

113 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Florida Power & Light Company

Docket Nos. ER93-465-034
ER96-417-003
ER96-1375-004
OA96-39-011
OA97-245-004

ORDER ON COMPLIANCE FILING

(Issued December 15, 2005)

1. This order addresses a compliance filing by Florida Power and Light Company (FP&L), submitted in response to the Commission's order issued in this proceeding on January 25, 2005,¹ that accepted a prior compliance filing in part, rejected it in part, and directed FP&L to make a further compliance filing. In this order, we accept FP&L's instant compliance filing in part, reject it in part, and direct the submission of a further compliance filing.

Background

2. This case has a long procedural history dating back to 1993, when FP&L completed a comprehensive restructuring of its then-existing tariff structure, including a new open access transmission tariff. On January 18, 1996, in Docket No. ER96-417-000, the Commission accepted for filing, and suspended, FP&L's network integration transmission service tariff.² On September 18, 2000, in Docket No. ER93-465-000, *et al.*, the Commission accepted a settlement agreement that fully resolved most of the rate issues related to the network integration transmission service tariff.³

¹ *Florida Power and Light Company*, 110 FERC ¶ 61,058 (2005) (January 25 Order).

² *Florida Power and Light Company*, 74 FERC ¶ 61,021 (1996).

³ *Florida Power and Light Company*, 92 FERC ¶ 61,241 (2000). Although the active parties reached an agreement in principle, negotiations have continued to prepare
(continued...)

3. The Commission addressed the three remaining issues on December 16, 2003,⁴ and directed FP&L to make a compliance filing revising its proposed rate schedules to exclude those FP&L facilities that fail to meet the same integration test applied to its network service customer, Florida Municipal Power Agency (FMPA), in Docket Nos. EL93-51 and TX93-4.⁵ The Commission also required that FP&L, in the “compliance filing should identify, as to those FP&L facilities whose costs were included in the rates which were objected to by FMPA, why they should be included in the rates and why they are or are not comparable to FMPA’s facilities.”⁶

4. On May 14, 2004, FP&L submitted a revised proposed rate schedule, in which it proposed to reduce FMPA’s network transmission rate by approximately \$20 million. FP&L explained that it had analyzed facilities, beginning at the 69 kV voltage level, using a 1998 test year. FP&L also explained that it distilled the network integration transmission test to four factors (TX Case Factors) and that a facility had to pass each of these tests to be considered integrated. FMPA protested, arguing that the filing did not achieve comparability.

5. In the January 25 Order, the Commission agreed that the filing did not satisfy the comparability requirement. Specifically, the Commission found that use of 1998 as a base year did not meet comparability with respect to the determination of the integration of FMPA facilities in the TX Case.⁷ The Commission also found that, while FP&L’s TX Case Factors test could be a just and reasonable way to ensure rate treatment comparability between its own and FMPA’s facilities, FP&L did not properly apply the test to its own facilities. Specifically, the Commission found that FP&L: (1) failed to exclude all radial facilities and associated equipment; and (2) did not test its transmission

the interchange service schedules that would fully implement the parties’ settlement in principle. On June 27, 2005, FP&L notified the Commission that it will endeavor to file a new settlement agreement shortly after July 14, 2005.

⁴ *Florida Power and Light Company*, 105 FERC ¶ 61,287 (2003) (December 16 Order), *reh’g denied*, 106 FERC ¶ 61,204 (2004).

⁵ *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).

⁶ December 16 Order at P 16 (citation omitted).

⁷ January 25 Order at P 10.

facilities for unneeded redundancy.⁸ The Commission did accept FP&L's proposed net plant methodology method to adjust the settlement rate, but required FP&L to demonstrate the integration of its transmission facilities as of 1993 and adjust the settlement rate established in 2000 using 1993 plant cost data.⁹ FP&L was given 90 days to make a new compliance filing.

6. On April 25, 2005, FP&L made the instant compliance filing. In support, FP&L states that, as a result of its analysis in accordance with the January 25 Order, it now proposes to remove from the rate it charges FMPA for network transmission service approximately \$29 million in costs. FP&L states that a portion of the filing contains Critical Energy Infrastructure Information (CEII), and requests that the Commission so designate that portion.

7. Notice of the filing was published in the *Federal Register*,¹⁰ with comments due on or before May 16, 2005. On May 10, 2005, FMPA filed a motion for an extension of time to file comments until May 31, 2005, and stated that FP&L had consented to that extension. The extension was granted on May 13, 2005.

