

122 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Florida Power & Light Company	Docket Nos. ER93-465-039
	ER93-465-040
	ER96-417-008
	ER96-417-009
	ER96-1375-009
	ER96-1375-010
	OA96-39-016
	OA96-39-017
	OA97-245-009
	OA97-245-010

ORDER ON COMPLIANCE AND GRANTING RECONSIDERATION

(Issued February 21, 2008)

1. This order reconsiders our July 6, 2006 order denying rehearing,¹ and also reconsiders the narrow issue of “unneeded redundancy” as addressed in our January 25, 2005 and December 15, 2005 orders.² Upon further review, we find that Florida Power & Light Company (FP&L) employed comparable standards to analyze the integration of Florida Municipal Power Authority’s (FMPA) Vero Beach-to-Fort Pierce facilities in 1994 and FP&L’s looped-transmission facilities. Accordingly, this order accepts FP&L’s April 25, 2005 compliance filing and rejects the September 5, 2006 compliance filing as moot.

I. Background

2. The background to this case is described in detail in the January 25, 2005 Order. Briefly, that order accepted in concept four factors for determining integration that were

¹ *Florida Power & Light Co.*, 116 FERC ¶ 61,013 (2006) (July 6, 2006 Order).

² *Florida Power & Light Co.*, 113 FERC ¶ 61,263 (2005) (December 15, 2005 Order); *Florida Power & Light Co.*, 110 FERC ¶ 61,058 (2005) (January 25, 2005 Order).

developed by FP&L in the TX Case,³ to ensure rate-treatment comparability between FP&L and FMPA facilities.⁴ The TX Case factor at issue in this proceeding states that a facility that provides only “unneeded redundancy” is not eligible for cost recovery.⁵ To ensure adherence to the principle of comparability, we ordered FP&L to apply the “unneeded redundancy” factor to each of its own transmission facilities as they existed in the model FP&L had previously used to analyze the integration of FMPA's Vero Beach-to-Fort Pierce facilities.⁶ We further directed FP&L to "demonstrate, through modeling the system with and without the facility, that each facility included in its transmission rate base was needed to deliver power to customers in the area where the facility is located *and* to other FP&L load centers."⁷

3. In our December 15, 2005 Order, we accepted FP&L's compliance filing in part, but stated that the test that FP&L had applied to its own facilities should have been "whether, even without a line, FP&L is able to deliver power to customers in that area *and* to other FP&L load centers."⁸ On January 17, 2006, FP&L filed a request for

³ *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *clarified*, 74 FERC ¶ 61,006 (1996), *reh'g denied*, 96 FERC ¶ 61,130 (2001), *aff'd*, *Florida Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003), *cert. denied*, 540 US 946 (2003) (TX Case).

⁴ January 25, 2005 Order, 110 FERC ¶ 61,058 at P 11.

⁵ *Id.* P 13.

⁶ *Id.*

⁷ *Id.* (emphasis added).

⁸ December 15, 2005 Order, 113 FERC ¶ 61,263 at P 21 (emphasis in original). Specifically, we stated:

. . . [I]t is not clear whether FP&L interprets loss of load not directly connected to the affected line or transformer, due to a contingency, as a violation of reliability criteria. . . . FP&L lists the facilities that it tested for unneeded redundancy. For each test period, FP&L indicates a number of facilities that, during contingencies, violated one of the following reliability criteria: (1) load was shed; (2) thermal ratings were violated; or (3) voltages at substations were at or above 95% of normal voltage. However, our review of FP&L's compliance filing has revealed that there are a number of test cases, in which the only reliability violations are what FP&L describes as "unserved load," and which do not demonstrate any thermal rating or voltage violations. Since FP&L does not indicate whether it is

(continued...)

rehearing (Request for Rehearing) arguing that the December 15, 2005 Order failed to comply with comparability standards because it determined unneeded redundancy in a manner inconsistent with precedent. Specifically, FP&L challenged the determination that an “FP&L facility provides more than unneeded redundancy only if *two* conditions are met. That is, [FP&L] must show that, under the test cases, load cannot be served by [FP&L] in the area of the facility being tested *and* (simultaneously) that load cannot be served by [FP&L] in other load centers.”⁹

