Interconnection, to incorporate by reference the current NERC TLR Procedure. It states that, in that filing, it renamed existing Attachment N "Procedures for Addressing Parallel Flows," and in the instant filing, it proposes to reserve Attachment Q for future use.

31. We will accept Progress Energy's proposal to reserve Attachment Q for future use, subject to the outcome of Docket Nos. OA07-53-000, OA07-53-001, and OA07-53-002.

7. Superseded Generator Interconnection Procedures and Order Nos. 2006, 2006-A, and 2006-B Compliance

32. Progress Energy proposes to delete the contents of Attachment O (Generator Interconnection Procedures) and Attachment O-1 (Request for Interconnection of Generation with CP&L Transmission System) because those attachments have been superseded by the Commission's Standard Large Generator Interconnection Procedures and Large Generator Interconnection Agreement that already appear in Attachment P to the Joint OATT. Attachments O and O-1 will be used for the SGIP and SGIA that it proposes to add to the Joint OATT in compliance with Order Nos. 2006, 2006-A, and 2006-B. Progress Energy states that Order Nos. 2006, 2006-A, and 2006-B require incorporation of the Commission's SGIP and SGIA into the Joint OATT.

33. We find that Progress Energy has satisfactorily complied with Order Nos. 2006, 2006-A and 2006-B, and will accept its proposal to delete superseded Attachments O and O-1 and add the Commission's SGIP and SGIA as new Attachment O.

8. Clerical Revisions

34. Progress Energy states that its Order No. 890 Compliance Filing resulted in various typographical errors. Specifically: (1) in section 29.1, it omitted an attachment designation and proposes now to add the letter "F" on First Revised Sheet No. 88 to correct the reference; (2) in section A.7.6 of Schedule 7, it notes that two sentences run together and proposes to add a period and capitalize the first word of the new sentence on

Second Revised Sheet No. 180; (3) in Attachment R, it included an incorrect title after re-designation of former Attachment K as Attachment R and proposes to delete “Transmission Planning Process” from First Revised Sheet No. 467.

35. Progress Energy also states that, when it created the Florida Power version of the Joint OATT, it inserted “Florida Power Corporation” in several places where “Carolina Power & Light Company” should have remained. It proposes to correct those references. It also proposes to eliminate various position titles in section 17.1 of the Joint OATT, but preserve the transmission provider name and address, according to the language of the *pro forma* OATT. Finally, it states that it duplicated two existing sheet numbers in its Formula Rate Filing and proposes to remedy the duplication by renumbering original sheets rather than the rate case sheets, noting that there are no changes to the text on any of the re-numbered sheets.

36. We accept Progress Energy’s proposed changes as described above.

The Commission orders:

(A) Progress Energy’s filing is hereby accepted in part and rejected in part, effective June 14, 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)

Kimberly D. Bose,
Secretary.