

129 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, and Philip D. Moeller.

Florida Blackout

Docket No. IN08-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 8, 2009)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), the North American Electric Reliability Corporation (NERC) and Florida Power and Light Company (FPL). This order is in the public interest because it resolves on fair and reasonable terms the investigation as to FPL conducted by Enforcement, the Commission's Office of Electric Reliability and NERC into possible violations of Reliability Standards associated with the Bulk Electric System (BES) load loss event in the State of Florida on February 26, 2008, more commonly referred to as the "Florida Blackout."¹

2. FPL has agreed to pay a civil penalty of \$25,000,000. \$10,000,000 shall be paid each to the United States Treasury and NERC and \$5,000,000 may be spent, subject to Commission staff and NERC staff approval, by FPL on BES reliability enhancement measures that go above and beyond the Agreement's reliability compliance commitments or what the Reliability Standards require. Moreover, as stated in the Agreement, FPL is adding significant additional protection redundancy at several transmission stations. Also, in the Agreement, FPL has committed to undertake numerous specific reliability enhancement measures (apart from the \$5,000,000 in expenditures noted above) including: enhancing its compliance program; enhancing training and certification requirements for operating employees; improving its frequency response; updating emergency operating procedures; providing additional staffing for BES analysis; and ensuring that specified equipment is properly inspected and maintained. FPL has also agreed to make quarterly progress reports to Enforcement and NERC and conduct an independent audit after one year following the Agreement to ensure compliance with the Agreement. These compliance and mitigation measures are in addition to numerous

¹ In *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007), P 75, the Commission stated that it would rely, at least for an initial period, on the NERC definition of "bulk electric system" to define the scope of facilities subject to the Reliability Standards.

actions taken by FPL on its own initiative after the event and during the course of staff's investigation.

Background

3. FPL is a public utility with transmission, distribution, and generation operations serving approximately 4.5 million customer accounts in Florida. Among other things, FPL is registered as Balancing Authority, Planning Authority, Transmission Owner, Transmission Operator, and Transmission Service Provider by NERC and is responsible for compliance with the Reliability Standards associated with those functions.

4. Florida Reliability Coordinating Council (FRCC) is a not-for-profit company incorporated in Florida. Along with serving as a "Regional Entity" responsible for proposing and enforcing Reliability Standards within its region, FRCC also performs various member services including functioning as the Reliability Coordinator (RC) under the Reliability Standards. As an RC, FRCC has the responsibility and authority for the reliable operation of the BES within FRCC and compliance with associated Reliability Standards. FRCC performs this function through a contract with FPL, by which FPL executes the RC function through FPL control room personnel. FPL also holds a substantial share of the membership of FRCC with respect to the member services functions.

5. On February 26, 2008, portions of the lower two-thirds of the State of Florida experienced a loss of load event more commonly referred to as the Florida Blackout. The event led to the loss of 22 transmission lines, 4,300 MW of generation, and 3,650 MW of customer service or load. In response to the event, the Commission publicly announced a formal non-public investigation into the cause and events surrounding the blackout.²

6. The event originated at the Flagami Substation on the FPL system when a field engineer was diagnosing a piece of BES transmission equipment that had previously malfunctioned. Specifically, on February 23, 2008 and February 24, 2008, when the FPL Load Dispatcher on duty in the FPL control center in Miami attempted to initiate separating one of the shunt reactors (a voltage control device) at Flagami from the 138kV bus by opening the associated circuit switcher, a lock-out relay for the reactor tripped the associated breaker. The relays were reset and the circuit switcher was tagged "emergency use only."

7. On February 26, 2008, a FPL Protection and Control (P&C) Engineer was sent to test the circuit switcher at Flagami. Once there, he disabled the primary protection and the breaker failure protection (considered the secondary level of protection). The P&C Engineer did not notify the Load Dispatcher on duty in the FPL control center that he had

² *Order of Non-Public, Formal Investigation*, 122 FERC ¶ 61,244 (2008).

disabled the second level of protection and neither the System Operator on duty in the FPL Control Center nor the RC were aware that any protection had been disabled.

8. At the request of the P&C Engineer, the Load Dispatcher then opened the circuit switcher, and due to the failure of the circuit switcher's bottle interrupter, a fault on the system occurred. The fault caused a 17-19 second arc which spread to the adjacent shunt reactor's circuit switcher, which in turn caused a three phase fault on the 138 kV system. Because the primary and secondary levels of protection were disabled, the fault was cleared remotely in approximately 1.7 seconds. This resulted in significant frequency swings, voltage excursions and tripping of transmission and generation around portions of the lower two-thirds of Florida.

Applicable Reliability Standards

9. On March 16, 2007, the Commission approved the first Reliability Standards,³ submitted by NERC, pursuant to section 215 of the Federal Power Act.⁴ Those categories of Reliability Standards applicable to the Agreement are described below:

10. The Balancing (BAL) group of Reliability Standards address balancing resources and demand to maintain interconnection frequency within prescribed limits.⁵

11. The Communications (COM) group of Reliability Standards require adequate internal and external telecommunications facilities and that these communication facilities be staffed and available to address real-time emergencies and that operating personnel carry out effective communications.⁶

12. The Emergency Preparedness and Operations (EOP) group of Reliability Standards address preparation for emergencies, necessary actions during emergencies and system restoration and reporting following disturbances.⁷

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007).