4. In the July 6, 2006 Order, we did not decide the merits of FP&L's request for rehearing, but denied the request as untimely. Specifically, we held that FP&L should have requested rehearing of our January 25, 2005 Order when we first determined that it had failed to comport with our comparability standards.¹⁰

5. On August 7, 2006, FP&L filed the instant request for rehearing or reconsideration (Motion to Reconsider), alleging that it “reasonably did not perceive the January 25, 2005 Order as aggrieving.”¹¹ FP&L explains that the standard for whether a party should have sought rehearing is not whether a particular reading of an order is possible, but rather whether the party was unreasonable in assuming that the order meant what the party assumed it meant. In this case, FP&L claims that the Commission, through use of the word “and,” intended a shift in the comparability standard (and the test for integration) from that previously used in this proceeding. This shift, FP&L contends, is not a reasonable inference from a simple “and.” In the alternative, FP&L argues that the Commission should reconsider its July 6, 2006 Order because issues were raised in FP&L's January 17, 2006 request for rehearing that the Commission had not previously considered.

6. FMPA filed an answer to the Motion to Reconsider, arguing that FP&L's request for rehearing is untimely, that the January 25, 2005 Order is unambiguous, and that the Commission used the correct test for comparability. FMPA argues that FP&L included in its rate base FP&L facilities that were similar to FMPA facilities that had been denied

referring to load that is directly connected to or supplied by the faulted element *and/or* load in other FP&L load centers, we need clarification that FP&L's test is indeed compliant with the January 25 Order and the applicable . . . standards.

December 15, 2005 Order, 113 FERC ¶ 61,263 at P 23 (footnote omitted).

⁹ FP&L January 17, 2006 Request for Rehearing at 11 (emphasis in original).

¹⁰ July 6, 2006 Order, 116 FERC ¶ 61,013 at P 20.

¹¹ Motion to Reconsider at 1.

credits, and that FP&L's study of FMPA's Vero Beach-to-Fort Pierce facilities in 1993/1994 (1994 Test)¹² was never made part of the record in this proceeding. FMPA argues that, because FP&L witnesses merely speculate as to how the 1994 Test was performed, their affidavits about the test should be given no weight.

7. FP&L filed an answer to FMPA's answer that reiterates arguments FP&L raised in its Motion to Reconsider.¹³ FMPA filed an answer to FP&L's answer.¹⁴

8. In addition to its Motion to Reconsider, FP&L made a compliance filing on September 5, 2006, removing from its network-service rate approximately \$5.6 million in costs associated with transmission facilities that produced only an unserved-load violation for load directly connected to facilities taken out of service as a first contingency and, as such, not used to deliver power to other FP&L load centers. According to FP&L, the rate base reduction of approximately \$5.6 million did not result in a change to the \$1.23/kW-month rate that had been calculated in the April 25, 2005 compliance filing. FMPA filed a protest to FP&L's compliance filing, asking that the Commission order FP&L to reduce rates and pay certain refunds, or appoint a presiding law judge as a special master to determine appropriate rate reductions and refunds for comparability.¹⁵

II. Discussion

A. Procedural Matters

9. Under section 313(a) of the Federal Power Act (FPA)¹⁶ and Rule 713(b) of the Commission's Rules of Practice and Procedure¹⁷ a rehearing is only timely if it is filed

¹² FP&L submitted prepared testimony on July 7, 1994, June 15, 2005, July 15, 2005 and January 12, 2006, stating that its witness performed load flow studies in 1993/1994 to test the FP&L system (with all of FMPA's Vero Beach-to-Fort Pierce facilities removed from the transmission model) for violations of FP&L's planning criteria (1994 Test). FP&L states that the planning criteria were consistent with those established by the Florida Electric Power Coordinating Group (FCG) and the Southeastern Electric Reliability Council (SERC). FP&L January 17, 2006 Request for Rehearing, Ex. A at 3 (Adjemian 2006 Affidavit).

