142 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

In re Progress Energy Florida, Inc. Docket No. IN13-1-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 16, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Progress Energy Florida, Inc. (PEF). This Order is in the public interest because it resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into whether PEF's sales of power within peninsular Florida at market-based rates violated a Commission order, PEF's Commission-approved tariffs, and the Commission's regulations. The investigation examined possible violations of the terms of the order granting PEF market-based rate authority, *Florida Power Corporation*, 79 FERC ¶ 61,385 (1997) (MBR Order). PEF agreed to pay a civil penalty of $80,000, make refunds with interest, implement remedial measures, and consent to compliance monitoring.

I. Background

2. PEF possesses market-based rate authority (MBRA), stemming from an application filed in May 1997 for authorization under Section 205 of the Federal Power Act (FPA) to sell electric energy and capacity at market-based rates, but only to unaffiliated entities outside of peninsular Florida. On June 26, 1997, the Commission granted this request under Section 205 of the FPA, but explicitly limited that MBRA to sales outside of peninsular Florida.[1] This limitation has continued through the

[1] *Florida Power Corporation*, 79 FERC ¶ 61,385 (1997) (MBR Order).

Commission's subsequent approvals of PEF's triennial market power updates.[2] It is also formalized in PEF's MBR Tariff.[3]

Investigation

3. Enforcement opened a non-public, preliminary investigation following the identification of certain issues by Enforcement's Division of Energy Market Oversight (DEMO) during its review of Electric Quarterly Reports (EQRs). DEMO referred the matter to the Division of Investigations (DOI) for further investigation upon its discovery that PEF's EQRs indicated that PEF had been engaged in unauthorized energy transactions at market-based rates (MBR) in peninsular Florida. DOI initiated its investigation to determine: (a) the extent of PEF's violations of its MBR authority; and (b) the impact of those violations.

4. Staff determined, based on its investigation, that between 2004 – 2010, PEF made 11 power sales within its control area at prices exceeding the maximum rate allowed by PEF's cost-based rate tariff. These 11 power sales resulted in gains to PEF of $5,693.58 in excess of the amounts allowed under PEF's cost-based rate tariff.

5. Staff determined that these 11 power sales violated several Commission requirements. First, they violated the Commission's 1997 order granting PEF MBR authority, but limiting that authority to areas outside of its control area in peninsular Florida. Second, they violated PEF's Commission-approved market-based and cost-based rate tariffs, which together prohibit such sales. PEF's market-based rate tariff explicitly prohibits MBR transactions within peninsular Florida, while PEF's cost-based rate tariff explicitly limits power sales within peninsular Florida to cost-of-service-based pricing, and prohibits sales above a specified maximum price. Third, they violated section 35.1(e) of the Commission's regulations, which requires PEF to abide by the rates provided for in its tariffs.

6. Staff also determined that, during the period 2004 -2010, PEF executed approximately 1,300 cost-based transactions within its control area that it incorrectly reported as market-based rate transactions in its EQRs. These sales were at prices that did not exceed the applicable cost-based rate caps. Because these sales involved power sold in PEF's control area, they could only have been made under PEF's cost-based rate tariff, and should have been reported as such.

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[2] *See Florida Power Corporation, et al.*, 113 FERC ¶ 61,131 (2005) and *Carolina Power & Light Company; Florida Power Corporation*, 128 FERC ¶ 61,053 (2009).

[3] *See* Section 4 of PEF's Market-Based Rate Tariff (a/k/a MR-1), entitled, "Prohibited Sales." ("Florida Power may not enter into Transactions under this Service Schedule . . . within Peninsular Florida.")

7. The Commission's regulations require that each public utility file an updated EQR each quarter, containing detailed transaction information for all jurisdictional power sales, whether executed under cost-based or market-based rate tariffs. *See* 18 C.F.R. § 35.10b (2012); *see also*, *Revised Public Utility Filing Requirements*, Order No. 2011, 99 FERC ¶ 61,107 (2002). Staff determined that by misreporting approximately 1,300 power sales, PEF violated these requirements.

