

136 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Florida Power Corporation

Docket No. ER11-3584-000

ORDER ON RETAIL ADJUSTMENTS TO DEPRECIATION RESERVES

(Issued July 15, 2011)

1. On May 16, 2011, pursuant to section 205 of the Federal Power Act (FPA),¹ Florida Power Corporation (Florida Power) filed to reflect the impact of retail rate depreciation reserve² adjustments on Florida Power's Open Access Transmission Tariff (OATT) formula rates. In this order, we reject the adjustments and instead direct Florida Power to account for the retail rate adjustments as regulatory assets, as discussed below.

I. Background

2. On February 28, 2011, in Docket No. ER11-2584, the Commission issued an order accepting Florida Power's proposed depreciation rates included in Schedule 10 of Florida Power's OATT.³ These depreciation rates were the same as those approved by the

¹ 16 U.S.C. § 824d (2006).

² As used here, the term "depreciation reserve" refers to amounts recorded in Florida Power's Account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

³ *Florida Power Corp.*, 134 FERC ¶ 61,145, at P 3 (2011) (February 28 Order).

Florida Public Service Commission (Florida Commission) in 2010.⁴ Protestors in Docket No. ER11-2584 argued that Florida Power should be required to supplement that filing to reflect the Florida Commission's approval of adjustments necessary to eliminate theoretical depreciation reserve imbalances (excess depreciation reserves).⁵ They argued that those adjustments will have a wholesale rate effect beyond that included in Florida Power's filing. Florida Power argued, however, that the actual quantitative rate impact of those adjustments would not be available for Commission consideration until April 2011, after it filed its 2010 FERC Form No. 1.⁶ The Commission agreed with the protestors that, consistent with Order No. 618,⁷ additions or deductions to depreciation expense to reflect any theoretical reserve amortization would require an FPA section 205 filing because such amortization would affect the remaining life calculations typically used to determine subsequent depreciation rates.⁸ The Commission emphasized that it was only approving the proposed depreciation rates and not any adjustments to eliminate the theoretical depreciation reserve surplus.⁹ Florida Power committed to make a FPA section 205 filing to account for these adjustments after its FERC Form No. 1 data became available and before filing its 2010 Annual Update for its OATT formula rate.

II. Florida Power's Filing

3. In the instant filing, Florida Power submits the 2010 impact of the retail depreciation reserve adjustments on its OATT formula rate. Florida Power states that it reduced the cost of removal portion of its depreciation reserve for production and distribution accounts, pursuant to Florida Commission orders and a retail Stipulation and Settlement

⁴ *In re: Petition for Increase in Rates by Progress Energy Florida, Inc.*, Docket No. 090079-EI, at 45-46 (Fla. Pub. Serv. Comm'n Mar. 5, 2010 and June 18, 2010).

⁵ The theoretical depreciation reserve balance is "the calculated balance that would be in the reserve if the life and salvage estimates now considered appropriate had always been applied." *Id.*

⁶ FERC February 28 Order, 134 ¶ 61,145 at P 12.

⁷ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695, n.25 (2000) (Order No. 618).

⁸ FERC February 28 Order, 134 ¶ 61,145 at P 20.

⁹ *Id.*

Agreement dated May 10, 2010 that was accepted by the Florida Commission.¹⁰ This Settlement Agreement states in part:

[Florida Power] will have the discretion to reduce depreciation expense (cost of removal) by up to \$150 million in 2010, up to \$250 million in 2011, and up to any remaining balance in 2012 during the term of this Agreement until the earlier of (a) [Florida Power's] depreciation (cost of removal) reserve reaches zero, or (b) the term of this Agreement expires. In the event [Florida Power] reduces depreciation expense (cost of removal) by less than the caps set forth in this paragraph, [Florida Power] may carry forward (i.e. increase the cap by) any used depreciation (cost of removal) reserve amounts in subsequent years during the term of this Agreement.¹¹

Because the Settlement Agreement grants Florida Power discretion to reduce depreciation expense up to a specified amount in 2010, 2011, and 2012, Florida Power asserts that it does not know whether and to what extent the adjustments to depreciation reserves will impact the OATT formula rate for service in 2011 and 2012.¹²

4. Florida Power states that it has recorded total 2010 depreciation reserve reductions of \$65,840,613, consisting of a \$33,296,538 reduction to the production plant depreciation reserve and a \$32,544,075 reduction to its distribution plant depreciation reserve.¹³ These depreciation reserve reductions result in reduced amounts of allocated deferred income taxes attributable to wholesale rate base and, consequently, result in a wholesale rate increase of \$79,986 under the OATT formula rate for 2010.¹⁴

5. Florida Power further explains that it implemented the retail depreciation reduction for 2010 effective January 1, 2010. Accordingly, Florida Power requests waiver of the

¹⁰ Transmittal Letter, Attachment 1 at 3 (Settlement Agreement).

¹¹ *Id.*

¹² *Id.* at n.8.

¹³ *Id.* at 3.