⁴ 16 U.S.C. § 824o (2006).

⁵ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, P 305 (2007).

⁶ *Id.* P 472.

⁷ *Id.* P 541.

13. The Personnel Performance, Training and Qualifications (PER) group of Reliability Standards are intended to ensure the retention of suitably trained and qualified personnel in positions that can impact the reliable operation of the BES.⁸

14. Protection and Control (PRC) group of Reliability Standards cover a wide range of topics related to the protection and control of power systems.⁹

15. The Transmission Operations (TOP) group of Reliability Standards ensure that the transmission system is operated within operating limits and specifically cover the responsibilities and decision-making authority for reliable operations, requirements for operations planning, planned outage coordination, real-time operations, provision of operating data, monitoring of system conditions, reporting of operating limit violations and actions to mitigate such violations.¹⁰

16. The Transmission Planning (TPL) group of Reliability Standards ensure that the transmission system is planned and designed to meet an appropriate and specific set of reliability criteria.¹¹

Stipulation and Consent Agreement

17. Enforcement and NERC allege that FPL violated Reliability Standards in the BAL, COM, EOP, PER, PRC, TOP, and TPL areas. FPL does not admit that its actions constituted violations of the Reliability Standards.

18. The Agreement provides for a substantial civil penalty in the amount of \$25,000,000 that reflects the seriousness and nature of the event and yet takes account of efforts to remedy the violations. This amount is to be paid in a manner that reflects the dual nature of this investigation which both the Commission and NERC conducted and in recognition that some amount of expenditure above the requirements of the Reliability Standards on additional reliability measures is in the public interest. Accordingly, FPL shall pay \$10,000,000 each to the United States Treasury and NERC and \$5,000,000 may be spent, subject to Commission staff and NERC staff approval, by FPL on Bulk Electric System (BES) reliability enhancement measures that go above and beyond the reliability compliance commitments that are also a significant feature of the Agreement or what the Reliability Standards require. If FPL has not spent or committed to spend for approved projects all of the \$5,000,000 amount within three years of the Effective Date of the

⁸ *Id.* P 1324.

⁹ *Id.* P 1418.

¹⁰ *Id.* P 1567.

¹¹ *Id.* P 1683.

Agreement, the amount or any remainder of the amount shall be paid and divided equally between the U.S. Treasury and NERC. Also, except as required by law, this amount may not be deducted or otherwise treated favorably to FPL for tax purposes nor recovered in rates by FPL.

19. The Agreement also provides for substantial, wide ranging, and specific reliability enhancement measures (apart from the \$5,000,000 in expenditures noted above) that are a significant element to the resolution of this matter. These include FPL committing to: enhance its overall electric reliability compliance program; enhance training and certification requirements for operating employees; improve its system's frequency response performance; update its emergency operating procedures; provide additional staffing for BES analysis; and ensure that specified equipment is properly inspected and maintained. FPL has also agreed to make quarterly progress reports to Enforcement and NERC and conduct an independent audit after one year following the Agreement to ensure compliance with the Agreement. These compliance and mitigation measures are in addition to numerous actions taken by FPL on its own initiative after the event and during the course of staff's investigation.

20. In assessing the appropriate remedy, staff considered the serious nature of the event and its impact on the BES. As the Agreement stipulates, this was a serious outage. On the other hand, staff also considered that FPL's actions were neither intentional nor fraudulent and that FPL demonstrated exemplary cooperation throughout the investigation. Also, FPL implemented voluntarily many reliability enhancement measures immediately following the event and throughout the investigation.

Determination of the Appropriate Sanctions and Remedies

21. We conclude that the penalty set forth in the Agreement is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and seriousness of FPL's alleged conduct and the event as well as the efforts taken by FPL to remedy the alleged violations, recognizing the company specific considerations as stated above and in the attached Agreement. We also conclude that, under the specific circumstances of this case, the payment provisions relating to the civil penalty reflect a balanced and sensible approach, including a portion to be paid to NERC and the allowance of a limited portion of the civil penalty to be spent by FPL to provide additional reliability protections on the FPL portion of the BES. We also conclude that the reliability enhancement measures set forth in the Agreement are substantial, relate directly to the alleged violations, and will enhance BES reliability and are therefore also fair and in the public interest.

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The Commission orders:

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

By the Commission. Commissioners Spitzer and Moeller concurring with separate statements attached.

Commissioner Kelly is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

2008 Florida Blackout

Docket No. IN08-5-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”), staff of the North American Electric Reliability Corporation (“NERC”) (collectively “staff”), and Florida Power and Light Company (“FPL”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve a non-public investigation conducted by Enforcement, staff of the Office of Electric Reliability of the Commission and NERC, pursuant to Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2008), and NERC’s Compliance Monitoring and Enforcement Program into alleged violations of the Reliability Standards by FPL surrounding a loss of load event in Florida on February 26, 2008.