II. Stipulation and Consent Agreement

8. Enforcement staff and PEF have resolved Enforcement's investigation by means of the attached Agreement.

9. PEF stipulates to the facts. PEF admits that it executed the transactions in question; that it executed 11 of the transactions within its control area at market-based rates without authorization and at rates exceeding the applicable cost-based rate caps; and that it inaccurately reported approximately 1,300 sales within its control area during the period 2004 – 2010.

10. PEF neither admits nor denies that the transactions in question constitute violations.

III. Determination of the Appropriate Sanctions and Remedies

11. In determining the appropriate remedy for these violations, Enforcement considered the factors described in the Revised Policy Statement on Enforcement.[4] Staff concluded that the violations, though numerous, were not the product of a purposeful refusal to comply with the geographic limits on PEF's market-based rate authority, or with the Commission's EQR requirements. Rather, the violations arose from a lack of adequate training and familiarity with the Commission's requirements. Upon learning of the violations, PEF undertook prompt remedial actions and complied with Enforcement's investigation.

12. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned, is consistent with the Revised Policy Statement on Penalty Guidelines,[5] and is in the public interest.

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[4] *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 (2008).

[5] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Progress Energy Florida, Inc.) Docket No. IN13-1-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Progress Energy Florida, Inc. (PEF) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into whether PEF's sales of power within peninsular Florida at market-based rates violated a Commission order, PEF's Commission-approved tariffs, and the Commission's regulations.

II. STIPULATED FACTS

Enforcement and PEF hereby stipulate and agree to the following:

A. Background

2. Florida Power Corporation, d/b/a Progress Energy Florida, Inc. (PEF) is an investor-owned, vertically-integrated public utility located in Florida. It is a subsidiary of Florida Progress Corporation, which in turn is a wholly-owned subsidiary of Progress Energy, Inc., a public utility holding company. On July 3, 2012, Progress Energy Inc. became a wholly-owned subsidiary of Duke Energy. PEF is engaged in the generation, purchase, transmission, distribution and sale of electricity. It maintains more than 35,000 miles of distribution and transmission lines and serves approximately 1.6 million customers in its 20,000 square mile service territory in central Florida.

3. PEF possesses market-based rate authority (MBRA), stemming from an application filed in May 1997 for authorization under Section 205 of the Federal Power Act (FPA) to sell electric energy and capacity at market-based rates, but only to unaffiliated entities outside of peninsular Florida. On June 26, 1997, the Commission granted this request under Section 205 of the FPA, but explicitly limited that MBRA to sales outside of peninsular Florida.[1] This limitation has continued through the

[1] *Florida Power Corporation*, 79 FERC ¶ 61,385 (1997) (MBR Order).

Commission's subsequent approvals of PEF's triennial market power updates.[2] It is also formalized in PEF's MBR Tariff.[3]

4. The investigation of PEF commenced following the identification of certain issues by Enforcement's Division of Energy Market Oversight (DEMO) during its review of Electric Quarterly Reports (EQRs). DEMO referred the matter to the Division of Investigations (DOI) for further investigation upon its discovery that PEF's EQRs indicated that PEF had been engaged in unauthorized energy transactions at market-based rates (MBR) in peninsular Florida. DOI initiated its investigation to determine (a) the extent of PEF's violations of its MBR authority; and (b) the impact of those violations.

B. Summary of Facts and Violation Findings

1. PEF Charged Counterparties Prices Exceeding the Maximum Allowed Rate under Its Cost-Based Rate Tariff

a. Facts

5. Between 2004 - 2010, PEF made 11 power sales in its control area to counterparties at prices exceeding the maximum allowed rate established in PEF's cost-based rate (CBR) tariff. The amount billed in excess of the CBR tariff's maximum allowed rate totaled $5,693.58.

b. Violation Findings

6. First, Enforcement finds that these 11 transactions violated the Commission's 1997 order granting PEF MBR authority outside its control area in peninsular Florida. Because these sales occurred in PEF's control area, PEF was required by the MBR Order to make them under its CBR tariff and abide by that tariff's maximum allowed rate. Instead, it sold the power at market rates provided for in its MBR tariff.