8. On May 31, 2005, FMPA filed a protest.¹¹ FMPA states that, because of FP&L's CEII redaction, FMPA also redacts certain materials, but challenges the need for CEII treatment. In addition, FMPA argues that FP&L has still not complied with the Commission's directive to ensure comparability.¹² FMPA maintains that FP&L failed to demonstrate, as directed, that each facility included in its transmission rate base was needed to deliver power to other FP&L load centers; FMPA argues that the vast majority of the 115 kV and 138kV lines FP&L includes, in fact, provide only very localized load-serving capability and only local redundancy. In addition, FMPA believes it likely that FP&L did not, contrary to what it led the Commission to believe, model its system in

⁸ *Id.* at P 11.

⁹ *Id.* at P 17.

¹⁰ 70 Fed. Reg. 23,860 (2005).

¹¹ FMPA also states that it "would have no objection" if the Commission orders that some of the redacted and deleted material contained in its filing be made public. FMPA Protest at 2. On June 3, 2005, FP&L filed an answer "disagree[ing] that it would be appropriate to make public any of th[at] information." FP&L June 3 Answer at 2.

¹² However, FMPA believes that FP&L should reduce rates and pay the refunds that it admits it owes in the April 25 Compliance Filing.

1994 to determine FMPA's entitlement to credits. Moreover, FMPA continues, even if FP&L did such a study, but can no longer retrieve it, FP&L "did not do what the Commission said it should do," *i.e.*, "study its system applying the same tests that it applied to exclude the Ft. Pierce-Vero Beach line for credits."¹³ FMPA further argues that the new test FP&L uses is far different from the standards FP&L applied to FMPA's facilities. In fact, FMPA states, when FMPA applied this new test to its own Ft Pierce-Vero Beach transmission line, that line passed the same test that FP&L applied to itself. FMPA also asserts that FP&L ignored the Commission's requirement that it demonstrate that each of its transmission rate base facilities is needed both to serve local load and to serve load in other load centers. Finally, FMPA maintains that, because of FP&L's failure to comply, FMPA's affidavit of Joe N. Linxwiler, Jr. provides the only record evidence of the appropriate transmission rate base reduction, and the Commission should order the results it recommends. If the Commission disagrees, FMPA argues that "the shortness of life militates against allowing [FP&L] a third try to get things right,"¹⁴ and the Commission should appoint an administrative law judge, acting as a special master, to advise the Commission on the appropriate rate reduction or other relief.

9. On June 3, 2005, FP&L filed an answer to FMPA's CEII challenge, maintaining that it would not be appropriate to make any of the material it redacted public.

10. On June 13, 2005 FMPA filed a pleading continuing to dispute the CEII designation, and requests that the Commission or its CEII Coordinator make public its protest.

11. On June 15, 2005, FP&L filed an answer to the protest. FP&L reiterates its position that the "issues in these long and complicated proceedings have been distilled to one: Which of [FP&L's] looped transmission facilities, if any, provide only 'unneeded redundancy,' and thus are not eligible for cost recovery,"¹⁵ and FP&L maintains that its compliance filing supplied that analysis. FP&L disagrees with FMPA's challenges to its "use of a 1994 vintage load flow model."¹⁶ Additionally, FP&L maintains that it has shown that each looped transmission facility provides more than unneeded redundancy and that the Commission should reject FMPA's arguments related to the criteria FP&L used to test for unneeded redundancy.

¹³ FMPA Protest at 9 (*italics omitted*).

¹⁴ *Id.* at 17.

¹⁵ FP&L June 15 Answer at 1.

¹⁶ *Id.* at 5.

12. On June 30, 2005, FMPA filed an answer to the June 15 Answer. FMPA argues that FP&L's June 15 Answer does not meet the Commission's standards for waiver of Rule 213 of the Commission's Rules of Practice and Procedure; nevertheless, FMPA maintains that, if the Commission does allow the June 15 Answer, it should also consider this reply. FMPA believes that the "core issue" in this case is "whether [FP&L] complied with the Commission's orders that it must treat FMPA's transmission comparably to its own."¹⁷ FMPA alleges that:

[i]t is apparent that [FP&L] does not have and admits that it does not have the test that it used in 1996 to deny FMPA credits. [FP&L] certainly does not supply it. Instead, it applies a test to its own facilities that it surmises is the one – or like the one – that Mr. Adjemian used in 1996. But it does not even attempt to apply that same test to FMPA. An attempt to achieve comparability by only measuring [FP&L's] own facilities is like attempting to cut with scissors having one blade.^[18]