II. STIPULATED FACTS

Enforcement, NERC and FPL hereby stipulate to the following:

2. On February 26, 2008, portions of the lower two-thirds of the Bulk Electric System (“BES”) in peninsular Florida experienced a loss of service to electric customers. The event led to the loss of 22 transmission lines, 4,300 MW of generation, and 3,650 MW of customer service or load. Approximately 596,000 FPL customer accounts and 354,000 non-FPL customer accounts were out of service, representing approximately 8% of Florida electric customer accounts. In response to the event, the Commission publicly opened a formal investigation into the cause and events surrounding the blackout. *Order of Non-Public, Formal Investigation*, 122 FERC ¶ 61,244 (2008). NERC also opened a parallel Compliance Violation Investigation (NERC0002CVI).

3. FPL is a public utility with transmission, distribution, and generation operations serving approximately 4.5 million customer accounts in Florida.

4. Based on industry benchmarking studies for the time period January 1, 2006 through December 31, 2008, FPL’s distribution reliability, as measured by “SAIDI,” ranked in the top decile of performance.

5. The FPL Control Center is located in western Miami. It has two levels, one which includes consoles for five “Load Dispatchers,” and another level which includes consoles

for the “System Operator” and “Reliability Coordinator.” At the time of the event, Load Dispatchers were responsible for monitoring a specific region and ensuring that proper switching orders and clearances are issued and executed. They are the main contact with Protection and Control (“P&C”) Field Engineers. A Readiness Review conducted by the Florida Reliability Coordinating Council (“FRCC”) and NERC in March 2004 included a recommendation relating to the Load Dispatchers and System Operator oversight. FPL took actions to address these recommendations in June 2004. A Readiness Review conducted by FRCC and NERC during April 2007 determined that “FPL has taken appropriate actions to implement and satisfactorily resolve all of the recommendations from the 2004 report” and did not identify Load Dispatcher certification as an area of concern. FPL did not require its Load Dispatchers to be NERC certified. The System Operator is responsible for supervising the Load Dispatchers and is charged with directing and implementing actions to ensure the stable and reliable operation of the FPL System. While the System Operator cannot effectively read the Load Dispatchers’ monitoring screens from the System Operator desk and at the time of the event did not receive the same alarms on his monitoring screens as the Load Dispatchers, the System Operator can access the same information that is available to the Load Dispatchers from his station. FPL requires its System Operators to be NERC certified. At times, including February 26, 2008, System Operators also fulfill the function of “Reliability Coordinator,” which is responsible for overseeing reliability in the entire FRCC region.

6. FPL P&C Field Engineers are responsible for conducting maintenance and troubleshooting on substation equipment. FPL P&C Field Engineers are highly skilled, experienced and trained and hold four year engineering degrees.

7. The Flagami Substation is located in western Miami and is centrally located in the southern portion of the FPL transmission system. The 230 kV/138 kV station contains two 138 kV shunt reactors, which are used to control voltage. Each shunt reactor is connected to the 138kV bus by a circuit switcher, which consists of a Sulfur Hexafluoride (SF₆) gas filled high speed bottle interrupter in series with a low speed air break disconnect switch. The circuit switchers were installed by FPL in 1987 and 1998.

8. In 2001, FPL studied the effects of a fault at Flagami. Based on the results, it added redundant primary bus differential relay protection at Flagami, but determined that it was not necessary to add redundancy around the autotransformer at Flagami.

9. On February 23, 2008 and February 24, 2008, when the Load Dispatcher on duty attempted to initiate separating one of the shunt reactors at Flagami from the 138kV bus by opening the associated circuit switcher, a lock-out relay for the reactor tripped the associated breaker. The relays were reset and the circuit switcher was tagged “emergency use only.”

10. On February 26, 2008, a P&C Field Engineer was sent to test the circuit switcher at Flagami. Once there, he disabled the primary protection and the breaker failure protection (considered the secondary level of protection). At this point, the shunt reactor and its associated circuit switcher were operating live on the system with two levels of protection disabled for approximately 37 minutes.

11. The P&C Engineer communicated the disabling of the breaker trip for the primary protection for the shunt reactors to the Load Dispatcher; the Load Dispatcher, when interviewed by staff, indicated that he did not understand that any protection had been disabled. The Field Engineer did not inform the Load Dispatcher that he had disabled the secondary level of protection. The Load Dispatcher did not request authorization for the removal of any levels of protection from the System Operator and did not communicate that one level of protection had been disabled to the System Operator. The System Operator's monitoring equipment did not independently alert him to the disabling of protection by the P&C Field Engineer. The System Operator, unaware of the disabling of protection, did not conduct an assessment of the changed system configurations or take action within 30 minutes in response to the changed condition.

12. The P&C Field Engineer performed a visual inspection of the bottle interrupter per FPL policy, which showed the presence of gas (which normally indicates proper functioning), prior to working on the circuit switcher. At the request of the P&C Field Engineer, the Load Dispatcher then opened the circuit switcher, and due to the failure of the circuit switcher's bottle interrupter, a fault on the system occurred. Subsequent forensic evaluation showed that the metal contacts within the bottle interrupter were fused into in a closed condition due to a connecting rod failure. Also the semaphore indicating low gas in the bottle interrupter had failed, giving a false indication of the presence of gas (and thereby giving a false indication that it was functioning properly) during the P&C Engineer's visual inspection.

