

169 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Florida Power & Light Company

Docket No. ER19-2585-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 30, 2019)

1. On August 13, 2019, Florida Power & Light Company (FPL) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to its Open Access Transmission Tariff (OATT) to: (1) implement a cost-of-service formula rate for Network Integration Transmission Service (NITS) and Point-to-Point (PTP) transmission service on the FPL transmission system (Formula Rate); (2) update FPL's cost-based rate for Reactive Supply and Voltage Control from Generation or Other Sources Service, as set forth in Schedule 2 of the FPL OATT (Reactive Service); and (3) make other limited ministerial changes to the OATT (collectively, Proposed Tariff Revisions).² In this order, the Commission accepts FPL's Proposed Tariff Revisions, suspends them for five months, to become effective April 1, 2020, subject to refund, and establishes hearing and settlement judge procedures.

I. Background

2. FPL is a public utility engaged primarily in the generation, transmission, distribution, and sale of electric energy in Florida. FPL is vertically integrated, with approximately 24,500 MW of generating capacity in service as of December 31, 2018. FPL states that it provides service to nearly 10 million people through five million retail customer accounts using its integrated transmission and distribution system, with over

¹ 16 U.S.C. § 824d (2018).

² FPL also submitted two errata filings with a corrected version of Attachment G, Estimated Transmission Service Bill Impact, and two exhibits mistakenly omitted from the original filing.

75,000 circuit miles of transmission and distribution lines that link its generation facilities to its customers in Florida.³

3. FPL states that its existing OATT transmission rates are stated rates established pursuant to a settlement approved by the Commission following its 2010 rate case filing.⁴ FPL states that these stated rates have not been changed since then, notwithstanding its \$2.1 billion in transmission investments. According to FPL, its on-going efforts to modernize and enhance its transmission system will require significant additional investment to address, among other things, necessary system expansions, storm hardening efforts, and reliability upgrades.⁵

4. FPL explains that its current rates for Reactive Service under Schedule 2 of the OATT were established pursuant to a 1998 settlement agreement,⁶ and states that since that time FPL's generating fleet has changed substantially, including the addition of numerous generating facilities. FPL asserts that as a result, its existing Schedule 2 rates for Reactive Service are no longer indicative of FPL's costs of providing such service.⁷

II. Instant Filing

A. Formula Rate and Protocols

5. FPL states that the proposed transmission formula rate replaces the current stated rates found in Schedules 7, 8, and Attachment H of the OATT, and is comprised of two components that will be incorporated into the OATT: (1) Attachment H-1 – the formula rate template, including Attachments 1 through 8, which contains the formula to be used to determine the annual rate for NITS and PTP service (Template); and (2) Attachment H-2 – the formula rate implementation protocols (Protocols) that describe

³ FPL's August 13, 2019 Transmittal at 2.

⁴ *Id.* (citing *Fla. Power & Light Co.*, 138 FERC ¶ 61,063 (2012)).

⁵ *Id.* at 2-3.

⁶ *Id.* at 12 (citing *Fla. Power & Light Co.*, 96 FERC ¶ 61,289 (2001) (approving, *inter alia*, 1998 settlement in Docket No. OA96-39, et al., establishing stated rates for Ancillary Services under FPL's OATT for, *inter alia*, Reactive Service under Schedule 2)).

⁷ *Id.* at 12.

how FPL will update the rate each year, the true-up process, the review procedures to be followed and how customer challenges will be addressed.⁸

6. FPL states that it is proposing to convert its stated transmission rates to a forward-looking transmission Formula Rate, including a true-up mechanism that uses a calendar year rate year (Rate Year). FPL explains that, under the Formula Rate, it will annually project its net revenue requirement by populating the applicable cost components reflected in the Template based on its projected costs for the upcoming Rate Year. FPL states that, based on the projected revenue requirement and loads, it will determine the rate for NITS and PTP transmission service for the upcoming Rate Year.⁹ FPL's currently effective rate of \$1.59 kW/mo. will increase to \$2.10 kW/mo. under the Proposed Tariff Revisions.

