

143 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas, LLC
Florida Power Corporation

Docket No. ER13-1105-001

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 24, 2013)

1. In this order, we accept for filing Florida Power Corporation's (Florida Power) proposed revisions to Schedule 10-A of its Open Access Transmission Tariff (OATT),¹ seeking recovery of 50 percent of its construction work in progress (CWIP) costs associated with 21 additional transmission expansion projects in the rate base of its formula transmission rate, and suspend them for a nominal period, to become effective May 15, 2013, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Florida Power states that it is a subsidiary of Duke Energy Corporation and shares a Joint Open Access Transmission Tariff (Joint OATT) with Duke Energy Carolinas, LLC and Carolina Power & Light Company.² Florida Power states that it implemented its formula rate effective January 1, 2008.³ Florida Power notes that its formula rate

¹ Designated as Schedule 10-A4, Accounting for CWIP in Rate Base – OATT Administration, under Tariff Volume No. 4, Duke Energy Carolinas, LLC Joint Open Access Transmission Tariff, Schedule 10-A, Network Integration Transmission Service - FPC Zone.

² See Florida Power March 15, 2013 Transmittal, Docket No. ER13-1105-000, at 2 n.3 (citing *Duke Energy Corp.*, 139 FERC ¶ 61,193 (2012)) (Florida Power March 15, 2013 Transmittal).

³ Florida Power March 15, 2013 Transmittal at 2 (citing *Florida Power Corp.*, Docket No. ER08-105-000 (Dec. 17, 2007) (unpublished letter order)).

includes 50 percent of CWIP for 109 transmission projects as well as a transmission expansion needed to support a new nuclear power plant in rate base.⁴

3. On March 15, 2013, as amended on March 28, 2013,⁵ pursuant to section 205 of the Federal Power Act,⁶ Florida Power submitted a revised Schedule 10-A to its OATT proposing to include 50 percent of CWIP associated with 21 additional transmission expansion projects with an estimated total cost of \$202.6 million.⁷ The filing affects the zonal rate in the Florida Power zone.⁸ Florida Power asserts that the transmission facilities for which it seeks 50 percent CWIP recovery are necessary to ensure and enhance reliability, mitigate congestion, and meet customer growth.⁹ Florida Power explains that customer growth in Florida for the period of 2012 to 2021 is expected to increase an average 1.5 percent per year, which is slightly more than the 10-year historical average of 1.2 percent.¹⁰ Florida Power states that this growth will reduce transmission capacity on Florida Power's transmission system, as well as other Florida systems, and will create congestion, primarily in the central Florida region.¹¹

4. Florida Power states that its transmission expansion program is supported by extensive and comprehensive individual planning and regional transmission planning processes.¹² Florida Power asserts that the Florida Reliability Coordinating Council's (FRCC) regional planning process provides a necessary and important vehicle to coordinate planning of all FRCC members and to ensure an open and fair planning

⁴ Florida Power March 15, 2013 Transmittal at 2.

⁵ On March 15, 2013, Florida Power submitted its filing in Docket No. ER13-1105-000. On March 28, 2013, in Docket No. ER13-1105-001, Florida Power resubmitted its filing to correct an administrative error.

⁶ 16 U.S.C. § 824d (2006).

⁷ See Florida Power March 15, 2013 Transmittal at 2-3.

⁸ See *Duke Energy Corp.*, 139 FERC ¶ 61,193 at P10 (explaining that, under the Joint OATT, transmission customers are only charged the zonal rate for the zone where the transaction sinks).

⁹ Florida Power March 15, 2013 Transmittal at 2.

¹⁰ *Id.* at 2 (citing Progress Energy Florida 10-Year-Site Plan, *available at*: <http://www.floridapsc.com/utilities/electricgas/10yrsiteplans>).

¹¹ *Id.*

¹² See *id.* at 3.

process in which all stakeholders' interests are evaluated and considered. Florida Power explains that, as a result of its participation in the FRCC regional planning process, it has complete and timely access to FRCC region-wide data in its planning processes and the FRCC transmission owners develop and implement transmission investments that result in a cohesive and integrated transmission grid for the FRCC region.¹³ Florida Power states that, for these reasons, the Commission can be confident that the additional transmission projects for 50 percent CWIP recovery result from prudent planning, including the assessment of alternative strategies and consideration of comprehensive information on the Florida electric system, that maintain reliability and a least-cost power supply system.¹⁴ Florida Power adds that the request for 50 percent CWIP recovery of these 21 additional transmission expansion projects is consistent with the Commission's general CWIP policy that seeks to balance investor and customer interests.¹⁵

5. In accordance with 18 C.F.R. § 35.25(f), Florida Power proposes accounting procedures to ensure that: (1) CWIP balances will be calculated accurately and that there will be no double recovery of CWIP and the allowance for funds used during construction for each of the specified additional transmission projects; and (2) customers will not be charged for any corresponding allowance for funds used during construction capitalized as a result of different accounting or rate making treatments.¹⁶ Florida Power explains that its proposed accounting procedures are included in Schedule 10-A.4 of the OATT and are similar to other accounting procedures accepted by the Commission.¹⁷

6. Florida Power requests that the Commission accept its request for 50 percent CWIP recovery in the formula rate for the 21 additional transmission projects effective

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 22 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007)).