13. The fault caused a 17-19 second arc which spread to the adjacent shunt reactor's circuit switcher causing a three phase fault on the 138 kV system. Because the primary and secondary levels of protection were disabled, the fault was cleared remotely in approximately 1.7 seconds. This resulted in significant frequency swings, voltage excursions and tripping of transmission and generation around portions of the lower two-thirds of Florida.

14. Immediately after the fault, the System Operator/Reliability Coordinator assigned the Reliability Coordinator responsibilities to a NERC-certified System Operator present in the Control Center, but not involved in operations that day. The System Operator then focused on restoring the FPL system. At the time of the event, there were four operators NERC-certified at the Reliability Coordinator level in the Control Center.

15. The System Operator then questioned the Load Dispatcher about the problem at Flagami. The Load Dispatcher reported that there had been a reactor fire at Flagami. After noting that Flagami was de-energized, the System Operator ordered all breakers at Flagami open.
16. Of affected firm customers, 56% were restored to service within one hour, 84% were restored within two hours, and all non-interruptible customers were restored within three hours.
17. While not the most significant event the BES has experienced, this was a serious outage.
18. FPL's action were neither intentional nor fraudulent.
19. FPL demonstrated exemplary cooperation throughout the investigation.
20. FPL implemented reliability enhancement measures immediately after the event and throughout the investigation.
21. As part of FPL's ongoing reliability improvements to the system, FPL: (a) is implementing protection redundancy for new transmission substations above 100 kV with in-service dates of 2010 and beyond that is intended to ensure single-points-of-failure on protection systems would not result in N-1 transmission system contingencies from evolving into more severe or extreme events; (b) is adding high speed redundant protection on the autotransformers at Flagami Substation; (c) is implementing protection redundancy for the autotransformers at eight substations that have similar bus arrangements as Flagami (Davis, Ft. Myers, Lauderdale Inner, Lauderdale Outer, Midway, Sanford Plant, Brevard and Ringling)(with two substations completed in each year commencing in 2009); and (d) in the interim period prior to completed in-service dates, is implementing automatic remote monitoring of the protection circuit fuses and developing a procedure for immediate action in the case of an alarm.

III. RESOLUTION

22. Enforcement and NERC alleged that FPL violated Reliability Standards in the BAL, COM, EOP, PER, PRC, TOP, and TPL areas. FPL does not admit that its actions constitute violations of the Reliability Standards or that it committed any violations of the Reliability Standards. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving all matters in dispute between Enforcement, NERC, and itself regarding the acts in question, FPL agrees to undertake the obligations set forth in this Agreement.

23. This agreement does not constitute an admission of liability or wrongdoing by FPL to any third party and FPL does not consent to the use of this Agreement by any other party in any other proceeding.

24. For purposes of settling any and all civil and administrative disputes arising from Enforcement's and NERC's investigation of FPL, and in lieu of any other remedy that the Commission or NERC might assess, determine, initiate, or pursue, concerning any of the matters referred to above, FPL agrees that after the Commission issues an order approving this Agreement without modification or condition, it shall take the following actions:

A. Civil Penalty

25. FPL shall pay a civil penalty in the amount of \$25,000,000. \$10,000,000 shall be paid each to the United States Treasury and NERC, within 10 days of the Effective Date. \$5,000,000 shall be remitted and FPL may spend it to further enhance the reliability of the BES upon staff approval (which will not be unreasonably withheld) on additional BES reliability enhancement measures not otherwise required under this Agreement or by the reliability standards as in effect on the date of this Agreement. If FPL has not spent or committed to spend for approved projects all of such amount within three years of the Effective Date, the amount or any remainder of the amount shall be paid and split equally between the U.S. Treasury and NERC. Except as required by law, this amount shall not be deducted or otherwise treated favorably to FPL for tax purposes nor recovered in rates by FPL.

B. Reliability Enhancement Measures

26. FPL will adopt the following reliability enhancement measures:

1. *Enhancements to FPL Compliance Program:* Within 6 months of the Effective Date, FPL will undertake incremental enhancements to its existing Reliability Standards compliance program with respect to all FPL owned or operated Bulk Electric System operations. This shall include specified roles for senior management involvement, independent reporting of compliance management to senior executives outside of the business units that plan, operate and maintain BES equipment, internal auditing, accountability for reliability in compensation packages, a compliance hotline, a written reliability compliance manual, and improvements to document databases, processes, and training. In addition, FPL will perform practice audits of all FPL Business Units, including a review of procedures, process flowcharts, and compliance documentation. FPL will also assess NERC compliance education and training for all employees responsible for compliance with the Reliability Standards and implement improvements in

these programs. To execute these enhancements, perform additional training, document control and spot audits to enhance a sustainable culture of compliance, FPL will provide additional employee support for its compliance program. In its quarterly progress reports to the Commission as described below, FPL shall document compliance improvement actions taken to date. Some of the incremental enhancements set forth herein have been undertaken prior to the effectiveness of the Agreement.