7. FPL states that no later than June 30 following the Rate Year, FPL will calculate the difference between: (1) FPL's actual net revenue requirement for the Rate Year; and (2) the actual load multiplied by the rate charged during the Rate Year. According to FPL, this difference, plus applicable interest, will be applied as an adjustment to the next Rate Year's projected revenue requirement (True-Up Adjustment), and will thus be reflected in the resultant rates. FPL states this process will repeat annually and is specified in detail in the Protocols.¹⁰

8. FPL's proposed Formula Rate includes a stated return on equity (ROE) of 10.7 percent. FPL notes that the analysis and recommendation concerning the ROE for FPL, provided in the testimony of its witness Adrien M. McKenzie, is based on the Commission's most recent guidance and policy objectives, including the multiple-model methodology proposed by the Commission in the *Coakley* Briefing Order.¹¹ Specifically, FPL states that witness McKenzie analyzes four financial models to assess FPL's appropriate cost of equity: (1) the two-step Discounted Cash Flow (DCF) model; (2) the Capital Asset Pricing Model (CAPM); (3) the Expected Earnings Analysis; and (4) the Risk Premium methodology.¹² FPL also notes that witness McKenzie also considers the application of the constant growth form of the DCF model and the empirical CAPM,

⁸ *Id.* at 1-2.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4 (citing *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018) (*Coakley* Briefing Order)).

¹² *Id.* at 4.

which are well-supported financial metrics relied upon to evaluate investors' required returns.¹³ FPL notes that based on his analysis, witness McKenzie recommends that FPL's ROE be set at the top end of the zone of reasonableness for an average risk utility, which results in a proposed base ROE of 10.7 percent.¹⁴

9. FPL states that the proposed Formula Rate includes Protocols for implementing the Formula Rate that are transparent and consistent with the Commission's latest guidance on protocols for forward-looking formula rates, and will provide FPL's customers and other interested parties with sufficient information and procedural safeguards to facilitate the annual review of the inputs to the template.¹⁵

B. Reactive Service

10. FPL's current Schedule 2 rate for Reactive Service is \$1.2096 per kW-year; FPL proposes a revised annual Schedule 2 rate for Reactive Service of \$2.1087 per kW-year. FPL states that the fleet-wide Reactive Service rate proposed by FPL is derived using the *AEP* methodology developed in Opinion No. 440¹⁶ and as applied in subsequent orders.¹⁷ FPL explains that its reactive power revenue requirement is derived from the fixed costs of the portion of plant investment for FPL's generating facilities for the 2018 test period that is attributable to the production of reactive power (Fixed Capability Component). FPL states that it has not included any lost opportunity costs or variable cost components in the calculation of its revenue requirement and associated rates.¹⁸

11. FPL states that, consistent with Opinion No. 440, FPL's Fixed Capability Component is calculated by analyzing the reactive power portion of investment in: (1) the generator and associated exciter equipment; (2) generator step-up transformers; (3) accessory electrical equipment that supports the operation of the generator-exciter system; and (4) the balance of plant. Because each of these components contributes to

¹³ *Id.*

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 12 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (AEP)).

¹⁷ *Id.* (citing *Dynegy Midwest Generation, Inc.*, 121 FERC ¶ 61,025, at PP 68-73 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2008)).

