

127 FERC ¶ 61,077
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 24, 2009

In Reply Refer To:
Florida Power Corporation
Docket No. ER09-754-000

Florida Power Corporation
Attention: Antonia A. Frost, Esq.
1701 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20006

Reference: Amended Notice of Termination Provision for 1983 Agreement with
Seminole Electric Cooperative, Inc.

Dear Ms. Frost:

1. On February 25, 2009, Florida Power Corporation d/b/a Progress Energy Florida, Inc. (Progress) filed, pursuant to Section 205 of the Federal Power Act,¹ an amended notice of termination provision for a pre-Order No. 888² bundled agreement between Progress and Seminole Electric Cooperative, Inc. (Seminole) by which Progress provides

¹ 16 U.S.C. § 824d (2006).

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 343 U.S. App. D.C. 151, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1, 122 S. Ct. 1012, 152 L. Ed. 2d 47 (2002).

Seminole with power supply, transmission, and distribution services³ (1983 Agreement). The Commission conditionally accepts the amendment to the 1983 Agreement, to be effective December 31, 2008, subject to a further compliance filing.

2. The 1983 Agreement's existing notice of termination provision provides that either party may terminate the agreement by giving notice in any calendar year after calendar year 2007. The agreement would terminate at the end of the fifth calendar year after notice was given. At the end of 2008, Progress and Seminole determined that, although neither party wished to exercise the notice of termination at that time, they wished to preserve their rights to do so. Accordingly, on December 19, 2008, the parties executed a letter agreement to amend the notice of termination provision so that if either party gave notice in 2009, the 1983 Agreement would terminate at the end of 2013. Progress, citing *Central Hudson Electric & Gas Corp.*,⁴ requests waiver of the 60-day notice requirement so that the amended termination provision may become effective on December 31, 2008. Progress notes that the Commission grants waiver of the 60-day prior notice requirement for uncontested changes to non-rate terms and conditions.

3. Progress also requests that the Commission waive the formatting requirements of Order No. 614,⁵ as the change presented in this filing is minor, mutually negotiated, and to a non-rate term of the 1983 Agreement. Moreover, Progress contends that it would be administratively burdensome and costly for it to conform both the original agreement and the numerous amendments and settlements relating to the agreement into Order No. 614 format.

4. Notice of Progress's filing was published in the *Federal Register*, 74 Fed. Reg. 9812 (2009), with interventions and comments due no later than March 18, 2009. Seminole filed a timely motion to intervene and comments in support of the filing. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the motion to intervene makes Seminole a party to this proceeding.

³ The Agreement between Florida Power Corporation and Seminole Electric Cooperative, Inc. is for Supplemental Resale Service, Transmission/Distribution Service and Load Following Service and is dated October 13, 1983.

⁴ 60 FERC ¶ 61,106, at 61,338 (1992).

⁵ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats & Regs. ¶ 31,096 (2000).

⁶ 18 C.F.R. § 385.214 (2008).

5. Order No. 614 was enacted to streamline rate schedule sheet designation procedures for the Commission and the electric industry. Progress's rationale for requesting waiver mirrors the concerns addressed in Order No. 614. The compliance problems faced by Progress and Seminole's counsel are similar to the problems the Commission would face when attempting to review the agreement and associated documents. In Order No. 614, the Commission provided an exemption for agreements filed before the order was published, but the Commission does not see cause for other exemptions, and denies waiver here.

6. The Commission finds Progress's amendment to be just and reasonable and waives the 60-day notice requirement so that the amendment can become effective December 31, 2008.⁷ However, we deny Progress's requests to waive the requirements of Order No. 614, and therefore direct Progress to make a compliance filing, within 60 days of the date of this order, to fulfill the requirements of Order No. 614.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ *Central Hudson Electric & Gas Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992).