2. *Training and Certification:* FPL will enhance training to operating employees staffing the control room on the functionalities and limitations of the protection schemes, emergency operations procedures and the requirement to utilize three part communication protocols of Direct-Repeat-Acknowledge. This training shall address the reliability risks to the BES when a part or all of a protection scheme is removed for maintenance or other purposes. FPL will also provide detailed technical training for field relay testing engineers regarding Protection and Control compliance activities, which will include a phased-in certification program. This training shall address seeking express permission from System Operators before switching or before work can be performed on energized BES facilities and the protection systems. Some of the incremental enhancements set forth herein have been undertaken prior to the effectiveness of the Agreement. In addition, FPL's initiative to NERC-certify all load dispatchers is currently in progress and will be completed per the schedule agreed upon in a separate Remedial Action Directive Settlement with NERC.
3. *Frequency Response:* FPL will implement measures to maintain its average frequency response for any calendar year (measured as being equal to its average frequency response in response to all events, as defined by the Resource Subcommittee of the NERC Operating Committee, that occur during such calendar year) to be as close as reasonably practicable to its frequency bias setting for such calendar year (it being understood that the Company's frequency bias setting is equal to 1% of its maximum peak load). For the purpose of maintaining such frequency response, both generation and load demand response measures will be acceptable. Frequency response measures to meet the above-referenced performance criteria shall include some combination of the following:
 - Modify generating units' droop characteristics.
 - Apply controllable demand response technology (it being understood that such technology that responds in a manner that is substantially similar to the response shown on

example Attachments A-1 and A-2 would be among technology that is considered acceptable for these purposes).

FPL's obligation to maintain such frequency response shall commence in no event later than one year from the Effective Date (as this obligation likely will commence in the midst of a calendar year, the parties agree that only events that occur after the commencement of such obligation through the remainder of such calendar year shall be considered in determining whether FPL has complied with such obligations for such initial calendar year).

4. *Update Emergency Operating Procedures:* FPL will review and modify, as is reasonably necessary, plans to mitigate operating physical emergencies including fires within stations or on BES transmission facilities. These revised procedures will be reviewed by NERC and FERC Staff. Such procedures shall specify a situational assessment to identify and, if possible, isolate the specific portion of the switchyard that is on fire. In the quarterly progress reports to the Commission, FPL shall document actions to be taken to conduct reasonably adequate emergency training of these revised procedures to operators of the BES.
5. *Additional Operations Engineers for BES Analysis:* FPL will staff two additional operations engineers to perform additional BES analysis including increased modeling scenarios for both planning and real-time scenarios as well as day-to-day contingency analysis.
6. *Equipment Maintenance:* To the extent not heretofore done: FPL will review its maintenance practices for Bulk Electric System circuit switchers to assure all such equipment is maintained based on condition assessment and performance monitoring practices that are consistent with standard utility practice. Such condition assessment and maintenance may include a combination of thermography, visual inspection, operational testing, lubrication and adjustment and other means. FPL will, with respect to all 1986 through 1995 S&C Series 2000 circuit switchers, (a) inspect them for potentially defective low gas indicators, (b) to the extent practicable, conduct non-destructive testing of control rods and (c) develop procedures to avoid operation of any switchers that are identified as defective.
7. *Quarterly Progress Reports:* FPL will make quarterly progress reports to FERC and NERC staff before a final independent audit is conducted one year after the Effective Date. The audit will evaluate FPL's compliance with the terms of this Agreement. FERC Staff and FPL shall reasonably

agree on the audit firm, with due regard for the independence of such firm, and any audit recommendations to be implemented.

IV. TERMS OF CONSENT AGREEMENT

27. The Effective Date of this Agreement shall be the date upon which the Commission issues an order approving this Agreement without modification or condition. Given unique circumstances of this case concerning FPL's role with respect to FRCC, staff covenants and agrees that it does not intend to pursue an agreement between staff and FRCC, or other resolution, resolving all or any matters in this same docket pertaining to FRCC (the "FRCC Matters") that includes (a) payments by FRCC that exceed the payments contemplated by the draft agreement that staff has provided (with the knowledge and concurrence of FRCC) to FPL most recently prior to the time of execution this Agreement (the "Current Draft FRCC Agreement") or (b) terms and conditions that are substantively different from, or in addition to, those set forth in the Current Draft FRCC Agreement. Staff covenants and agrees to use best efforts to cause this Agreement to be presented to the Commission for consideration as promptly as practicable following the execution of this Agreement.

28. Unless the Commission issues an order approving the Agreement in its entirety and without modification or condition, the Agreement shall be null and void and of no effect whatsoever, and neither Commission staff, NERC, nor FPL shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Commission staff, NERC and FPL.

29. The Agreement shall remain confidential until approved by *each* party and the Commission issues an order approving the Agreement without modification or condition. The Agreement shall be made public only after the Commission's approval without modification or condition.