¹⁸ *Id.* at 12-13.

the provision of both reactive power and real power, an allocation factor is applied to each of these amounts to determine the reactive power portion of the investments. FPL states that the individual allocated amounts are then summed and multiplied by a fixed cost carrying charge to produce FPL's annual revenue requirement for Reactive Service. FPL further states that to determine the Schedule 2 rates for Reactive Service, the annual revenue requirement is divided by FPL's 12-month average coincident transmission system peak demand.¹⁹

C. Partial Initial Rate Year and Effective Date

12. FPL requests that the Formula Rate become effective on November 1, 2019, resulting in a Rate Year of two months (November and December 2019) (Initial Rate Year). FPL states that the Initial Rate Year will be based on the projected annual revenue requirement and the projected monthly loads for calendar year 2019. FPL states that the projected net revenue requirement for 2019 is \$553,033,080, resulting in a rate of \$.10/kW-month for the Initial Rate Year.²⁰

13. FPL states that, consistent with the Protocols, this rate will be subject to true-up once actual 2019 data becomes available in 2020. As the Formula Rate is not expected to be effective until November 1, 2019, FPL proposes to forgo the review and challenge process outlined in its proposed Protocols during the Initial Rate Year. FPL proposes to address issues related to the Initial Rate Year through the Protocols the following Rate Year, as specified in Section VIII of the Protocols.²¹

D. Other Ministerial Changes

14. FPL states that, in addition to the tariff changes necessary to accommodate its proposed Formula Rate, it is submitting several other administrative and clean-up changes to other parts of its OATT. FPL asserts that each of these changes is consistent with or superior to the non-rate terms and conditions of the Commission's *pro forma* tariff and should be accepted and approved.²²

¹⁹ *Id.* at 13.

²⁰ *Id.* at 11.

²¹ *Id.* at 12.

²² *Id.* at 13.

III. Notice of Filing and Responsive Pleadings

15. Notice of FPL's filing was published in the *Federal Register*, 84 Fed. Reg. 43,117 (2019), with interventions and protests due on or before September 20, 2019.²³ Florida Municipal Power Agency (FMPA),²⁴ Tampa Electric Company, the Orlando Utilities Commission, and the Georgia Transmission Corporation submitted timely motions to intervene. Seminole Electric Cooperative, Inc., Lee County Electric Cooperative, Inc., and Florida Keys Electric Cooperative Association, Inc. (collectively, Florida Cooperatives) filed a timely joint motion to intervene.

16. On September 20, 2019, Florida Cooperatives and FMPA both filed protests. On October 3, 2019, FMPA filed an errata to its protest. On October 7, 2019, FPL filed an answer to the protests. Subsequently, protesters responded with a joint answer to FPL's answer.

A. Protests

17. FMPA and Florida Cooperatives (together, Protesters) request that the Commission suspend FPL's proposal for the maximum five month period, establish a refund effective date, and establish settlement and hearing procedures. Protesters state that, under *West Texas*, the Commission considers a rate increase to have the potential to yield substantially excessive revenues when it appears that greater than ten percent of the proposed increase may be excessive, and that FPL's filing meets this standard.²⁵

18. Protesters argue that FPL's proposed 10.7 percent ROE is substantially excessive and warrants a five-month suspension, and that FPL's own analysis supports an ROE of no higher than 9.93 percent. Protesters' ROE expert argues that FPL's ROE should be 8.15 percent, or the median-based result of the DCF model.²⁶ Alternatively, Protesters

²³ Initially, the comment date was September 3, 2019. The Commission extended the deadline twice to and including September 20, 2019. *See* Notices of Extension issued August 23, 2019, 84 *Fed. Reg.* 45,491, and September 6, 2019.

²⁴ Entities whose interests are represented by FMPA in this proceeding are: Alachua, Bushnell, Clewiston, Fort Meade, Fort Pierce, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Leesburg, Moore Haven, Newberry, New Smyrna Beach, Ocala, Quincy, Starke, and Wauchula.

²⁵ Florida Cooperatives Protest at 54-55; FMPA Protest at 51-52 (citing *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,375 (1982) (*West Texas*)).