¹³ FP&L September 7, 2006 Answer.

¹⁴ FMPA September 22, 2006 Answer.

¹⁵ FMPA October 3, 2006 Protest to Compliance.

¹⁶ 16 U.S.C. § 825l(a) (2000).

within 30 days of the date of the order for which rehearing is sought. In addition, the Commission generally does not allow rehearing of an order denying rehearing.¹⁸ The Commission, however, has the discretion to reconsider its orders.¹⁹ We are persuaded that we erred in our July 6, 2006 Order and so we will take the unusual step of granting reconsideration.²⁰

B. Analysis

10. The substantive issue before us is a narrow one: is the test that FP&L used on its own facilities to determine if they provided “unnecessary redundancies” comparable to the 1994 Test used to evaluate FMPA’s Vero Beach-to-Fort Pierce facilities. Upon further consideration, we find that the tests are comparable. In light of our granting reconsideration on this issue, and finding that the tests are comparable, the September 5, 2006 compliance filing is rejected as moot.

11. As the U.S. Court of Appeals for the D.C. Circuit recognized in the TX Case, the same integration standard used to determine FMPA’s eligibility for pricing credits should also be used by FP&L for rate-making purposes.²¹

12. In our January 25, 2005 and December 15, 2005 Orders, we relied on FP&L witness Adjemian's July 7, 1994 prepared testimony describing the 1994 Test. Describing certain power flows across FMPA facilities, Adjemian stated:

The fact that a negligible amount of power can flow over the [FMPA] line is not, however, determinative of whether the [FMPA] line benefits [FP&L]. The

¹⁷ 18 C.F.R. § 385.713(b) (2007).

¹⁸ *See, e.g., KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 112 FERC ¶ 61,153, at P 6 (2005).

¹⁹ *Cities of Campbell and Thayer v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985).

²⁰ Section 309 of the FPA authorizes the Commission "to perform any and all acts, and to prescribe . . . such orders . . . as it may find necessary or appropriate to carry out the provisions of . . . [the FPA]." 16 U.S.C. § 825h (2000). In interpreting this section, the courts have held that "the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of policies, remedies and sanctions . . . to arrive at maximum effectuation of congressional objectives." *Niagara Mohawk Power Corp. v. F.P.C.*, 379 F. 2d 153, 159 (D.C. Cir. 1967).

²¹ TX Case, 315 F.3d at 364.

question is whether [FP&L] has sufficient transmission facilities in the area such that, even without the [FMPA] line, [FP&L] is able to deliver power to retail customers in that area *and* to transmit power to [FP&L's] other load centers in South Florida.²²

13. FP&L witness Adjemian focused on whether FP&L's facilities could serve *all* loads absent FMPA's Vero Beach-to-Fort Pierce facilities. As such, reconsidering this language, the "and" in that passage does no more than indicate that the FMPA line was "unneeded" for either local *or* remote load. It does not signal that FP&L had used a two-step threshold for integration, as we initially (and incorrectly) thought. In other words, the issue was and is whether removing FMPA's facilities from the test case curtails either local or remote load, not whether it curtails both.

14. We now turn to the question of whether the 1994 Test FP&L applied to the FMPA facilities was, in fact, comparable to the tests FP&L performed on its own facilities to determine if they provided "unneeded redundancies." We find that the tests were comparable. Both the 1994 Test applied to FMPA's facilities and FP&L's analysis of its own facilities²³ considered the threshold question, whether a given facility provided *any*

²² Adjemian 1994 Affidavit at 54 (emphasis added).