30. The Agreement binds FPL and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on FPL, or any affiliated entity, its agents, officers, directors or employees, other than the obligations identified in Section III of this Agreement.

31. All information and documents provided by FPL to the Commission and/or NERC as part of the investigation and/or the settlement of the investigation were submitted on a confidential basis and are not information and documents that would normally be disclosed to the public. Aside from the public release of the Agreement after the Commission issues an order approving the Agreement in its entirety and without modification or condition, no information or documents pertaining to the investigation shall be disclosed by the Commission or NERC, except as required by law.

32. In connection with the payment of the civil penalty provided for herein, FPL agrees that the Commission's order approving the Agreement without modification or condition shall be a final order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. FPL further waives rehearing of any Commission order approving the Agreement without modification or condition, and judicial review by any court of any Commission order approving the Agreement without modification or condition. FPL also waives any rights of appeals provided by the NERC Rules of Procedure.

33. Commission approval of this Agreement without modification or condition shall fully, irrevocably, and unconditionally release FPL, its agents, officers, directors, employees, shareholders, representatives and affiliates, both past and present, and their respective successors and assigns, and forever bar the Commission and NERC from holding or seeking in any forum to hold FPL, its agents, officers, directors, employees, shareholders, representatives and affiliates, both past and present, and their respective successors and assigns liable for any and all direct and/or indirect administrative, civil, criminal or other claims or liability (whether or not now known) arising out of, related to, or connected with the event or the investigation. In further consideration for this release, FPL represents that it is not aware of any cause of the event that was not disclosed to staff during the investigation and which might reasonably be considered to be a violation of any Reliability Standard.

34. Upon the Effective Date of this Agreement, Enforcement's and NERC's investigation of FPL shall terminate in Docket No. IN08-5-000 and NERC0002CVI.

35. Failure to make a timely payment or to comply with any other provision of this Agreement once effective shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject FPL to additional action under the enforcement and penalty provisions of the FPA.

36. If FPL does not make the payment above at or before the time agreed by the parties, interest payable to the United States Treasury and NERC will begin to accrue, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due.

37. The signatories to the 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, NERC, or FPL has been made to induce the signatories or any other party to enter into the Agreement.

38. 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.

39. The undersigned representative of FPL 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 or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement and NERC in express reliance on those representations.

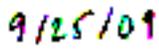
40. The Agreement may be signed in counterparts.

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

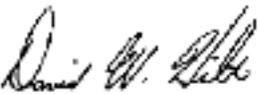
Agreed to and accepted:



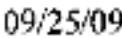
 Norman C. Bay
 Director, Office of Enforcement
 Federal Energy Regulatory Commission



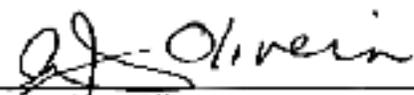
 Date



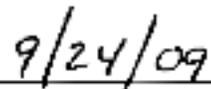
 David Hilt
 Vice President and Director of Compliance
 North American Electric Reliability Corporation