7. Second, Enforcement finds that PEF's 11 transactions violated PEF's Commission-approved MBR tariff and CBR tariff, which, like the Commission's directive in the MBR Order, prohibit PEF from making MBR sales in PEF's control area. PEF's MBR tariff explicitly prohibits MBR sales in the PEF control area, while PEF's CBR tariff requires prices based on cost-of-service and prohibits PEF from selling power

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[2] *See Florida Power Corporation, et al*., 113 FERC ¶ 61,131 (2005) and *Carolina Power & Light Company; Florida Power Corporation*, 128 FERC ¶ 61,053 (2009).

[3] *See* Section 4 of PEF's Market-Based Rate Tariff (a/k/a MR-1), entitled, "Prohibited Sales." ("Florida Power may not enter into Transactions under this Service Schedule . . . within Peninsular Florida.")

at prices exceeding a specified maximum price.

8. Third, Enforcement finds that the 11 transactions violated Commission regulations, which require PEF to abide by the rates provided for in PEF's tariffs. Specifically, section 35.1(e) of the Commission's regulations, 18 C.F.R. § 35.1(e) (2012), states: "No public utility shall, directly or indirectly, demand, charge, collect or receive any rate, charge or compensation for or in connection with electric service subject to the jurisdiction of the Commission, or impose any classification, practice, rule, regulation or contract with respect thereto, which is different from that provided in a rate schedule required to be on file with this Commission unless otherwise specifically provided by order of the Commission for good cause shown."

2. PEF Misreported Approximately 1,300 Transactions Occurring in Its Control Area as MBR Sales

a. Facts

9. In addition to the 11 transactions described above, PEF incorrectly reported in its EQRs approximately 1,300 transactions occurring in its control area as MBR sales. These 1,300 sales did not exceed PEF's maximum allowed rate under its CBR tariff, but were misidentified as market-based sales in PEF's EQRs. Because these sales involved power sold in PEF's control area, they could only have been made under the CBR tariff, and should have been reported as such. The approximately 1,300 sales occurred between 2004 - 2010.

b. Violation Findings

10. Enforcement finds that PEF's approximately 1,300 transactions that were misreported as MBR sales violated the Commission's EQR filing requirements, which require public utilities to file detailed transaction information covering all services it provides for each of the four calendar quarters of each year. Specifically, section 35.10b of the Commission's regulations, 18 C.F.R. § 35.10b (2012), directs each public utility to file an updated EQR covering all services it provides for each of the four calendar quarters of each year, prepared in conformance with the software and guidance posted on the Commission's website. Similarly, the Commission's Order No. 2001 requires all public utilities to file an EQR, in which they must summarize the contractual terms and conditions in all their jurisdictional service agreements (including MBR and CBR sales) and provide detailed transaction information for power sales during the most recent calendar quarter.[4] To date, pending resolution of this investigation, PEF has not re-submitted EQRs to reflect accurately the approximately 1,300 CBR transactions.

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[4] *See Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107 (2002).

C. Additional Factors Regarding PEF's Violations and Subsequent Corrective Actions

11. Enforcement found no evidence that PEF willfully refused to comply with the MBR Order or intended to profit unjustly from making prohibited MBR sales in peninsular Florida. In fact, after being informed of the possible violations in 2009 – 2010, PEF reviewed its transactions back to 2004 for similarly improper trades. PEF also implemented controls to ensure compliance both with the geographic limits of its MBRA and with the Commission's EQR requirements.

12. At the time of its violations, PEF had a FERC Compliance Program, which included a Chief FERC Compliance Officer, a FERC Compliance Steering Committee, training programs, and periodic internal compliance audits. PEF's compliance efforts, however, lacked adequate training on the geographic limitations of PEF's MBR authority. As a result, PEF's relevant personnel lacked sufficient familiarity with the Commission's requirements regarding PEF's MBR authority.

13. After learning of the violations and conducting its own internal review, PEF has taken substantial efforts to remedy its violations and prevent their recurrence, including:

- PEF immediately stopped making sales under its MBR tariff to customers who bought power with a delivery point in PEF's control area.

- PEF disciplined all real-time traders, day-ahead traders and the manager in the Power Unit responsible for the improper transactions and erroneous EQR reporting.

- PEF modified its trade capture system to ensure that all sales are associated with the proper contract and FERC tariff and are reported properly in the EQRs. PEF also expanded the role of the Power Trading Desk in the processes used to validate and prepare the data submitted in EQRs.

