

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Carolina Power and Light Company
and Florida Power Corporation

Docket Nos. ER01-1807-005
ER01-1807-006
ER01-2020-002
and ER01-2020-003

ORDER DENYING REQUEST FOR REHEARING AND
CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued May 21, 2003)

1. In this order, the Commission denies the request for rehearing, filed by Carolina Power & Light Company (CP&L), of the Commission order in Carolina Power & Light Company and Florida Power Corporation, 97 FERC ¶ 61,048 (2001) (October 15 Order). As discussed below, we conditionally accept CP&L's compliance filing that contains a tariff amendment establishing a mechanism to credit energy imbalance penalty revenues to non-offending transmission customers within CP&L's zone, subject to CP&L filing revisions, to become effective on June 15, 2001, as discussed below.
2. This order will benefit customers because it promotes the establishment of more economically efficient ways to handle energy imbalances on transmission systems.

Background

3. In Carolina Power and Light Company,¹ the Commission accepted escalating penalty provisions for energy imbalances outside the deadband, with the maximum charge for deficient energy in excess of 40 MW of the deadband being the greater of \$100/MWH, 150 percent of CP&L's System Incremental Cost (SIC) or 150 percent of the Lost Opportunity Cost (LOC) and denied intervenors' requests to credit energy imbalance penalty revenues. Subsequently, the Commission issued an order granting in part and denying in part the requests for rehearing filed by Electricities of North Carolina, Inc.

¹95 FERC ¶ 61,429 (2001) (June 25 Order).

(ElectriCities) and North Carolina Electric Membership Corporation (NCEMC).² The Commission required CP&L, among other things, to develop a mechanism to credit energy imbalance penalty revenues to its non-offending transmission customers. The Commission explained that:

We find it appropriate, in the interim period before CP&L's transmission customers have access to an energy imbalance market, for CP&L to implement a crediting mechanism for imbalance penalty revenues. This should encourage the promotion of market-based imbalance solutions. [Footnote omitted] This approach, which is consistent with the approach we follow with respect to gas pipelines, should provide appropriate economic incentives for transmission customers to minimize their energy imbalances, while at the same time removing any incentive for CP&L to hinder the development of other imbalance services that do not rely on penalties.³

4. On November 14, 2001, CP&L filed a compliance filing proposing a mechanism to credit energy imbalance penalty revenues to non-offending transmission customers within CP&L's zone. On the same date, CP&L also filed a request for rehearing asking the Commission to rescind the requirement for a penalty revenue crediting mechanism and reject CP&L's compliance filing. CP&L claims that this requirement is arbitrary, discriminatory and unsupported by the evidence, and that it will result in economic inefficiency and reduced reliability.

Notice of Filing and Responses

5. Notice of the filing in Docket No. ER01-1807-006, CP&L's compliance filing, was published in the Federal Register, 66 FR 59015 (2001), with comments, protests or interventions due on or before December 5, 2001. On December 5, 2001, NCEMC and ElectriCities filed protests. The Towns of Black Creek, Lucama, Sharpsburg and Stantonsburg, North Carolina (NC Towns) filed a timely motion to intervene and comments. On December 20, 2001, CP&L filed an answer to the NCEMC's and ElectriCities' protests.

A. Compliance Filing

6. In its compliance filing, CP&L proposes to credit penalty revenues that it receives for energy imbalances outside the deadband to each transmission customer taking service

²October 15 Order.

³Id. at 61,279.

under its open access transmission tariff (OATT), who has not experienced an energy imbalance in excess of the deadband in that hour. CP&L explains how it will assess penalty revenues for undersupply and oversupply of energy imbalances outside the deadband.

7. CP&L proposes to allocate the penalty revenues based on the ratio of each non-offending network integration transmission service customer's network load or each point-to-point transmission customer's scheduled energy in an hour, to the sum in each hour of the total control area load and the scheduled energy transmitted on behalf of point-to-point transmission customers to points of delivery at CP&L's interfaces with other transmission systems.

