

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

Florida Power & Light Company

Docket Nos. ER93-465-032,
ER96-417-001,
ER96-1375-002,
OA96-39-009,
and OA97-245-002

ORDER DENYING REHEARING

(Issued March 3, 2004)

1. This order denies a request for rehearing filed by Florida Municipal Power Agency (FMPA) of the Commission's order issued in this proceeding on December 16, 2003,¹ where the Commission addressed an Initial Decision issued in this proceeding on March 19, 1995² concerning the justness and reasonableness of proposed rates filed by Florida Power & Light Company (FP&L) for wholesale power and transmission services, and also rejects FP&L's answer to the request for rehearing.

Background

2. In the December 16 Order, the Commission: (1) directed FP&L to revise its rate schedules to exclude those FP&L facilities that fail to meet the same integration test applied to FMPA facilities in Docket Nos. EL93-51 and TX93-4;³ (2) denied FMPA

¹ Florida Power & Light Company, 105 FERC ¶ 61,287 (2003) (December 16 Order).

² Florida Power & Light Company, 73 FERC ¶ 63,018 (1995).

³ Florida Municipal Power Agency v. Florida Power & Light Company, 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, 124 S. Ct. 386 (2003) (TX Case).

credits for its customer-owned facilities because this issue had been determined in the TX Case; and (3) declined to revisit the issue of behind-the-meter generation and load ratio pricing for network integration service because this issue had been addressed in Order Nos. 888 and 888-A.⁴

3. On January 15, 2004, FMPA filed a request for rehearing. FMPA

[r]ecognizes that comparability can be achieved through adequate rate base reductions, . . . [however,] solely as a protective matter, in the event that [FP&L] does not reduce its rate base to eliminate all [FP&L] facilities that are like FMPA's facilities which receive no credits, and that the Commission determines for any reason that it cannot or should not make the required rate base reductions, or refunds are not ordered, FMPA would respectfully request rehearing of the Commission's failure to order credits for its facilities as being unduly discriminatory under the Federal Power Act, as providing for unjust and unreasonable rates and being anti-competitive.^{5]}

In addition, FMPA challenges the Commission's determination not to revisit the issue of load ratio pricing for network integration service.

4. On January 30, 2004, FP&L filed an answer. FP&L argues that FMPA's conditional request for rehearing of the crediting issue is an inappropriate attempt to reserve a right to revisit the credit issue and that the load ratio pricing issue was indeed decided in Order Nos. 888 and 888-A.

Discussion

5. We will reject FP&L's answer. Under Rule 713(d) of the Commission's Rules of Practice and Procedure, an answer is not permitted to a request for rehearing.⁶

⁴ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and 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 (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), aff'd in relevant part, Transmission Access Policy 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).

⁵ Request for Rehearing at 3 (emphasis in original; citation omitted).

⁶ 18 C.F.R. § 385.713(d) (2003).

Conditional Request

6. We will deny the conditional request for rehearing regarding elimination of FP&L's facilities from FP&L's rates. FMPA is not, in fact, challenging our determination in the December 16 Order. Indeed, as noted above, FMPA "recognizes" that the December 16 Order satisfied its comparability concerns. Rather, FMPA is concerned that the compliance filing FP&L was directed to make will not actually comport with the comparability requirement of the December 16 Order. Such concerns are appropriately raised in response to FP&L's compliance filing – should FMPA feel it necessary to challenge any specific facility's treatment in that compliance filing. Such concerns are not appropriately raised here.

Network Load Pricing

7. In the December 16 Order, the Commission noted that "FMPA raised the same concerns in Order Nos. 888 and 888-A, and we addressed the issue of load ratio pricing for network integration service in that context – and were affirmed on appeal – and we likewise see no persuasive reason to revisit that determination here."⁷

8. On rehearing, FMPA argues that it accepts that network transmission charges should be based on companies' and customers' full load. However, FMPA questions "whether FMPA should be charged by [FP&L] for network transmission integration service to serve load where [FP&L] cannot provide the service because of physical transmission limitations."⁸ In support, FMPA explains that, for FP&L's service to Key West, FP&L charges FMPA for network transmission service based on Key West's total load, notwithstanding that the transmission system does not have the physical capacity to serve all of Key West's peak load. FMPA maintains that allowing FP&L to charge FMPA for transmission based on Key West's peak load amounts to a charge for service that FP&L does not and cannot provide, and cannot possibly be just and reasonable.

9. FMPA also argues that Order Nos. 888 and 888-A are not, in fact, controlling. FMPA believes that those decisions were "general and did not address the issue of application of full network load pricing where the transmission provider could not provide firm service."⁹ In addition, FMPA maintains that the premise of Order Nos. 888 and 888-A and their affirmance by the D.C. Circuit Court of Appeals is that "network

⁷ December 16 Order at P 19 (citation omitted).

⁸ Request for Rehearing at 4 (emphasis in original not shown).

⁹ Id. at 8.

customers can call on the transmission provider to supply not just some, but all of their loads at any given moment, when for instance they experience blackouts or brownouts,”¹⁰ while here the transmission provider cannot supply all of the load at any given moment. Finally, FMPA argues that, in deciding Order Nos. 888 and 888-A, the Commission could not and did not consider this individual record and the Commission refused to consider this record when it decided the TX Case.

10. We will also deny the request for rehearing regarding network load pricing. We disagree with FMPA’s premise that the transmission pricing guidance contained in Order Nos. 888 and 888-A is only generic in nature and did not address the application of load ratio pricing to the circumstances raised here by FMPA; Order No. 888-A clearly addressed the circumstances cited by FMPA and states that the “bottom line is that all potential transmission customers, including those with generation behind the meter, must choose between network integration transmission service or point-to-point transmission service. Each of these services has its own advantages and risks.”¹¹ Because FMPA has chosen to take network integration service along with the attendant advantages, it must accept everything else, i.e., the disadvantages and risks, that go along with that choice.

The Commission orders:

(A) FP&L’s answer to the request for rehearing is hereby rejected.

(B) FMPA’s request for rehearing is hereby denied.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁰ 225 F.3d at 726.

¹¹ FERC Stats. & Regs. at 30,260 (emphasis added; footnote omitted). See also id. at 30,260-61 (“a network customer will not be permitted to take a combination of both network and point-to-point transmission services under the pro forma tariff to serve the same discrete load”; “the Commission will allow a network customer to either designate all of a discrete load as network load under the network integration transmission service or to exclude the entirety of a discrete load from the network service and serve such load with the customer’s ‘behind-the-meter’ generation and/or through any point-to-point transmission service” (emphasis in original; footnotes omitted)).