

128 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Carolina Power & Light Company

Docket No. ER99-2311-010

Florida Power Corporation

Docket No. ER97-2846-013

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND
COMPLIANCE FILINGS

(Issued July 16, 2009)

1. In this order, the Commission accepts an updated market power analysis filed by Progress Energy Inc. (Progress Energy) on behalf of its public utility affiliates, Carolina Power & Light Company (Carolina Power & Light) and Florida Power Corporation. As discussed below, the Commission concludes that Carolina Power & Light and Florida Power Corporation continue to satisfy the Commission's standards for market-based rate authority in the Southeast region, excluding the Carolina Power & Light balancing authority area and peninsular Florida.¹

2. The Commission also accepts Carolina Power & Light's and Florida Power Corporation's proposed market-based rate tariff revisions to incorporate provisions as adopted in Order Nos. 697 and 697-A, to be effective September 18, 2007, as requested.²

¹ Carolina Power & Light and Florida Power Corporation are subject to cost-based rates in the Carolina Power & Light balancing authority area and peninsular Florida in *Carolina Power & Light Co.*, 113 FERC ¶ 61,130 (2005), and *Florida Power Corp.*, Docket No. ER98-374-000 (April 20, 1998) (unpublished letter order).

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, (continued...)

3. Additionally, Carolina Power & Light and Florida Power Corporation meet the criteria for Category 2 sellers in the Southeast region and Category 1 sellers in all other regions and are so designated. Carolina Power & Light's and Florida Power Corporation's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.³

I. Background

4. Carolina Power & Light and Florida Power Corporation are indirect wholly-owned subsidiaries of Progress Energy, which is a public utility holding company. Carolina Power & Light and Florida Power Corporation both own and control generation and transmission in the Southeast region of the United States. As noted above, Carolina Power & Light and Florida Power Corporation are currently subject to cost-based mitigation in the Carolina Power & Light balancing authority area and peninsular Florida and are not seeking market-based rate authority there.

5. The balancing authority area markets first-tier to the Carolina Power & Light balancing authority areas are Duke Energy Carolinas, LLC (Duke Energy Carolinas), PJM Interconnection, L.L.C (PJM), South Carolina Electric and Gas Company (South Carolina Electric & Gas), Santee Cooper, Tennessee Valley Authority (TVA) and Yadkin, Inc. (Yadkin). Southern Company (Southern) is the only balancing authority area outside of peninsular Florida that is directly interconnected to the Florida Power Corporation balancing authority area.⁴

Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *order on reh'g and clarification*, 124 FERC ¶ 61,055 (2008), Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-893, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9-10, App. D-1; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Apps. D, D-1, and D-2. *See also* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 47-48 (amending in part App. D-2).

⁴ Carolina Power & Light and Florida Power Corporation were authorized to sell electric energy and capacity at wholesale at market-based rates in *Carolina Power & Light Co.*, 82 FERC ¶ 61,004 (1998) and *Florida Power Corp.*, 79 FERC ¶ 61,385 (1997).

6. On September 2, 2008, Carolina Power & Light and Florida Power Corporation filed an updated market analysis in accordance with the regional reporting schedule adopted in Order No. 697.⁵ As part of that filing, Carolina Power & Light and Florida Power Corporation submitted a Simultaneous Import Limitation (SIL) study for several markets in the Southeast region. Carolina Power & Light and Florida Power Corporation also submitted revised tariff sheets to incorporate the required provisions adopted by the Commission in Order Nos. 697 and 697-A.⁶

7. On December 23, 2008, Commission Staff issued a request that Carolina Power & Light and Florida Power Corporation submit additional information regarding the SIL study submitted on August 29, 2008. On January 13, 2009, Carolina Power & Light and Florida Power Corporation submitted a filing in response to Commission Staff's December 23, 2008 request. On April 9, 2009, Commission Staff issued another request to Carolina Power & Light and Florida Power Corporation notifying them that additional information concerning their SIL study was still needed. On May 8, 2009, Carolina Power & Light and Florida Power Corporation submitted additional information in response to Commission Staff's April 9, 2009 request.

II. Notices and Responsive Pleadings

8. Notice of Carolina Power & Light and Florida Power Corporation's September 2, 2008, filing was published in the *Federal Register*,⁷ with interventions or protests due on or before November 3, 2008. None was filed.

9. Notice of Carolina Power & Light and Florida Power Corporation's September 11, 2008, supplemental filing was published in the *Federal Register*,⁸ with interventions or protests due on or before October 2, 2008. None was filed.

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that "both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable." *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914-918.

⁷ 73 Fed. Reg. 53,214 (2008).

⁸ 73 Fed. Reg. 55,064 (2008).