8. CP&L explains that the total load calculation excludes the loads of the customers that experienced the imbalances outside the deadband. Moreover, CP&L has decided to calculate the payments based on actual hourly loads rather than the reserved capacity of point-to-point customers, once its automated hourly system load data reflects actual hourly load. CP&L contends that if it were required to adjust hourly system loads to exclude the scheduled energy of point-to-point transmission customers and substitute those customers' reserved capacity, it would have to perform manual calculations for each point-to-point transmission customer for each hour, a process that would be prohibitively expensive.

9. With respect to imbalances occurring due to undersupply of energy, CP&L states that the penalty revenues result when charges to the customer for an undersupply of energy exceed CP&L's incremental costs for that hour.⁴

10. CP&L claims that it does not provide credits for revenues resulting from the difference between the amounts paid to customers for oversupply imbalances that fall outside the deadband and CP&L's incremental costs because: (1) a customer that experiences an oversupply imbalance in excess of the deviation band is compensated for that energy at an amount that is less than the CP&L's SIC in the hour and this payment does not constitute a penalty revenue to CP&L; (2) the payment to the customer is a payment for purchased power that is passed through to both wholesale and retail customers who take service from CP&L at rates that include a fuel clause or an energy clause, thus CP&L is already passing on to its customers the entire benefit it receives from paying customers less than its SIC for the oversupplied energy; and (3) CP&L's payment of less

⁴For example, CP&L states that if a transmission customer experiences an undersupply of 5 MW outside the deadband, and the SIC is \$100/MWH, the transmission customer is assessed a charge of 120 percent of \$100/MWH, or \$120/MWH. Thus, the penalty revenues are \$120 minus the SIC of \$100, or \$20/MWH and the total penalty revenues are 5 MW multiplied by \$20/MWH, or \$100.

than its SIC for oversupplied energy imbalances does not constitute a penalty because there is no basis on which to assume that CP&L would have paid an amount equal to its incremental cost for the energy, if it had the option to purchase or not purchase the oversupplied energy. However, CP&L explains that if its costs increase as a result of accepting the oversupply, it will charge the customer 110 percent of CP&L's SIC for the increase in costs and will credit the penalty to the non-offending transmission customers.

11. CP&L proposes to credit the penalty revenues against the bills of its transmission customers in the month after the month in which the CP&L receives the penalty revenues. Further, CP&L notes that it is not crediting to customers any amounts relating to charges for energy imbalances inside the deadband as these charges have not been modified, and are therefore, not at issue in this proceeding.

12. Additionally, CP&L proposes to allocate penalty revenues to all customers - wholesale and retail - rather than only to customers taking service under the OATT. CP&L provides that such allocation is appropriate because (1) CP&L's retail customers are entitled to a share of the penalty revenues and CP&L will record the penalty revenues as a credit against its cost of service and the state commissions will evaluate the appropriate rate treatment of those revenues for retail customers; (2) CP&L has wholesale requirements customers who take transmission service pursuant to grandfathered bundled power sale agreements that contain formula rates which allow an automatic crediting of penalty revenues against future charges; and (3) allocating the penalty revenues only to OATT customers may produce inappropriate results. For example, CP&L contends that if NCEMC, an 1100 MW OATT customer, experienced an imbalance on CP&L's system, its imbalance penalty revenues would be allocated among CP&L's other OATT customers. The total load for remaining transmission customers within CP&L's control area is less than 60 MW. As a result, CP&L contends that NCEMC's energy imbalances would provide the remaining OATT customers a windfall that is far out of proportion to the transmission service that they are taking.

B. Protests, Comments, and Answer

13. Protestors ask the Commission to reject the compliance filing and find that it neither complies with the Commission's objective, nor with the October 15 Order. Protestors complain that CP&L's proposal to allocate penalty revenues to all customers on its system, and not just to its OATT customers, will provide CP&L with an incentive to retain, not credit customers, the revenues collected from its retail service. According to NCEMC, CP&L's proposal allows it to allocate a bulk of penalty revenues it collects to its retail service, and such an allocation will not allow an immediate flow-through of revenues

to the retail customers, until CP&L files a new retail rate case before the appropriate state commissions to offset the revenues against the retail cost of service. Protestors are concerned that as CP&L does not affirmatively commit to file a rate case (and has not filed one since 1988), it will retain the penalty revenues in the meantime as profit. They argue that this runs counter to the Commission's objective to encourage transmission providers to rely less on penalties and create other mechanisms to manage their systems. Furthermore, NCEMC contends that it is not clear precisely how (or when) CP&L proposes to credit its wholesale customers through formula rates.