- PEF modified its pre-transaction checks and after-the-fact validations to ensure compliance with MBR and CBR authority and accurate transaction record keeping.

- PEF implemented formal training for all relevant personnel regarding the rules and restrictions related to PEF's CBR and MBR tariffs.

14. On April 20, 2011, PEF refunded $1,806.46, the difference between the gross revenues it received and the cost-based rate for four of the eleven improper MBR transactions. In February 2012, consistent with Commission precedent, PEF refunded an additional $3,947.96, reflecting the time value of the gross revenues for those transactions.

III. REMEDIES AND SANCTIONS

15. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, PEF agrees with the facts as stipulated in Section II of this Agreement and neither admits nor denies the violations described therein. PEF further agrees to take the following actions.

A. Civil Penalty

16. PEF shall pay a civil penalty of $80,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below. PEF shall not pass through the civil penalty, directly or indirectly, to any present or future PEF customers or ratepayers or any customers or ratepayers of its affiliates.

B. Refunds

17. To the extent it has not already done so, PEF shall complete issuance of all refunds, with interest calculated pursuant to the Commission's regulations at 18 C.F.R. § 35.19a, within ten days after the Effective Date of this Agreement, as defined below. Within ten days of the refund date, PEF shall submit confirmation to Enforcement staff regarding the completion of all refund payments.

C. Compliance Training

18. PEF shall implement enhancements to its compliance program including, at minimum, annual training on the scope, limitations, and reporting and other obligations associated with both cost-based and market-based rate transactions. This training shall be mandatory for all PEF employees who negotiate or execute sales of electric energy at cost-based or market-based rates.

D. Corrected EQRs

19. To the extent it has not already done so, PEF shall submit corrected EQRs for all quarters from 2004 – 2010 in which PEF's prior reports inaccurately identified cost-based rate transactions as market-based rate transactions. These corrected EQRs shall be submitted by the earliest of either the 30th day following the Effective Date of this Agreement or December 31, 2012.

Compliance Monitoring

20. PEF shall make two semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than six months after the Effective Date of this Agreement and the second report shall be submitted no later than one year after the Effective Date of this Agreement. Each compliance report shall: (a) advise Enforcement whether violations by PEF have occurred related to PEF's MBR authority or the Commission's EQR filing requirements; (b) provide a detailed update of all compliance training administered and compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning PEF's MBR authority and the Commission's EQR filing requirements, and a list of the personnel that have received such training and when the training took place; (c) note any further changes to processes, procedures, or systems involved in the preparation and submission of EQRs; and (d) include an affidavit executed by an officer of PEF that the compliance reports are true and accurate. The first semi-annual report shall also include confirmation that the civil penalty and refunds (with interest) have been paid. Upon request by Enforcement, PEF shall provide to Enforcement documentation to support its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require PEF to submit semi-annual reports for one additional year.

IV. TERMS

21. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to PEF and any affiliated entity, and their agents, officers, directors and employees, both past and present.

22. Commission approval of this Agreement in its entirety and without material modification shall release PEF and forever bar the Commission from holding PEF, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

23. PEF's failure to: (a) make a timely civil penalty payment; (b) comply with the compliance program and monitoring requirements specified herein; or (c) comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, and may subject PEF to additional action under the enforcement and penalty provisions of the FPA.

24. If PEF does not timely make the civil penalty payment, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations

at 18 C.F.R. § 35.19a (2012) from the date those payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

25. The Agreement binds PEF and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on PEF, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

26. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer, or promise of any kind by any member, employee, officer, director, agent, or representative of Enforcement or PEF has been made to induce the signatories or any other party to enter into the Agreement.

27. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor PEF shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and PEF.

28. In connection with the payment of the civil penalty provided for herein, PEF agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316(a) of the FPA, 16 U.S.C. § 825*o*(a). PEF waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

29. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

30. The undersigned representative of PEF affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

31. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

Norman C. Bay, Director
Office of Enforcement
Federal Energy Regulatory Commission

Dec. 21, 2012
Date

Alexander J Weintraub
Vice President Fuels and System Optimization
Florida Power Corporation d/b/a Progress Energy Florida, Inc.

December 4th 2012
Date