

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. ER01-1807-011
ER01-1807-012
ER01-2020-008
and ER01-2020-009

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued September 12, 2003)

1. On June 16, 2003, Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC) (collectively, Applicants), in compliance with the Commission's order in Carolina Power & Light and Florida Power Corporation,¹ submitted revised tariff sheets to reflect changes to the mechanism Applicants propose to use to credit penalty revenues related to energy imbalance service, provided under their open access transmission tariffs (OATTs), to "non-offending" transmission customers. On August 28, 2003, Applicants filed tariff sheets modifying the June 16, 2003 compliance filing. In this order, the Commission conditionally accepts the compliance filing to become effective on June 15, 2001, subject to the modifications 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.

I. Background

3. In Carolina Power and Light Company and Florida Power Corporation,² the Commission accepted escalating penalty provisions for energy imbalances outside the deadband, with the maximum charge for deficient energy in excess of 40 MW

¹ 103 FERC ¶ 61,209 (2003) (May 21 Order).

² 95 FERC ¶ 61,429 (2001).

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). Subsequently, the Commission issued an order granting in part and denying in part the requests for rehearing filed by Electricities of North Carolina, Inc. (Electricities) and North Carolina Electric Membership Corporation.³ In that order, the Commission required CP&L, among other things, to develop a mechanism to credit penalty revenues to its non-offending transmission customers.

4. On November 14, 2001, CP&L filed a compliance filing proposing a mechanism to credit 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 as required by the October 15 Order, and reject CP&L's compliance filing.

5. The May 21 Order denied CP&L's request for rehearing, and conditionally accepted CP&L's compliance filing, to become effective on June 15, 2001.⁴ The Commission accepted CP&L's proposal, with certain modifications, to allocate penalty revenues to non-offending transmission customers in proportion to their monthly fixed cost contribution to CP&L's revenue requirements. We rejected CP&L's proposal to allocate penalty revenues to retail customers (non-OATT customers), explaining that penalty revenues should be allocated only to the OATT customers who are subject to these penalties. We also rejected CP&L's proposal to retain revenues received within the deadband; and sought an explanation from CP&L on how it would credit penalty revenues for energy imbalance deviations inside the deadband when a customer fails to return in kind after the billing period. Finally, the May 21 Order found that CP&L was only required to disburse the penalty revenues when the annual total accumulated amount of penalty revenues reached \$100,000. The May 21 Order directed Applicants to file a report with the Commission within 60 days of the date of the disbursement of the penalty revenues.

³ Carolina Power and Light Company and Florida Power Corporation, 97 FERC ¶ 61,048 (2001) (October 15 Order).

⁴ CP&L was directed to file the revised tariff sheets as a compliance filing within 30 days from the date of the order.

II. Applicants' Compliance Filings

6. Applicants propose to make the following revisions to the energy imbalance provisions in its tariff.⁵ Applicants propose to credit energy imbalance penalty revenues only to non-offending transmission customers. Applicants propose to allocate penalty revenues on a load ratio share basis to non-offending transmission customers (i.e., customers that did not experience energy imbalances in excess of the deadband in an hour). A similar allocation method would apply in the limited circumstance when a transmission customer that experiences imbalances within the deadband fails to return-in-kind energy within a 30-day period).⁶

7. Applicants propose to add § A.4.4 to reflect the Commission's requirement that penalty revenues only need be disbursed once they reach \$100,000, and that the companies will file a report with this Commission within sixty (60) days after doing so. As a result, Applicants have deleted the provision for monthly crediting of penalty revenues.

8. Applicants seek a waiver of the requirement to serve copies of this filing upon all parties taking service under its OATT. Applicants state that it will instead serve copies of this filing on all parties listed on the official service list maintained in these proceeding and on North Carolina Utility Commission and Florida Public Service Commission. In addition, Applicants state that they will post copies of the revised tariffs on their Open Access Same-time Information System (OASIS) sites.