10. Notice of Carolina Power & Light and Florida Power Corporation's January 13, 2009 supplemental filing was published in the *Federal Register*,⁹ with interventions or protests due on or before July 8, 2009. None was filed.

11. Notice of Carolina Power & Light and Florida Power Corporation's May 8, 2009 second supplemental filing was published in the *Federal Register*,¹⁰ with interventions or protests due on or before May 29, 2009. None was filed.

12. Notice of Carolina Power & Light and Florida Power Corporation's June 10, 2009 third supplemental filing was published in the *Federal Register*,¹¹ with interventions or protests due on or before July 1, 2009. None was filed.

III. Discussion

A. Market-Based Rate Authorization

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹² The Commission concludes that Carolina Power & Light and Florida Power Corporation satisfy the Commission's standards for market-based rate authority, as discussed below.

B. Horizontal Market Power

14. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹³

15. Carolina Power & Light and Florida Power Corporation prepared the pivotal supplier and wholesale market share screens for the balancing authority areas first-tier to

⁹ 74 Fed. Reg. 32,910 (2009).

¹⁰ 74 Fed. Reg. 23,685 (2009).

¹¹ 74 Fed. Reg. 29,201 (2009).

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

¹³ *Id.* P 62.

their balancing authority areas including Duke Energy Carolinas, PJM, TVA, South Carolina Electric & Gas, Southern and Santee Cooper.¹⁴

16. The Commission has reviewed Carolina Power & Light and Florida Power Corporation's pivotal supplier and wholesale market share screens. As noted above, Commission Staff issued data requests on December 23, 2008 and April 9, 2009, requesting that Carolina Power & Light and Florida Power Corporation provide additional information regarding the SIL study they submitted as part of their updated market power analysis. In response to those requests, Carolina Power & Light and Florida Power Corporation submitted additional information and revised SIL studies. Commission Staff requested the other transmission owners in the Southeast that filed SIL studies with their updated market power analyses (Southeast Transmission Owners)¹⁵ to submit similar information as well. As detailed in an order being issued concurrently with this order, the Commission has made adjustments to the SIL studies submitted by the Southeast Transmission Owners, which we will use in evaluating market power analyses filed in the Southeast region.¹⁶

17. We find that Carolina Power & Light and Florida Power Corporation pass the pivotal supplier and wholesale market share screens in all their first-tier markets. Specifically, using the Commission-adjusted SIL study results, Carolina Power & Light's and Florida Power Corporation's market shares for the relevant balancing authority areas are as follows: Duke Energy Carolinas market shares range from 7.2 to 10.5 percent; Santee Cooper market shares range from 4.3 to 5.2 percent; South Carolina Electric & Gas market shares range from 3.1 to 4.1 percent; Southern market shares range from 6.2

¹⁴ The Yadkin balancing authority area, which is a generation-only balancing authority area, was excluded from the analysis. The Yadkin market also was not analyzed as part of the Progress Energy's previous triennial.

¹⁵ There were seven separate updated market power filings submitted on behalf of Southeast Transmission Owners. They include submissions by: (1) Duke Energy Carolinas, (2) South Carolina Electric & Gas, (3) Tampa Electric Company, (4) Carolina Power & Light Company and Florida Power Corporation, (5) Entergy Services, Inc., Entergy Power Ventures, LP, EWO Marketing, LP, and Entergy Power, Inc., (6) LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, and Western Kentucky Energy Corporation, and (7) Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

¹⁶ *Carolina Power & Light Co.*, 128 FERC ¶ 61,039 (2009).

to 6.5 percent; TVA market shares range from 0.4 to 0.6 percent; and PJM market shares range from 0.6 to 1.3 percent.

18. Accordingly, the Commission finds that Carolina Power & Light and Florida Power Corporation satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in all the first-tier balancing authority areas.

C. Vertical Market Power

19. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.¹⁷ Carolina Power & Light and Florida Power Corporation state that they have OATTs on file with the Commission.¹⁸

20. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁰ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers, but will allow intervenors to demonstrate otherwise.²¹

21. Carolina Power & Light and Florida Power Corporation state that neither they nor their affiliates own or control intrastate natural gas transportation or intrastate natural gas storage in the Southeast region. They also do not own or control physical sources of coal supplies or control who may access transportation of coal via barges and rail cars. Florida Power Corporation does own or has options on one site, the Levy County site, for

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁸ See *Carolina Power & Light Co.*, Docket No. OA96-198-000 (November 22, 2000) (unpublished letter order); *Florida Power Corp.*, Docket No. OA97-362-000 (January 19, 2001) (unpublished letter order).

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

new capacity development in Florida, but it does not own sites that could be used to create barriers to entry in the relevant markets.

22. The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²² Carolina Power & Light and Florida Power Corporation affirmatively state that neither Carolina Power & Light and Florida Power Corporation nor any of their affiliates have erected barriers to entry into the relevant markets and that they will not erect barriers into the relevant markets.