²⁶ Florida Cooperatives Protest at 19-21; FMPA Protest at 17.

argue that the median-based result of a “reasonable application” of the three cost-indicative methods identified in recent Commission orders – using the DCF, CAPM, and Risk Premium models – produces an ROE of 8.42 percent.²⁷

19. Florida Cooperatives raise several issues related to FPL’s Formula Rate, including: FPL’s proposed treatment of accumulated deferred income taxes (ADIT); its request to include theoretical reserve imbalance costs in rates; allowance for funds used during construction (AFUDC); FPL’s Formula Rate Template not properly accounting for unfunded reserves as a credit to rate base; FPL’s proposed depreciation rates; FPL’s proposed Capital Structure; FPL’s proposed adjustment to recover certain investments associated with retired plant; whether or not customers are held harmless from FPL’s merger related activities; whether FPL’s Formula Rate Template accounts for revenue credits associated with distribution under-build facilities; and FPL’s proposed Formula Rate Template lacks transparency and contains numerous errors.

20. Additionally, Florida Cooperatives raise several issues with FPL’s proposed rates for Schedule 2 Reactive Service and argue that they are excessive by substantially more than ten percent and are the product of a flawed or questionable analyses. Florida Cooperatives take issue with FPL’s methodology to determine the amount of investment associated with the production of reactive service. Florida Cooperatives also argue that FPL has not provided Reactive Service rates or revenue requirements by individual units as Commission precedent requires.

21. Florida Cooperatives argue that according to their analysis of the issues presented by the FPL filing, FPL’s proposed rate increase for network transmission service and firm point-to-point transmission service are excessive by at least \$0.41 per kW-year, or 80 percent, and that the FPL proposed Reactive Service rate increase is excessive by at least \$0.4977 per kW-year, or approximately 55.4 percent, each of which is well above the 10 percent threshold established in *West Texas*.²⁸

22. In its protest, FMPA states that FPL proposes to apply its high ROE to an equity ratio that exceeds the historical range approved by the Commission and maintains a stale and overstated transmission loss factor.²⁹ FMPA states that FPL’s decision to apply a net plant allocator to its balance of ADIT, rather than use the preferred gross plant allocator

²⁷ Florida Cooperatives Protest Exhibit No. BMM-1; FMPA Protest Exhibit No. BMM-1.

²⁸ Florida Cooperatives Protest at 55.

²⁹ FMPA Protest at 2.

that FPL uses in its production formula rate, is arbitrary and deprives ratepayers of an over \$87 million dollar deduction to rate base.³⁰

23. FMPA argues that there are numerous aspects of FPL's new formula rate that are inadequately supported or that lack transparency. Among other things, FMPA also argues that FPL has understated the revenue requirement of the facilities it proposes to exclude and has not provided any information, and does not propose to provide information in future formula rate input updates, regarding the facilities it has excluded.³¹

24. FMPA states that the *West Texas* "substantially excessive" standard is fully applicable to proposals seeking to institute formula rates, and argues that the standard is clearly met here. FMPA provides four adjustments which it argues demonstrate that application of FPL's proposed formula rate will yield an increase that is at least 10 percent excessive.³² FMPA states that these four major adjustments demonstrate that FPL's proposed formula produces rates that are excessive by about \$0.22/kW-month, or over 40 percent excessive.³³

B. FPL Answer

25. Regarding Protesters' disputes concerning FPL's proposed ROE in its Formula Rate, FPL contends that it has proposed an ROE that is founded on the Commission's recent orders, but given the uncertainties in Commission policy, ROE is an inherently factual issue appropriately set for settlement judge procedures.³⁴ FPL disagrees with Protesters' assertions that the Commission should disallow FPL's use of its actual capital structure in its proposed Formula Rate in favor of a lower alternative and argues that

³⁰ *Id.* at 34.

³¹ *Id.* at 39-42.

³² *Id.* at 51-52. FMPA's four factors are: (1) assumption of 9.93 percent ROE reduces the proposed rate by over \$0.07/kW-month; (2) assumption of 56 percent equity ratio, the NextEra equity ratio, reduces the proposed rate by about \$0.07/kW-month; (3) the correction of the exclusion of facilities reduces the proposed rate by about \$0.05/kW-month; and (4) the use of gross plant allocator for ADIT calculations reduces the proposed rate by \$0.03/kW-month. *Id.* at Attachment C, Exhibit No. DSP-1.2.