14. NCEMC argues that crediting penalty revenues to CP&L's bundled retail customers would be anti-competitive, by reducing CP&L's retail rates vis-a-vis CP&L's on-system competitors. NCEMC adds that imposition of the penalties already raises CP&L's competitors' costs while CP&L remains immune because it can rely on inadvertent interchange with other control areas to deal with differences between its generation and load, and thus avoid the financial and competitive consequences of the proposed energy imbalance penalties.

15. ElectriCities disagrees with CP&L that allocating penalty revenues to retail and wholesale requirements customers is the best solution to the load disparities problem, i.e., if a large OATT customer like NCEMC were subject to an imbalance penalty, it would confer a windfall on the other transmission customers that is far out of proportion to the transmission service that they are taking. Rather, ElectriCities asserts that the better approach would be to bring additional load (such as service to CP&L's retail load) under the OATT as soon as possible, while respecting existing non-OATT agreements. In the meantime, ElectriCities contends that penalty revenues should be allocated only to OATT customers, which would be consistent with the Commission's objective to remove the transmission provider's financial incentive to retain penalty revenues.

16. ElectriCities' also contends that the Commission could specify that penalty revenues collected by CP&L would be allocated only to those classes of service in which the revenues would directly flow-through to the customers in those classes (i.e., OATT customers and customers under formula transmission rates). ElectriCities suggests that if CP&L wishes to allocate a share of the penalty revenues to retail service, it could adopt a mechanism which would ensure that such a share would flow-through to its retail customers on a current basis. Further, ElectriCities asserts that such allocation is fully consistent with the Commission's objective of eliminating the economic incentive for transmission providers to hinder the development of market-based imbalance solutions.

17. ElectriCities disagrees with CP&L's argument that it is not supposed to credit revenues arising from imbalances within the deadband. ElectriCities argues that CP&L's proposal puts at issue the treatment of penalty revenues regardless of whether they are

generated by deviations within the deadband or outside the deadband, as the retention of any penalty revenues are inimical to the Commission's objective of eliminating incentives for transmission providers to obstruct the development of market-based imbalance solutions. As a result, ElectriCities argues that CP&L should be directed to credit to customers all energy imbalance penalty revenues it collects, without regard to whether those revenues are generated by imbalances inside or outside the deadband.

18. CP&L, in its answer restates that the charges for energy imbalances within the deadband are not at issue in this proceeding. CP&L argues that there are two bases upon which the Commission can order modifications to rates and require a utility to make refunds: (1) upon a finding that a proposed rate change by a utility is unjust and unreasonable, pursuant to Section 205 of the Federal Power Act (FPA); and (2) upon a finding, in response to a complaint or on the Commission's own motion, that existing charges are unjust and unreasonable under Section 206 of the FPA. CP&L contends that neither one of these circumstances exists in this proceeding, as the imbalance charges within the deadband are not the subject of a Section 205 filing or a Section 206 complaint proceeding.

19. NC Towns believe that, if CP&L's proposal is accepted by the Commission, the transmission provider will retain a significant portion of the penalty revenues in question. NC Towns stated that it, NCEMC and other OATT customers are at risk of incurring imbalance penalties. NC Towns contend that it is more fair to allocate penalty revenues to only those customers at risk of incurring the penalties, and it is not proper to give non-OATT customers a share of the penalty revenues when these customers do not incur obligations associated with reducing imbalances such as, the expense of installing telemetry equipment, or meeting operational standards for matching supply with load, or incurring imbalance penalties resulting from equipment failure or human miscalculations. In addition, NC Towns disagree with CP&L's assertion that the calculation process needed to properly allocate the penalty revenues is too burdensome and expensive. While CP&L claims that the energy imbalance revenues collected for deviations outside the deadband are less than \$5000, NC Towns points out that past years' revenue figures have not been provided for comparison and may have exceeded \$5000.