13. FMPA also maintains that, by framing the issue as whether its facilities provide unneeded redundancy, FP&L isolates the question of the usefulness of its facilities from whether it is providing parallel treatment to FMPA. FMPA believes that FP&L has acknowledged that the Ft. Pierce-Vero Beach line passes its usefulness test. Finally, FMPA asserts that Mr. Adjemian's affidavit has no probative value, as he states "to the best of my recollection, *I believe*" and "*logically*," rather than that he remembers.¹⁹

14. On July 15, 2005, FP&L filed an answer to the June 30 Answer. FP&L reiterates its belief that the core issue here is unneeded redundancy; FP&L alleges that FMPA is continuing to seek credits. FP&L asserts that it applied the same test (data models, standards, and methodology) to its facilities in 2005 that it applied to FMPA's facilities in 1994, and attaches an affidavit from Hector Sanchez so stating. FP&L alleges that "[i]f any doubt remains in this regard, FMPA is merely tilting at windmills rather than abiding by its acknowledgment that it would accept [FP&L's] conclusions regarding [FP&L] transmission facilities so long as [FP&L] applied the same test to FMPA's facilities."²⁰

¹⁷ FMPA June 30 Answer at 2.

¹⁸ *Id.* at 3 (citation omitted).

¹⁹ *Id.* at 11 (emphasis in FMPA June 30 Answer).

²⁰ FP&L July 15 Answer at 6, *citing* FMPA June 30 Answer at 5.

15. Additionally, FP&L reiterates that there is a difference between its and FMPA's facilities regarding the "local benefits" they provide.²¹ FP&L disputes FMPA's claim that the Ft. Pierce-Vero Beach line passes FP&L's usefulness test, and argues that FMPA obtained this result because it changed the model Mr. Sanchez used. Finally, FP&L defends Mr. Adjemian's affidavit.

16. On August 1, 2005, FMPA filed an answer to FP&L's July 15 Answer. FMPA argues that the Commission should reject FP&L's third round of pleadings, where, it maintains, FP&L is proffering new evidence. FMPA also reiterates its position that FP&L is attempting to avoid comparability.

17. On August 10, 2005, FP&L filed an answer to FMPA's August 1 Answer. FP&L states that "[e]ach piece of evidence [FP&L] has provided has been responsive to the [January 25 Order], or has been provided to correct the record clouded by FMPA's assertions, and should be accepted."²²

Discussion

18. Notwithstanding that Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²³ generally prohibits answers to answers unless otherwise ordered by the decisional authority, we will accept the additional responses in this case, as they assist in our decision-making process. In particular, we note that these additional pleadings resolve FMPA's concerns about whether FP&L employed the same test to analyze its looped transmission facilities that it used to test FMPA's transmission facilities in 1994.²⁴

²¹ *Id.* at 6-8.

²² FP&L August 10 Answer at 1.

²³ 18 C.F.R. § 385.213(a)(2) (2005).

²⁴ We note that FMPA did not in its August 1 Answer challenge FP&L's interpretation of FMPA's statement in the June 30 Answer that it "would accept [FP&L's] proffered standards that include all of its lines in rate base for the reasons that are advocated by [FP&L]," FMPA June 30 Answer at 5, to mean that, as FP&L "has demonstrated that it employed the same test to analyze its facilities as it used to test FMPA's facilities in 1994, FMPA must "abid[e] by its acknowledgement that it would accept . . . FP&L's conclusions." FP&L July 15 Answer at 6.

CEII Designation

19. We agree with FP&L's designation of a portion of its filing as CEII, and will deny FMPA's request to publish the redacted materials. CEII is defined in 18 C.F.R. § 388.113(c)(1) (2005) as "information about proposed or existing critical infrastructure that (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act [FOIA], 5 U.S.C. § 552; and (iv) does not simply give the location of the critical infrastructure." The information at issue includes technical information that relates to the transmission of energy that could be useful to a person planning an attack on critical infrastructure, and show, not merely the location of critical infrastructure, but also the interrelationship of FP&L's transmission facilities.²⁵

Comparability

20. We will accept FP&L's compliance filing in part, reject it in part, and direct a further compliance filing. As we directed in the January 25 Order, in this filing, FP&L did remove from its transmission rates all radial transmission facilities. However, as explained in more detail below, it is not clear whether FP&L failed to test its non-radial facilities in a manner comparable to the way it tested FMPA's facilities.²⁶

21. In the January 25 Order, we 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."²⁷ In its April 25, 2005 compliance filing, FP&L describes the test it applied as follows:

²⁵ Moreover, although the information requested is CEII, it may be released to requesters with a legitimate need for the information. The Commission must balance the requester's need for the information against the sensitivity of the information. While the Commission's regulation at 18 C.F.R. § 388.113(d)(3)(i) (2005) requires that requesters assert a need for and intended use of the information, the primary purpose of the rule is to ensure that information deemed CEII stays out of the possession of terrorists.