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4 (citing *Carolina Power and Light Co.*, Docket Nos. ER08-889-000 and ER08-889-001 (June 27, 2008) (unpublished letter order); *Northeast Utils. Serv. Co.*, 114 FERC ¶ 61,089 (2006); *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004), *order on reh'g*, 111 FERC ¶ 61,266 (2005); *United Illuminating Co.*, Docket Nos. ER05-1049-000, *et al.* (letter order)).

May 15, 2013.¹⁸ Florida Power explains that this effective date coincides with its 2013 Formula Rate Annual Update.

II. Notice of Filing and Responsive Pleadings

7. Notice of Florida Power's filings was published in the *Federal Register*, 78 Fed. Reg. 17,651 and 78 Fed. Reg. 20,902 (2013), with interventions and protests due on or before April 18, 2013. Reedy Creek Improvement District, Seminole Electric Cooperative, Inc. (Seminole) and Florida Municipal Power Agency (FMPA) filed timely motions to intervene. Seminole filed comments, and FMPA filed a protest.

8. While FMPA is not opposed to a modification of the formula rate to include CWIP associated with additional eligible facilities, it requests that the Commission and Florida Power's customers have the opportunity to verify that the facilities Florida Power has identified are actually eligible for CWIP treatment.¹⁹ FMPA explains that the eligibility of transmission projects for CWIP treatment is a fact-specific inquiry that considers, amongst other things: (1) that the facilities must be network facilities and may not include facilities that are, or should be, directly assigned to specific customer; and (2) projects that have been cancelled in whole or in part are ineligible for CWIP treatment.²⁰ FMPA acknowledges a history of cooperation between Florida Power and its customers regarding the formula rate and the inclusion of projects for CWIP treatment.²¹ However, FMPA states that, due to time limitations, excessive redaction of information asserted by Florida Power to be CEII, and the need for a special confidentiality agreement between Florida Power and FMPA that addresses the unique requirements of Florida's open government laws, it has not yet been able to verify that each of the 21 additional transmission projects is eligible for CWIP treatment.²²

9. Seminole states that it has conferred with Florida Power regarding the 21 additional transmission projects at issue and has forwarded data requests to Florida Power regarding these projects.²³ Seminole does not contest Florida Power's right to seek CWIP recovery of qualified facilities but seeks to determine via its data requests whether

¹⁸ *Id.* at 4; Florida Power March 28, 2013 Transmittal, Docket No. ER13-1105-001 at 1.

¹⁹ FMPA Protest at 4.

²⁰ *Id.* at 5.

²¹ *Id.*

²² *Id.* at 1-2.

²³ Seminole Comments at 3.

the 21 projects are appropriate candidates for CWIP recovery and whether proposed Schedule 10-A.4 is sufficient to protect customers against double recovery related to these facilities.²⁴

10. Both FMPA and Seminole request that the Commission suspend this filing, establish a refund effective date and set this proceeding for hearing to be held in abeyance to enable Florida Power and the intervenors to engage in settlement discussions before a Commission administrative law judge.²⁵

III. Discussion

A. Procedural Matters

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

B. Hearing and Settlement Judge Procedures

12. In Order No. 679, the Commission outlined its policy with respect to allowing CWIP balances in rate base.²⁶ The Commission stated that, in the typical case, allowing 50 percent of CWIP in rate base balances investor and consumer interests by permitting investors recovery of some construction costs on a current basis while also protecting consumers against full rate recovery before a particular facility is placed into service.²⁷ However, we agree with FPMA and Seminole that customers should have the opportunity to review the projects that Florida Power seeks to be afforded this rate treatment. Florida Power's proposed tariff revisions raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. Our preliminary analysis indicates that Florida Power's proposed tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Florida Power's proposed tariff revisions for filing, suspend them for a nominal period, make them effective May 15, 2013, subject to refund, and set them for hearing and settlement judge procedures.

²⁴ *Id.*

²⁵ *Id.*; FMPA Protest at 5.

²⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 22.

²⁷ *Id.*

14. With respect to Seminole's concern over the adequacy of Florida Power's accounting procedures for CWIP in rate base, we find that they conform to the requirements of section 35.15 of the Commission's regulations and will ensure that customers will be protected against double recovery related to these facilities. Therefore, we see no need to set the proposed accounting procedures for hearing and settlement procedures.

15. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Florida Power's proposed tariff revisions to Schedule 10-A are hereby accepted for filing and suspended for a nominal period, to become effective May 15, 2013, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Florida Power's revised Schedule 10-A to its OATT to include an additional 21 transmission expansion projects for CWIP recovery in its OATT formula rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

²⁸ 18 C.F.R. § 385.603 (2012).

²⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.