20. In its answer, CP&L clarifies that the wholesale requirements customers taking service under formula rates - North Carolina Eastern Municipal Power Agency and Southeastern Power Administration - will automatically receive credits against future charges. Additionally, CP&L states that it did not mention three non-OATT wholesale customers in its compliance filing, Public Works Commission of the City of Fayetteville, Town of Waynesville, North Carolina and French Broad Electric Membership Corporation (Fayetteville, Waynesville and French Broad), that receive service under long-term fixed-

rate contracts. CP&L asserts that it does not provide a credit to these customers because to do so would be inconsistent with Commission precedent.⁵

C. CP&L Request for Rehearing

21. In its request for rehearing, CP&L provides three arguments why the Commission should rescind the requirement to establish the crediting mechanism, which include: (1) the requirement is arbitrary and without supporting evidence, and will deprive transmission system users of any incentive to avoid imbalances by immunizing them from costs resulting from their imbalances, and, as a consequence, produce economic inefficiencies and reduced reliability; (2) neither PJM Interconnection⁶ nor the gas pipeline industry precedent support requiring CP&L to develop and implement a crediting mechanism; (3) the Commission wrongfully and discriminatorily singles out and compels CP&L to provide penalty revenue credits, which has not been imposed on any other public utility subject to Commission jurisdiction under the FPA. CP&L asks the Commission to hold a hearing if it decides not to grant rehearing.

Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely unopposed motion to intervene filed by NC Towns serves to make them parties to this proceeding.

⁵See French Broad Electric Membership Corporation, 92 FERC ¶ 61,283 at 61,967 (2000) (French Broad) (The Commission determined that evidence that a single rate issue may not be just and reasonable is insufficient to prove that over the life of the contract a fixed-rate contract is not just and reasonable, and that the proper time frame for determining the justness and reasonableness of a long-term fixed-rate contract is over the life of the contract.)

⁶95 FERC ¶ 61,175 at 61,568 (citing Order No. 637-A at 31,609 and footnote 158 (2000)), reh'g denied, 95 FERC ¶ 61,477 (2001).

⁷18 C.F.R. § 385.214 (2002).

23. We find good cause to accept the answer of CP&L, notwithstanding the general prohibition on the filing of answers to a protest,⁸ as the answer assists us in our understanding and resolution of issues raised.

B. Compliance Filing

24. While the Oct 15 Order directed CP&L to develop a mechanism to credit penalty revenues to its non-offending transmission customers, we did not prescribe a particular methodology to do so. We believe that CP&L's proposal, with the modifications discussed below, to allocate penalty revenues to non-offending transmission customers in proportion to their monthly fixed cost contribution to CP&L's revenue requirements is in compliance with the Commission's directive. Such a methodology appears to provide a fair and equitable distribution of the revenues. It also appears to be consistent with the Commission's objective to provide appropriate economic incentives for transmission customers to minimize their energy imbalances, while at the same time removing any incentive for CP&L to hinder the development of other imbalance services that do not rely on penalties. Although, we believe that CP&L's compliance filing is consistent with our directive in the October 15 Order, we are not precluding proposals of other credit methodologies for penalty revenues. Moreover, we find reasonable CP&L's proposal to use existing automated procedures rather than a more expensive manual procedure to calculate credits.

25. We reject CP&L's proposal to allocate energy imbalance penalty revenues to retail customers. We agree with Electricities that penalty revenues should be allocated only to the OATT customers, who are subject to these penalties. Because CP&L's retail customers are not under CP&L's OATT, they are not subject to such energy imbalance penalties. Therefore, we believe that retail customers are not entitled to penalty revenue credits. A related argument raised on rehearing by CP&L is that energy imbalances may cause reliability impairments and that such challenges will impose a cost on CP&L that may be passed onto retail customers. We are not persuaded by this argument because CP&L's proposal allows it to recover its out-of-pocket costs when a transmission customer experiences an energy imbalance deviation outside the deadband. Further, we believe that retail customers will not be harmed as the costs related to imbalance deviations will not be passed on to them by CP&L. For these reasons, we believe that retail customers should not receive penalty revenue credits.