23. Based on Carolina Power & Light and Florida Power Corporation's representations, we find that they satisfy the Commission's requirements for market-based rate authority regarding vertical market power.

D. Compliance Filings

24. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: (1) a provision requiring compliance with the Commission's regulations; and (2) a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.²³ In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.²⁴ In Order No. 697-A, the Commission also required that each seller include in its market based rate tariff a provision identifying which category of seller it qualifies as in each region.²⁵

25. Carolina Power & Light and Florida Power Corporation's revised market-based rate tariffs include the Commission's two required provisions, indicating that they intend to comply with the Commission's regulations, including the affiliate restrictions.

26. Additionally, the revised market-based rate tariffs provide that Carolina Power & Light and Florida Power Corporation shall not make any sales under the tariffs to be delivered within their respective balancing authority areas (including sales to any customer dynamically scheduled into their balancing authority areas).

²² *Id.* P 447.

²³ *Id.* P 914.

²⁴ *Id.* P 917.

²⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-393.

27. Carolina Power & Light and Florida Power Corporation's revised market-based rate tariffs also include a set of standard provisions with regard to sales of certain ancillary services in the markets administered by PJM, New York Independent System Operator, Inc., ISO New England Inc., and California Independent System Operator, Inc., as well as a provision regarding sales of ancillary services as a third-party provider.

28. Carolina Power & Light's and Florida Power Corporation's revised market-based rate tariffs include the required provision concerning seller categories. Carolina Power & Light also includes a list of assets as required by Order No. 697.²⁶ Carolina Power & Light's revised market-based rate tariffs therefore satisfy the Commission's requirements set forth in Order Nos. 697 and 697-A. Accordingly, we will accept the revised market-based rate tariffs of Carolina Power & Light and Florida Power Corporation, effective September 18, 2007, as requested.²⁷

E. Reporting Requirements

29. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.²⁸ Public

²⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

²⁷ Carolina Power & Light Co., FERC Electric Tariff, Sixth Revised Volume No. 4, First Revised Sheet Nos. 1-5 and 14-15 (supersedes Original Sheet Nos. 1-5 and 14-15) and First Revised Sheet No. 13A (cancels Original Sheet No. 13A) and Second Revised Sheet No. 16 (cancels First Revised Sheet Nos. 16 and 17). Carolina Power & Light Co., FERC Electric Tariff, Third Revised Volume No. 5, First Revised Sheet Nos. 1-6 (supersedes Original Sheet Nos. 1-6) and First Revised Sheet No. 7 (cancels Original Sheet Nos. 7 and 8). Carolina Power & Light Co., FERC Electric Tariff, Original Volume No. 7, Substitute First Revised Sheet Nos. 1-5 (supersedes Original Sheet Nos. 1-5) and Substitute First Revised Sheet No. 8 (cancels Original Sheet Nos. 8 and 9). Florida Power Corp., FERC Electric Tariff, Fourth Revised Volume No. 8, First Revised Sheet Nos. 3-9, 13, 21-24 (supersedes Original Sheet Nos. 3-9, 13, 21-24), Original Sheet No. 21A (supersedes Original Sheet No. 22) and Second Revised Sheet No. 25 (cancels First Revised Sheet Nos. 25 and 26). Florida Power Corp., FERC Electric Tariff, Third Revised Volume No. 10, First Revised Sheet Nos. 1-5 and 8 (supersedes Original Sheet Nos. 1-5 and 8).

²⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, (continued...)

utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.²⁹

30. Carolina Power & Light and Florida Power Corporation must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³⁰

31. Additionally, in Order No. 697, the Commission created two categories of sellers.³¹ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888³²); that are not affiliated with

Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²⁹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

³⁰ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2008).

³¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³² *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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.³³ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analyses.³⁴

32. Based on Carolina Power & Light and Florida Power Corporation's representations, we find that Carolina Power & Light and Florida Power Corporation meet the criteria for a Category 2 seller in the Southeast region based on their ownership of generation totaling greater than 500 MW of capacity and their ownership of transmission facilities in the Southeast region of the United States and a Category 1 seller in all other regions. Thus, Carolina Power & Light and Florida Power Corporation must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.³⁵ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Carolina Power & Light and Florida Power Corporation's updated market power analyses are hereby accepted for filing, as discussed in the body of this order.

(B) Carolina Power & Light and Florida Power Corporation's revisions to their market-based rate tariff sheets are hereby accepted, effective September 18, 2007, as discussed in the body of this order.

³³ 18 C.F.R. § 35.36(a)(2) (2008).

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

³⁵ *Id.* P 882.

(C) Carolina Power & Light and Florida Power Corporation are hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.