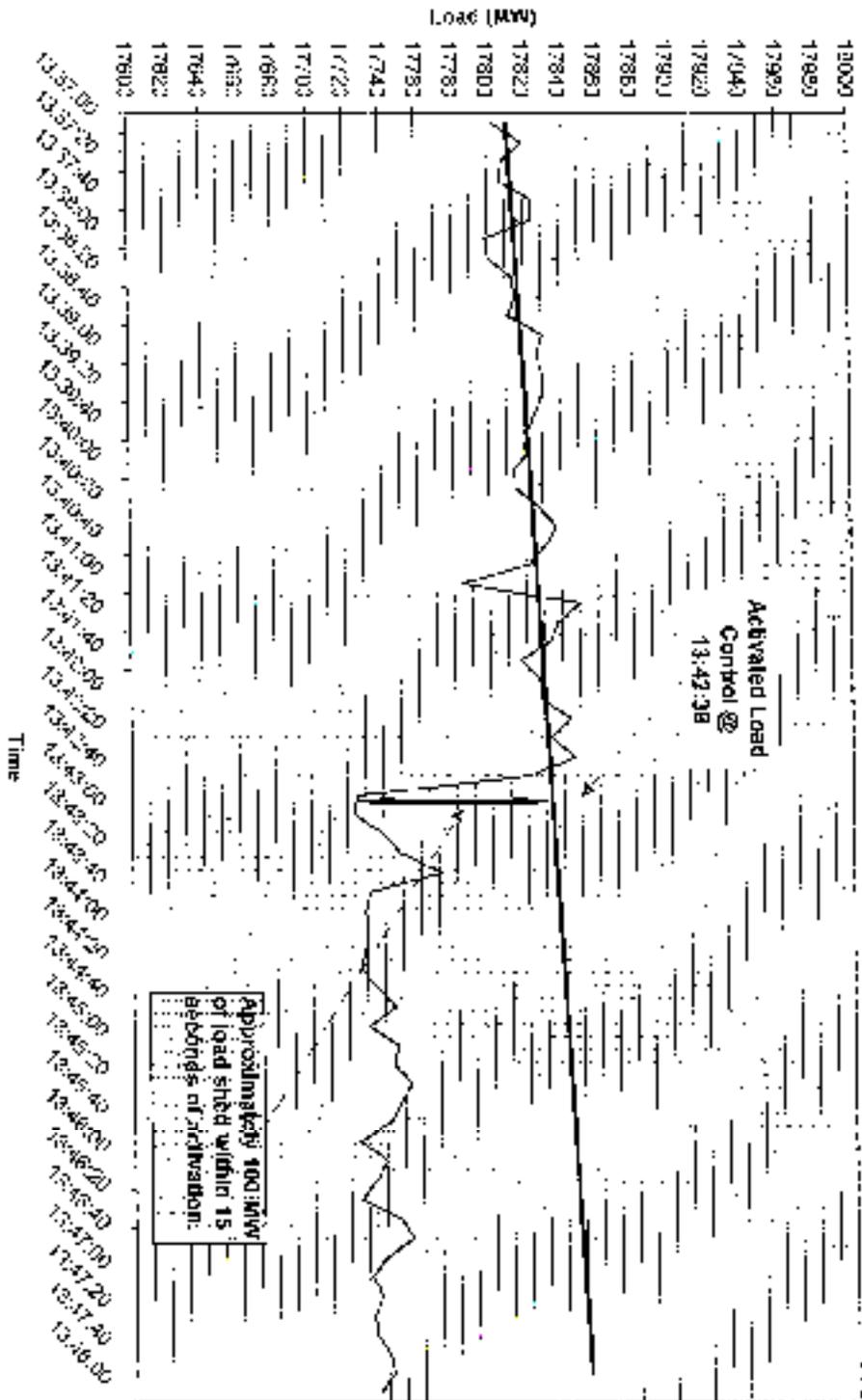
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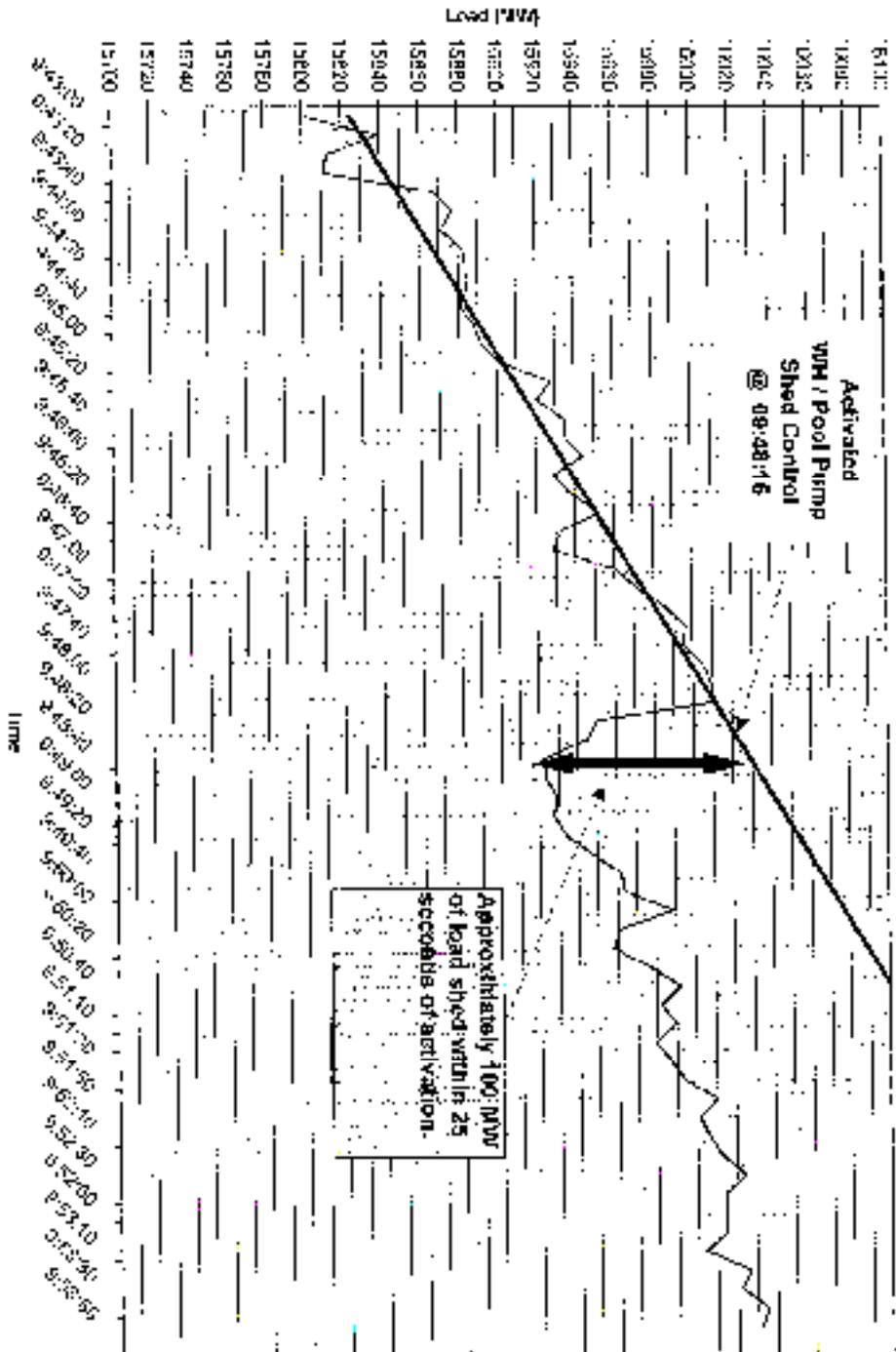
 Armando J. Olivera
 President and CEO
 Florida Power and Light Company