¹⁴ *Id.* The depreciation reserve is an offset to plant in service. Therefore a decrease in reserve results in an increase in rate base.

Commission's prior notice requirements to permit an effective date of January 1, 2010.¹⁵ In support of this waiver, Florida Power explains that, on June 1, 2011, it will complete its Annual Update and true up of the OATT formula rate for 2010 transmission service, and that such true up will be completed using the 2010 FERC Form No. 1 data, which incorporates the depreciation adjustments described in this filing. Therefore, Florida Power is implementing the depreciation adjustments consistent with the OATT formula rate. Florida Power notes that the Commission has granted waiver of its notice requirements in several similar cases.¹⁶

III. Notice of Filing and Responsive Pleadings

6. Notice of Florida Power's filing was published in the *Federal Register*, 76 Fed. Reg. 30,330 (2011), with interventions or protests due on or before June 6, 2011. Timely motions to intervene were filed by Florida Municipal Power Agency and Seminole Electric Power Cooperative, Inc.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

8. As explained below, the Commission finds that Florida Power's adjustment of its depreciation reserves is not in accordance with the Commission's accounting and reporting requirements. We also find that Florida Power must recognize the economic effects of the Florida Commission's rate actions as regulatory assets in Account 182.3, Other Regulatory Assets, rather than as adjustments to its depreciation reserve.

9. In Order No. 618 and in the February 28 Order, the Commission stated that the cost of property used in utility operations should be allocated in a "systematic and rational manner" to periods during which the property is used in utility operations, i.e., over the

¹⁵ *Id.* at 4.

¹⁶ *Id.* (citing *South Carolina Electric and Gas Co.*, 132 FERC ¶ 61,043 (2010); *Duke Energy Carolinas, LLC*, 130 FERC ¶ 61,079 (2010)).

property's remaining estimated useful service life.¹⁷ For this reason, changes in asset depreciation estimates, including cost of removal, should be made prospectively over the asset's remaining life. Florida Power proposes to adjust its depreciation reserves by \$65,840,613 in 2010 and intends to adjust its depreciation reserves by varying amounts in 2011 through 2013 rather than allocating the excess depreciation reserves over the remaining service lives of the related utility plant. While these adjustments may be acceptable for retail ratemaking purposes, they do not conform to our requirements for allocating the costs of utility plant over their service lives. Accordingly, we will direct Florida Power to reinstate all such adjustments to its depreciation reserves (Account 108). Florida Power must also re-file its 2010 FERC Form No. 1 to reflect the restatement of its depreciation reserves. Additionally, because Florida Power's OATT Formula Rate automatically incorporates the revised plant amounts, we will direct Florida Power to recalculate wholesale formula rate billings¹⁸ to reflect the reinstatement of the depreciation reserves and refund with interest all amounts improperly collected from wholesale customers.

10. Additionally, we find that the adjustments approved by the Florida Commission should be recognized in Florida Power's accounts and FERC Form No. 1 financial statements as regulatory assets. The Commission's Uniform System of Accounts for public utilities provides for the use of regulatory assets and liabilities to account for, *inter alia*, rate actions of regulatory agencies that differ from the Commission's accounting requirements.¹⁹ Specifically, Account 182.3, Other Regulatory Assets, provides for amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. Therefore, Florida Power

¹⁷ See FERC February 28 Order, 134 ¶ 61,145 at P 19; Order No. 618, FERC Stats. & Regs. ¶ 31,104 at 31,694-95. Additionally, the Commission's Uniform System of Accounts provides, in part, that, "[u]tilities must use percentage rates of depreciation that are based on a method of depreciation that allocates in a systematic and rational manner the *service value* of depreciable property to the service life of the property." General Instruction No. 2, Depreciation Accounting, 18 C.F.R. Part 101 (2011) (emphasis added). "Service value" refers to "the difference between original cost and net salvage value of electric plant." Definition No. 37, Service Value, 18 C.F.R. Part 101 (2011). The "net salvage value" is the "salvage value of property retired less the cost of removal." Definition No. 19, Net Salvage Value, 18 C.F.R. Part 101 (2011).

¹⁸ Florida Power Corp., OATT, Schedule 10 (1.0.0), Section 1.

¹⁹ See Definition No. 31, Regulatory Assets and Liabilities, 18 C.F.R. Part 101 (2011).

must debit Account 182.3 and credit Account 407.4, Regulatory Credits, for the above discussed adjustments that are reflected in its retail rate orders.

The Commission orders:

(A) Florida Power's proposed adjustments to its depreciation reserves are hereby rejected, and Florida Power is hereby directed to reinstate amounts improperly removed from Account 108, as discussed in the body of this order.

(B) Florida Power is hereby directed to record a regulatory asset to record the economic effects of the Florida Commission's retail rate order, as discussed in the body of this order.

(C) Florida Power is hereby directed to refund with interest all amounts improperly collected from wholesale customers, as discussed in the body of this order.

(D) Florida Power is hereby directed to file a refund report with the Commission within 30 days after making the refunds.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.