³³ *Id.* at 52.

³⁴ FPL Answer at 2.

Protesters point to no litigated case in which the Commission has required a utility to use a capital structure different than book capitalization in a transmission Formula Rate.³⁵

26. Similarly, FPL argues that because it used the same proposed ROE and capital structure for its Reactive Service stated rate proposal, this aspect of its filing should similarly be set for settlement judge procedures.³⁶ FPL argues that the remainder of Protesters' issues with FPL's Reactive Service rates largely amount to factual or methodology issues that should be set for settlement or hearing proceedings.³⁷

27. With respect to its Formula Rate design, FPL asserts that forward-looking formula rates with true-ups to actual incurred costs have been widely adopted by transmission owner and are similar to formula rates that have recently been accepted by the Commission.³⁸ FPL argues that any substantive issues with the Template where the resolution requires building a more fulsome factual record should be set for settlement judge procedures.³⁹ Additionally, FPL argues that Protesters raise a number of issues with FPL's filing related to its Formula Rate inputs – such as concerns about unfunded reserves, merger costs and gross up of excess ADIT – that are not appropriately considered in this proceeding, and should instead be addressed in either the annual update process under the Formula Rate or in a separate section 206 proceeding.⁴⁰ FPL argues that it has not proposed to change the loss factor in the OATT, or the sections of the OATT that specify the loss factor and that the proper means of challenging the loss factor is to initiate a proceeding under section 206 of the FPA.⁴¹

28. FPL argues this case is not a circumstance in which a five-month suspension of the rate filing is appropriate and that the proposed Formula rate is not excessive. FPL argues that the *West Texas* policy considers whether imposition of a five-month suspension

³⁵ *Id.* at 6.

³⁶ *Id.* at 5-6.

³⁷ *Id.* at 26-27.

³⁸ *Id.* at 7.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 8.

would have harsh and inequitable results.⁴² FPL asserts that the current stated rate significantly under-recovers FPL's current transmission cost of service and argues that in this circumstance, imposition of a five-month suspension would be harsh and inequitable, and preclude FPL from earning a fair rate of return on its investment sufficient to attract capital during the suspension period.⁴³

C. Protesters Answer

29. In a joint answer, Protesters reiterate their arguments that FPL's proposed Formula Rate is unjust and unreasonable and should be set for hearing and settlement judge proceedings and that a five-month suspension is warranted.⁴⁴ Protesters repeat their assertions that FPL's requested 10.7 percent ROE is far above the 9.93 percent that FPL's own analysis supports and that FPL's capital structure is substantially overstated and produces excessive rates.⁴⁵

IV. Discussion

A. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We accept FPL's and Protesters' answers because the answers have provided information that assisted us in our decision-making process.

B. Substantive Matters

32. Our preliminary analysis indicates that FPL's Proposed Tariff Revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. FPL's filing raises issues of

⁴² *Id.* at 9 (citing *West Texas*, 18 FERC at 61,374-75).

⁴³ *Id.* at 9-10.

⁴⁴ Protesters Answer at 2-3.

⁴⁵ *Id.* at 4.

material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

33. In *West Texas*, the Commission explained that, when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).⁴⁶ Based on our preliminary analysis, we find that FPL's proposed rates may yield substantially excessive revenues. Therefore, we accept FPL's Proposed Tariff Revisions for filing, suspend them for five months to become effective April 1, 2020, subject to refund, and set all issues for hearing and settlement judge procedures.

34. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁴⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁴⁸ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment of the case to a presiding judge.

The Commission orders:

(A) FPL's Proposed Tariff Revisions are hereby accepted for filing and suspended for five months to become effective April 1, 2020, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the

⁴⁶ *West Texas*, 18 FERC at 61,374-75.

⁴⁷ 18 C.F.R. § 385.603 (2019).

⁴⁸ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of FPL's Proposed Tariff Revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.