 Date



Attachment A - 1
Load Graph - 07-20-2008



Attachment A - 2
Load Graph - 06-22-2007

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Blackout

Docket No. IN08-5-000

(Issued October 8, 2009)

SPITZER, Commissioner, concurring:

I support the Order as a reasonable outcome. However, I write separately to express my concern with a lack of transparency and an absence of clarity in the Order. In light of the importance of our reliability program and compliance with the Reliability Standards, I would have required that the Order identify with specificity the Reliability Standards alleged to have been violated in this matter and how the facts of this case apply to those Reliability Standards. In the future, I expect that all orders on settlements addressing alleged violations of the Reliability Standards will provide this important information.

On February 26, 2008, the lower two-thirds of Florida lost electricity for several hours. That event, which the Order refers to as the Florida Blackout, knocked out 22 transmission lines and 4,300 MW of generation. The Florida Blackout resulted in the loss of 3,560 MW of customer service or load. Clearly, the Florida Blackout was a major event for the system and for consumers. Order P 5, 20.

Today's Order is the outcome of our investigation into Florida Power and Light Company's (FPL) role in the Florida Blackout. We find that the event originated on the FPL system. Order P 6. We outline certain actions of FPL preceding the Florida Blackout. Order P 6-8. However, when it comes to identifying the Reliability Standards that FPL is alleged to have violated with regard to the Florida Blackout – the basis for the Commission's and North American Electric Reliability Corporation's (NERC) investigation into FPL in the first place – the Order merely identifies the *categories* of the relevant Reliability Standards. Order P 17. Although we impose a substantial penalty on FPL and require FPL to enhance its reliability measures through specific mitigation, nowhere does the Order identify with any specificity the Reliability Standards that the Commission and NERC alleged FPL violated in connection with the Florida Blackout. Nowhere does the Order provide an explanation of how the facts support the application of those Reliability Standards in this case.

In the Energy Policy Act of 2005, Congress vested the Commission with the authority to approve and enforce Reliability Standards. Critical to that responsibility are clear rules, regulations and policies. Indeed, as I have explained before, such clarity and transparency is an important means to ensure a meaningful enforcement program. *See, e.g., Tenaska Marketing Ventures, et al.*, 126 FERC ¶ 61,040 at 61,247 (2009) (Spitzer, dissenting).

The problem with today's Order is that, by failing to identify with any specificity the Reliability Standards that FPL is alleged to have violated or how the facts support the application of the Reliability Standards, the Commission fails to provide clarity or transparency to the industry as to what is expected under the relevant Reliability Standards. I appreciate that settlements are case-specific matters rather than industry-wide promulgations. This proceeding, however, is the first reliability enforcement matter in which we impose a substantial penalty and specific mitigation measures in response to a serious outage. Yet we provide no meaningful information as to why the actions taken by FPL leading up to and after the Florida Blackout are, in the Commission's view, violative of the Reliability Standards. We provide no information as to which Reliability Standards caused the Commission and NERC to investigate the matter in the first instance or to impose the penalty and mitigation program herein.

The Commission's enforcement authority, including the imposition of sanctions, is a component of the Commission's mission. However, the Commission's ultimate objective is to promote compliance with our rules, regulations and orders. We best achieve that objective by providing all users, owners and operators of the grid clarity as to how the Commission will apply the Reliability Standards. Today's Order fails to provide that important information.

For these reasons, I respectfully concur in the Order.

Marc Spitzer
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Blackout

Docket No. IN08-5-000

(Issued October 8, 2009)

MOELLER, Commissioner, *concurring*:

I respectfully concur in the Order as a reasonable outcome. As I have stated several times, “[t]hose who are subject to Commission penalties need to know, in advance, what they must do to avoid a penalty.”¹² For that reason, I agree with Commissioner Spitzer’s concurring statement in this case that, “[i]n the future, ... all orders on settlements addressing alleged violations of the Reliability Standards” should, “... identify with specificity the Reliability Standards alleged to have been violated ... and how the facts of [the] case apply to those reliability standards.”

Philip D. Moeller
Commissioner

¹ Concurring Opinions of Commissioner Moeller in *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008) and *Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058 (2008). This statement was repeated in the dissenting opinions of Commissioner Moeller in *Seminole Energy Services, LLC, et al.*, 126 FERC ¶ 61,041 (2009) and *National Fuel Marketing Co., LLC, et al.*, 126 FERC ¶ 61,042 (2009).

Document Content(s)

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