²³ FP&L's April 25, 2005 compliance filing states that FP&L analyzed its own facilities by modeling various system conditions that FP&L uses for planning purposes. FP&L witness Sanchez explains that he first modeled a system condition with all network resources presumed available to serve the corresponding network loads in the model and included all long-term firm wholesale obligations. Sanchez states that, since retail load and wholesale obligations must continue to be served in a reliable manner even when one network resource is unavailable, he also modeled conditions that presume one network resource is unavailable at a time with the remaining network resources committed and dispatched as necessary to serve the corresponding network load. Sanchez removed the transmission facility being tested from the base models representing various system conditions, and performed a load-flow simulation to determine whether any reliability-criteria violations occurred for a first contingency (i.e., for a sudden loss of a single transmission line, transformer, or generator) under such system conditions. Sanchez attested that an analysis of first contingencies under the various system conditions is consistent with the analyses FPL uses when it assesses its transmission system during the planning process. That is, when FPL assesses its transmission system during the planning process, it analyzes various system conditions, including all network resources available and including any one network resource unavailable at a time, in order to test the system's ability to continue to reliably provide wholesale transmission and retail obligations when first contingencies arise. Sanchez concluded that if a test resulted in a

(continued...)

benefit to FP&L's system, by removing the facility at issue and looking for violations of the planning criteria.²⁴ In each instance it was understood that load should continue to be served, that transmission facilities should be at or below 100 percent of their applicable respective thermal ratings and that voltages at substations should be at or above 95 percent of nominal voltage.²⁵

15. In sum, we find that the 1994 Test, as described and applied by FP&L witness Adjemian, and the testimony and models provided by FP&L with respect to its own facilities show that the test performed on FMPA's facilities, i.e., the 1994 Test and the tests performed on its own looping-transmission facilities are comparable. Accordingly, FP&L's April 25, 2005 compliance filing properly removed transmission facilities that provided only unneeded redundancy, consistent with the 1994 Test and nothing more is needed. Thus, we also reject the September 5, 2006 compliance filing as moot.

violation of reliability criteria, the transmission facility associated with the test is considered "needed" to meet FPL's wholesale transmission and retail obligations. FP&L April 25, 2005 Compliance Filing, Sanchez Affidavit at 5-7.

²⁴ FP&L witness Sanchez states that his analysis performed on FP&L's facilities was consistent with the 1994 Test methodology, arguing that he, like Adjemian, removed the subject line and determined whether, without that line, FP&L would be able to meet its wholesale transmission and retail obligations. *See* FP&L January 17, 2006 Request for Rehearing at 24-26. Adjemian confirms Sanchez's statement, testifying that the 1994 load-flow studies were performed to test the FP&L system, with the Vero Beach-to-Fort Pierce line removed from the transmission model, for violations of the planning criteria. *Id.* at 18. Under planning criteria single contingencies (which were referred to as "more probable contingencies") were to be met "without loss of load (other than the load connected to the line or transformer which is lost)." *Id.*, Ex. A at 3. Adjemian states that the reference to "load connected to the line or transformer which is lost" applied to radial facilities only. In other words, when loss of a radial line or radial transformer was the first contingency event, FCG rules were not violated when the load connected to that facility was lost. Otherwise, a utility was to plan its system such that load was not lost under first contingency events. *Id.*

²⁵ *Compare* FP&L April 25, 2005 Compliance Filing, Sanchez Affidavit at 7 *with* FP&L January 17, 2006 Request for Rehearing, Ex. A at 2.

The Commission orders:

(A) We hereby grant the Motion for Reconsideration and reconsider our denial of the Request for Rehearing for the limited purpose of determining that FP&L employed comparable standards to analyze the integration of the Vero Beach-to-Fort Pierce facilities in 1994 and its own looped-transmission facilities.

(B) We hereby accept FP&L's April 25, 2005 compliance filing and reject the September 5, 2006 compliance filing as moot.

By the Commission. Commissioner Wellinghoff dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company

Docket Nos. ER93-465-039
ER93-465-040
ER96-417-008
ER96-417-009
ER96-1375-009
ER96-1375-010
OA96-39-016
OA96-39-017
OA97-245-009
OA97-245-010

(Issued February 21, 2008)

WELLINGHOFF, Commissioner, dissenting:

The majority states that the substantive issue before the Commission here is a narrow one: whether the test that FP&L used on its own facilities to determine if they provided “unneeded redundancies” is comparable to the 1994 Test that FP&L used to evaluate FMPA’s Vero Beach-to-Fort Pierce facilities. I agree with that characterization of the issue before the Commission. I respectfully dissent, however, because I am not convinced that FP&L has satisfied the Commission’s comparability requirement and because the majority has not adequately explained its decision to reverse the Commission’s repeated previous findings on that issue.