III. Notice of Compliance Filing, Protest and Modified Compliance Filing

9. Notice of Applicants' compliance filing was published in the Federal Register, 68 Fed. Reg. 38,708 (2003), with interventions, comments, and protests due on or before July 7, 2003. ElectriCities filed a timely protest.

⁵ See §§A.4.3 and A.4.4.

⁶ Applicants state that penalty revenues are determined based on the difference between (i) the payments received for net negative imbalances inside the deadband and (ii) the product of the average SIC in the hours when the negative imbalances occurred and the MWh of energy for which penalty charges were assessed. See § A.4.3.1 (iii).

10. On August 8, 2003, Applicants revised their June 16, 2003 compliance filing to address Electricities' concerns.⁷

IV. Discussion

11. We will accept Applicants' proposal to allocate the energy imbalance penalty revenues on a load ratio share basis to non-offending customers. This is consistent with the Commission's objective to credit the penalty revenues only to non-offending customers.

12. In their protest, Electricities argues that the language in the compliance filing fails to recognize the rights of certain pre-OATT wholesale customers to continue receiving a portion of penalty revenues under the provisions of their existing service contracts. Electricities claims that the proposed allocation methodology could be interpreted to prevent transmission customers who are not taking transmission service pursuant to the OATT from receiving a share of imbalance penalty revenues. Electricities asserts that CP&L should be directed to modify its compliance filing to allow non-OATT customers to continue receiving a portion of imbalance penalty revenues under the provisions of their existing service contracts. In their August 8, 2003 filing, Applicants propose to modify the OATT formula rates for the allocation of imbalance penalty revenues to include in the calculation the transmission revenues of customers that take service under pre-OATT contracts which provide for them the (pre-OATT customers) to receive a portion of the imbalance penalty revenues. We believe that Applicants' proposal addresses Electricities' concerns. Accordingly, we will accept the Applicants' proposed tariff provisions with regard to crediting imbalance penalty revenues.

13. Electricities argues that Applicants fail to provide for the accrual of interest on the accumulated balances during the period of time between the receipt of the penalty payments and the date on which disbursement is made because the \$100,000 trigger amount has been reached. Electricities asserts that Applicants should be directed to modify its compliance filing to provide for the payment of interest on unpaid imbalance penalty revenues from the date they are collected to the date they are distributed. We note that in their August 8, 2003 filing, Applicants provide that they will credit imbalance penalty revenues, including interest in accordance with 18 C.F.R. § 35.19a (2003), to non-offending customers.

⁷ A subsequent unpublished notice was issued on August 13, 2003 extending the comment date to August 29, 2003.

14. On a related issue, we note that the tariff language in §A.4.4 proposed by Applicants may be interpreted as requiring Applicants to disburse penalty revenues only if the accumulated amount each month reaches \$100,000.⁸ The May 21 Order directed “CP&L to maintain a separate accounting of the penalty revenues...on a monthly basis. However, [CP&L was directed to disburse] the penalty revenues when the annual total accumulated amount of penalty revenues collected reache[d] \$100,000.”⁹ Therefore, we direct Applicants, consistent with our May 21 Order, to include a clarification in the relevant tariff provision (§ A.4.4) to state that Applicants will disburse the penalty revenues when the annual accumulated amount of penalty revenues collected by Applicants reaches \$100,000.

15. We grant Applicants’ request for waiver to serve copies of this filing on all parties taking service under their OATTs.

The Commission orders:

(A) Applicants’ revised tariffs sheets are hereby accepted for filing, subject to modifications, as discussed in the body of this order, to become effective on June 15, 2001.

⁸ Section A.4.4. reads as follows:

The Transmission Provider shall disburse accumulated penalty revenues, plus interest calculated in accord with 18 C.F.R. § 35.19a, within 30 days after the end of each month in which accumulated, undistributed penalty revenues exceed \$100,000. The Transmission Provider shall file a report with the Commission not more than 60 days after it makes each such disbursement.

⁹ Id. at P 35.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.