26. We reject CP&L's proposal to retain revenues received within the deadband as it is contrary to the Commission's objective to eliminate incentives for transmission providers

⁸See 18 C.F.R. § 385.213 (a)(2) (2002).

to use penalties as a profit center. Under CP&L's existing tariff, energy imbalances are returned in-kind within 30 days, however, if a customer fails to settle a negative net imbalance within 30 days after the end of the billing month, the customer pays for the energy at the highest cost of energy produced on CP&L's system during that month. Consistent with our directive to credit all penalty revenues to non-offending transmission customers, and contrary to CP&L's assertion, penalty revenues within the deadband must be credited to non-offending transmission customers. Therefore, we require CP&L to submit a clarification to explain how it will credit penalty revenues for energy imbalance deviations inside the deadband when a customer fails to return in-kind after the billing period within 30 days of the date of this order.

27. CP&L states that penalty revenues will be credited to its non-OATT wholesale requirement customers (i.e., Southeastern Power Administration and North Carolina Eastern Municipal Power Agency) through existing formula rates. We find it reasonable for CP&L to continue crediting these wholesale requirements customers consistent with the terms of their existing contracts. CP&L indicates that it will not credit penalty revenues to Fayetteville, Waynesville and French Broad, its non-OATT wholesale requirement customers that receive service under long-term, fixed-rate power sale contracts that have no provision allowing such credits. CP&L states that because these contracts are not under the OATT and have not been found to be unjust or unreasonable, it would be inconsistent with French Broad⁹ to allow these wholesale customers to collect penalty revenue credits when their agreements do not provide for such credits. Generally, the Commission will not abrogate existing contractual agreements, unless the agreements or provisions thereof are found to be unjust and unreasonable. To that end the Commission has allowed customers to continue taking service under pre-existing agreements.¹⁰ Moreover, parties do not contend that the agreements are unjust and unreasonable. Accordingly, we find that CP&L need not credit penalty revenues to Fayetteville, Waynesville and French Broad.

⁹92 FERC ¶ 61,283.

¹⁰See 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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. P31,048 (1997), 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), in relevant part, remanded in part on other grounds sub nom. Transmission Access Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

28. NCEMC has previously argued that CP&L's penalties discriminate against non-control area operating customers, who, unlike CP&L, cannot rely on inadvertent interchange with other control areas to deal with differences between its generation and load to avoid energy imbalance penalties. In Order No. 2000, the Commission recognized that unequal access to balancing options (*i.e.*, inadvertent interchange) was a significant RTO problem and suggested that an RTO or "another entity that is not affiliated with any market participant" was responsible for setting up a real-time market to resolve this problem.¹¹ We addressed the same issue in the June 25 Order and October 15 Order, and found that CP&L's energy imbalance penalty scheme, as modified by those orders, was acceptable in the interim period until the real-time balancing markets by RTOs were established.¹² Accordingly, we will require CP&L to develop real-time markets governing inadvertent energy settlements as a member of a Commission-approved RTO.

29. As we stated in our June 25 Order, we will establish an effective date of June 15, 2001, for CP&L's energy imbalance provisions.¹³ The June 15, 2001 effective date is also listed on the revised tariff sheets filed by the CP&L .

C. Rehearing Request

¹¹The Commission also stated:

In the NOPR, we noted that unequal access to balancing options can lead to unequal access in the quality of transmission service, and that this could be a significant problem for RTOs that serve some customers who operate control areas and other customers who do not. We conclude that control area operators should face the same costs and price signals as other transmission customers and, therefore, also should be required to clear system imbalances through a real-time balancing market. We believe that providing options for clearing imbalances that differ among customers would be unduly discriminatory.

Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 at 896 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,142 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (February 25, 2000), FERC Stats. & Regs ¶ 31,092 (2000), petitions for review dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

¹²June 25 Order, 95 FERC at 62,600 and October 15 Order, 97 FERC at 61,280-1.

¹³ See 95 FERC at 62,601.

30. In its rehearing request, CP&L argues that the establishment of a crediting mechanism required by the October 15 Order will furnish windfall revenues to undeserving system users and cause behavior that undermines economic efficiency and reliability. We disagree. We did not prescribe a crediting method for CP&L to follow. Rather, we directed CP&L to design a mechanism that only refunds the revenues earned, *i.e.* money in excess of costs incurred. CP&L's compliance filing seeks to meet the requirements set forth in the October 15 Order. Our review of the proposed crediting mechanism submitted in the compliance filing, with modifications, indicates that this interim measure once implemented by CP&L, will encourage the promotion of market-based imbalance solutions and provides appropriate economic incentives for transmission customers to minimize their energy imbalances. While CP&L requests an evidentiary hearing, CP&L raises no issues of material fact necessitating such a hearing. Providing the penalty revenues to non-offending transmission customers will help elicit appropriate behavior and is consistent with the Commission's objective of providing incentives for transmission providers to develop market-based imbalance solutions.

31. CP&L also contends that neither PJM Interconnection,¹⁴ cited in the October 15 Order, nor the gas pipeline imbalance rules, afford any support for the imbalance revenue credits. We disagree. The Commission has recognized the applicability of Order No. 637's policy to the allocation of penalty revenues in the context of the electric markets in PJM Interconnection.¹⁵ In PJM Interconnection, the Commission determined that capacity deficiency charges paid by capacity-short load serving entities in PJM should be credited to all load serving entities that satisfy their capacity obligations, rather than only to the owners of excess capacity. The Commission explained that capacity deficiency charges are penalties rather than cost-based rates meant to compensate the owners of excess capacity, and that it is therefore appropriate to allocate the revenues among all non-offending load-serving entities, especially as the allocation avoids creating the inappropriate incentive for the owners of excess capacity to withhold capacity from the market. Therefore, as with the capacity deficiency charges addressed in PJM Interconnection, it is appropriate to allocate energy imbalance revenues to all non-offending customers in order to avoid the creation of the inappropriate incentives for the transmission provider to maximize imbalances. While CP&L is correct that the Commission did not order the crediting of imbalance penalty revenues in Tampa Electric Company,¹⁶ despite the protestors' claim that such revenues would result in a penalty windfall to Tampa, it fails to mention that the Commission's reason for doing so was because the charges proposed for generator imbalances were set at

¹⁴95 FERC ¶ 61,175 at 61,568.

¹⁵Id.

¹⁶95 FERC ¶ 61,101 at 61,306-7 (2001).

cost-based rates, and were not penalties and thus could not result in any penalty windfall for Tampa. Accordingly, we find that CP&L's arguments in this regard are misplaced.

32. The final argument raised by CP&L is that the October 15 Order illegally discriminates against CP&L by requiring it to follow the new crediting policy, while other transmission providers subject to the Commission's jurisdiction are not subject to this policy. CP&L asserts that the electric transmission industry should follow the process undertaken in the gas industry where gas pipeline policy was developed as part of an industry-wide rulemaking process that took place over several years.

33. Generally, agencies have broad authority to choose between adjudication and rulemaking proceedings as vehicles for policy-making.¹⁷ Moreover, in a recent case, Village of Bethany, Illinois, et al. v. FERC,¹⁸ the court stated that it would uphold the Commission's policy choice if it appeared that the Commission had given reasoned consideration to each of the pertinent factors in balancing the needs of the industry with the relevant public interests, even though a rulemaking process had not been undertaken prior to applying the policy. Our decision in the October 15 Order resulted from thoughtful consideration of the principles that were considered in Order Nos. 637 and 637-A, *i.e.*, crediting energy imbalance penalty revenues for: (1) the promotion of market-based solutions; (2) provision of appropriate economic incentives for transmission customers to minimize their energy imbalances; and (3) the removal of any incentive for the transmission provider to retain penalty revenues.¹⁹ We clarify that in Order No. 637, the