²⁶ Specifically, FP&L's second TX Case Factor states that a facility which provides only unneeded redundancy is ineligible for cost recovery. *See* January 25 Order at P 13.

²⁷ *Id.* (emphasis added).

Mr. Sanchez removed the transmission facility being tested from the base models . . . 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) . . . Following single contingencies load should continue to be served, transmission facilities should be at or below 100 percent of their applicable respective thermal ratings, and voltages at substations should be at or above 95% of normal voltage. Mr. Sanchez thus tested to ensure that these criteria, which are consistent with those used by FPL in identifying its transmission facility needs and are in accordance with North American Electric Reliability Council [(NERC)] and [Florida Reliability Coordinating Council (FRCC)] reliability criteria, were satisfied.²⁸

22. Our review of FP&L's compliance filing does not convince us that FP&L has applied the test in accordance with NERC and FRCC reliability criteria. Current NERC standards allow for "planned or controlled interruption of electric supply to radial customers or some local network customers, connected to or supplied by the faulted element or by the affected area, in certain areas without impacting the overall reliability of the interconnected transmission systems."²⁹ In 1994, these standards were essentially no different. In 1994, Florida Coordinating Group, the predecessor to FRCC, had the following planning criteria in place:

The bulk electric power system in the State of Florida shall be planned to meet the following criteria: A. MORE PROBABLE CONTINGENCIES – To be sustained without loss of load (*other than the load connected to the line or transformer which is lost*)³⁰

23. It is not clear whether FP&L's compliance filing comports with these standards; specifically, it 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. In Exhibits 3 and 4, 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 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.

²⁸ FP&L April 25, 2005 Compliance Filing at 8.

²⁹ NERC Standard TPL-002-0 – System Performance Following Loss of a Single BES Element, Table 1.

³⁰ FP&L's 1994 FERC Form 715 filing, section V (emphasis added).

However, our review of FP&L's compliance filing has revealed that there are a number of test cases,³¹ 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.³² Since FP&L does not indicate whether it is 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 NERC and FRCC standards.

24. This is critical, because the January 25 Order was intended to ensure consistency of FP&L's test of its own facilities with the redundancy test FP&L has devised and applied to FMPA. Specifically, with regard to the Fort Pierce-Vero Beach line, FP&L had stated that, even without the line, FP&L is able to deliver power to customers in that area and to other FP&L load centers.³³

25. Accordingly, we will direct FP&L to submit a compliance filing within 60 days of the date of this order clarifying the definition of "unserved load," and, excluding those facilities that do not result in violation of NERC and FRCC reliability criteria following single contingencies. FP&L can justify the inclusion in transmission rate base of a test case facility if it can demonstrate specifically the "unserved load" in question is not connected to the line or transformer which constitutes a first contingency.³⁴

³¹ By "test case" we mean simulations in which the tested facility is assumed not to exist so as to determine if the facility is redundant – *i.e.*, whether FP&L's transmission system meets NERC and FRCC reliability criteria without that particular facility.

³² To the extent that by "unserved load" FP&L is referring to load attached to transmission that is taken out of service as a first contingency, we note that the loss of such load is not a NERC or FRCC reliability criteria violation.

³³ We reject FMPA's argument that the Ft. Pierce-Vero Beach line passes the usefulness test, as outside the scope of this proceeding. The issue of which FMPA facilities to include was decided in the TX Case.

³⁴ We note that our determination of which facilities are not eligible for transmission rate base inclusion is a very narrow determination aimed at achieving comparability to the test FP&L devised to test FMPA's facilities in the TX Case. In other circumstances, we would typically find these looped facilities to be integrated transmission facilities. *See, e.g., Northeast Texas Electric Cooperative, Inc.*, 111 FERC ¶ 61,189 at P 13-19 (2005).

The Commission orders:

(A) We hereby deny FMPA's request to publish the material designated CEII, as discussed in the body of this order.

(B) FP&L is hereby required to submit a compliance filing, as discussed in the body of this order, within 60 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.