The Commission has previously found in these proceedings that with regard to FMPA’s Vero Beach-to-Fort Pierce facilities, FP&L assessed “unneeded redundancy” by analyzing whether a facility was needed to deliver power to customers in the area where the facility is located and to other load centers.¹ In light of that finding and the Commission’s comparability requirement, the Commission stated that FP&L must apply the same test to its own facilities. The Commission also previously recognized the unusual nature of FP&L’s test, as described in the underlying orders. The Commission stated that although it would typically find looped facilities like the FP&L facilities at issue here to be integrated transmission facilities, the Commission’s “very narrow determination”

¹ *Florida Power & Light Co.*, 110 FERC ¶ 61,058 at P 13 (2005); *Florida Power & Light Co.*, 113 FERC ¶ 61,263 at P 24 (2005) (December 15, 2005 Order); *Florida Power & Light Co.*, 116 FERC ¶ 61,013 at P 20 (2006) (July 6, 2006 Order).

made in the underlying orders was “aimed at achieving comparability to the test FP&L devised to test FMPA’s facilities.”²

In today’s order, the majority finds that the Commission previously misunderstood the test that FP&L applied to assess FMPA’s facilities for “unneeded redundancy”. Contrary to the Commission’s repeated descriptions of FP&L’s test, the majority now states that “the issue was and is whether removing FMPA’s facilities from the test case curtails either local or remote load, not whether it curtails both.” Building on that reversal, the majority concludes that the test that FP&L applied to its own facilities is comparable to the test that FP&L earlier applied to FMPA’s facilities. In support of these reversals, the majority cites affidavits submitted by FP&L Witnesses Sanchez and Adjemian.

I agree with the majority that its new understanding of FP&L’s test would provide a better basis for assessing “unneeded redundancy” than the Commission’s previous understanding of FP&L’s test. The relative advantages of those approaches, however, are not before the Commission. As the majority states, the issue that the Commission must address is comparability. I do not find adequate evidence in the record to justify reversing course on that issue.

FMPA has raised serious concerns about the Sanchez and Adjemian affidavits on which the majority places great weight. For example, in its August 22, 2006 answer to FP&L’s request for rehearing or reconsideration of the Commission’s July 6 Order, FMPA states:

FPL makes numerous references to a 1994 “test” of FMPA’s facilities that was allegedly done by Mr. Adjemian. Mr. Adjemian did testify in 1994 that the Ft. Pierce-Vero Beach line was unneeded by FPL. But any “study” that FPL made is not part of the record. FPL’s statements concerning the test are based upon a test that FPL does not have and has not supplied others. Nor does Mr. Adjemian even specifically recall the test. Rather, the test is an apparent reconstruction of what affiants Adjemian and Sanchez presume that Mr. Adjemian would have done in 1994 to test FMPA’s facilities The affidavits can be given no weight because they are based on speculation.³

² December 15, 2005 Order at P 25, n.33; July 6, 2006 Order at P 22, n.31.

³ FMPA Answer to FP&L Request for Rehearing or Reconsideration and Motion to Accept Filing, Docket Nos. ER93-465-036, *et al.*, at 12, Aug. 22. 2006 (citations omitted).

The majority acknowledges FMPA's concerns along these lines in the "Background" section of today's order. Despite that acknowledgement, the majority does not respond to the substance of those concerns. Instead, the extent of the majority's response on this point is a footnote in the "Background" section to the effect that FP&L previously submitted prepared testimony stating that its witnesses performed load flow studies in 1993/1994.

I believe that, in relying so heavily on the Sanchez and Adjemian affidavits, the majority dismisses FMPA's concerns too easily. In the absence of a clearer showing that the Commission did indeed misunderstand FP&L's test for assessing "unneeded redundancy," I would not reverse the Commission's repeated previous findings on either that issue or the related question of comparability.

For these reasons, I respectfully dissent.

Jon Wellinghoff
Commissioner