¹⁷Indiana-Michigan Power Company, 87 FERC ¶ 61,278, footnote 11 citing to Clark-Cowlitz Joint Operating Agency v. FERC, 826 F.2d 1074, 1081 (D.C. Cir. 1987), cert. denied, 485 U.S. 913 (1988). See also NLRB v. Bell Aerospace Corporation, 416 U.S. 267, 294 (1974) ("adjudicative cases may and do serve as vehicles for the formulation of agency policies."); SEC v. Chenery Corp., 332 U.S. 194, 203 (1947); Mobil Exploration and Producing, Inc. v. FERC, 881 F.2d 193, 198-99 (5th Cir. 1989); Michigan Wisconsin Pipeline Company v. FPC, 520 F.2d 84, 89 (D.C. Cir. 1975) ("there is no question that the Commission may attach precedential and even controlling weight to principles developed in one proceeding and then apply them under appropriate circumstances in a stare decisis manner."); and Pacific Gas and Electric Co. v. FPC, 506 F.2d 33, 38 (D.C. Cir. 1974) ("agency may establish binding policy through rulemaking procedures ... or through adjudications which constitute binding precedents.").

¹⁸276 F.3d 934, 942-3 (7th Cir. 2002).

¹⁹Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, 65 Fed. Reg. 10,156

Commission required the crediting of all penalty revenues and encouraged pipelines to exclude offending shippers from the revenue credits.²⁰ In this docket, the Commission has chosen to use the crediting policy as an interim measure until energy imbalance markets are created by future RTOs, to promote the establishment of more economically efficient ways to handle energy imbalances on transmission systems.

34. We clarify that it is our intention to apply our policy on crediting of energy imbalance penalty revenues prospectively to issues involving such penalty revenues, subject to consideration of arguments raised in individual cases about the appropriateness of this policy. Accordingly, we will deny CP&L's request for rehearing.

35. CP&L claims that, under the current tariff provisions, the transmission customers' desire to avoid penalty payments provides the transmission customers' with an incentive to control their imbalances and results in low penalty revenues. CP&L states that it collected approximately \$5,000 for the year. Moreover, CP&L argues that the Commission should not change the energy imbalance tariff provisions because there is no existing evidence that these provisions hinder competition. We recognize CP&L's claim that the penalty revenues collected are low and believe that CP&L's proposed crediting mechanism may be administratively burdensome when penalty revenues are at these levels. It is not our intent to implement a requirement that costs more than the value of the penalty charges. Therefore, we will require CP&L to maintain a separate accounting of the penalty revenues collected and calculate the credit for non-offending transmission customers on a monthly basis. However, we will only require CP&L to disperse the penalty revenues when the annual total accumulated amount of penalty revenues collected by CP&L reaches \$100,000. Accordingly, we will require CP&L to file a report with the Commission within 60 days of the date of the disbursement of the penalty revenues. Finally, we will direct CP&L to modify its proposed tariff sheets in accordance with the discussion above.

The Commission orders:

(A) CP&L's request for rehearing is hereby denied.

¹⁹(...continued)

(February 25, 2000), FERC Stats. & Regs. ¶ 31,091, 31314-20 (2000), order on reh'g, Order No. 637-A, 65 Fed. Reg. 35,705, 31,606-11 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099 (2000), reh'g denied, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002).

²⁰See Order No. 637 at 31,315 and Order No. 637-A at 31,606.

(B) CP&L's compliance filing is hereby conditionally accepted, subject to the modification directed herein, to be submitted by CP&L within 30 days from the date of this order, to become effective on June 15, 2001.

(C) CP&L and Florida Power Corporation's proposed tariff sheets are hereby conditionally accepted, subject to the modification directed herein, to become effective on June 15, 2001.

(D) CP&L and Florida Power Corporation is hereby directed to file a report with the Commission within 60 days of the date of the disbursement of the penalty revenues.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.