

167 FERC ¶ 61,138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Florida Municipal Power Agency

Docket No. EL19-40-000

v.

Duke Energy Florida, LLC

ORDER GRANTING COMPLAINT

(Issued May 16, 2019)

1. On January 30, 2019, Florida Municipal Power Agency (FMPA) filed a complaint against Duke Energy Florida, LLC (DEF), under sections 206, 306, and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² alleging that DEF violated its Open Access Transmission Tariff (OATT) by denying FMPA and its members' requests for transmission service on the DEF transmission system for deliveries from the Poinsett Solar Facility (Project). For the reasons discussed below, we grant FMPA's complaint.

I. Background

2. FMPA is a municipal power supply agency composed of 31 municipal electric systems located throughout Florida.³ DEF, a subsidiary of Duke Energy Corporation,

¹ 16 U.S.C. §§ 824e, 825e, 825h (2012).

² 18 C.F.R. § 385.206 (2018).

³ FMPA states that it finances generation and transmission projects and engages in many other joint action activities for its member cities, which together provide electricity to nearly 2.5 million Floridians. Complaint at 3.

provides transmission service over the DEF system pursuant to its OATT.⁴ With respect to its complaint, FMPA states that the pertinent provisions of DEF's OATT related to applications for interconnection service and transmission service are identical to the Commission's *pro forma* OATT.⁵

3. FMPA states that the Project is a 74.5 MW solar facility being developed by Florida Renewable Partners, LLC (Florida Renewable), a subsidiary of NextEra Energy, Inc. (NextEra). The Project will be interconnected with the DEF transmission system.⁶ NextEra applied to DEF for network resource interconnection service for the Project under DEF's OATT on December 14, 2017, and the interconnection study process is ongoing.⁷ FMPA states that the Project has a planned commercial operation date of June 30, 2020.

4. FMPA states that it and its members have entered into a series of agreements to purchase the full output of the Project and to allocate that output among FMPA's members. FMPA states that it is entitled to 46.5 MW of the Project's output to serve FMPA's all-requirements members, and that the Cities of Bartow, Wauchula, and Winter Park, which are also FMPA members, are entitled to the remaining 28 MW.⁸ FMPA notes that Bartow, Wauchula, and Winter Park appointed FMPA as their agent to obtain the necessary transmission service for the Project under the individual Network Integration Transmission Service Agreements that Bartow, Wauchula, and Winter Park have with DEF under the DEF OATT.⁹

⁴ DEF shares a joint OATT with affiliates Duke Energy Carolinas, LLC and Duke Energy Progress, LLC. *See* Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreements, Tariff Volume No. 4, Open Access Transmission Tariff (9.0.0).

⁵ Complaint at 5.

⁶ FMPA states that the Project is one of three facilities that make up a 223.5 MW solar project being developed by FMPA, Orlando Public Utilities Commission, and NextEra. FMPA notes that this is the largest solar project in Florida, and one of the largest solely municipal-backed solar projects in the United States. *Id.* at 6.

⁷ FMPA states that the Project is Queue Position 207 on DEF's most recently updated generator interconnection queue. *Id.* at 6 n.10.

⁸ The remaining 28 MW entitlement includes 13 MW for Bartow, 5 MW for Wauchula, and 10 MW for Winter Park. *Id.* at 15.

⁹ *Id.* at 4, 6.

(continued ...)

5. According to FMPA, DEF confirmed FMPA's August 6, 2018 Open Access Same-Time Information System (OASIS) submissions for Bartow, Wauchula, and Winter Park, and FMPA's August 14, 2018 OASIS submission for FMPA's all-requirements members, on August 14, 2018, and September 5, 2018, respectively.¹⁰ Subsequently, FMPA states that, on September 5, 2018, it submitted to DEF a request to designate its entitlement to 46.5 MW of the Project as a network resource and submitted three additional requests to designate Bartow's, Wauchula's, and Winter Park's entitlements to the remaining 28 MW of the Project as network resources.¹¹ On September 10, 2018, DEF rejected FMPA's network resource designation request (hereafter referred to as a "transmission service request") on behalf of its all-requirements members. On September 25, 2018, DEF rejected FMPA's three transmission service requests on behalf of Bartow, Wauchula, and Winter Park.¹²

II. Complaint

6. FMPA alleges that DEF rejected all four transmission service requests for the Project because NextEra's network resource interconnection service request is pending and DEF's unwritten policy is to require an executed interconnection agreement before it accepts for study and queues a transmission service request related to the designation of a network resource.¹³ FMPA argues that this policy: (1) violates DEF's OATT, OASIS business practices, and the Commission's filed rate doctrine; (2) is inconsistent with long-standing Commission precedent allowing interconnection and transmission service requests to be submitted simultaneously under the *pro forma* OATT;¹⁴ and

¹⁰ FMPA states that completion of the OASIS submissions did not establish a queue position, but allowed FMPA to proceed to the second step to submit requests to designate the Project as a network resource. *Id.* at 7.

¹¹ *Id.* at 7-8.

¹² *Id.* at 8, Ex. FMP-02.

¹³ *Id.* at 8, 13, Ex. FMP-04 at 1.

¹⁴ Complaint at 17-18 (citing *Tenn. Pwr. Co.*, 90 FERC ¶ 61,238, *order on reh'g*, 91 FERC ¶ 61,271 (2000); *S. Co. Servs., Inc.*, 94 FERC ¶ 61,131, *order on reh'g*, 93 FERC ¶ 61,078 (2001); *Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,193 (2006); *Laguna Irrigation Dist.*, 91 FERC ¶ 61,340 (2000), *order on reh'g*, 95 FERC ¶ 61,305 (2001)).

(3) directly contradicts Order No. 2003.¹⁵ FMPA also alleges that DEF rejected the three transmission service requests for Bartow, Wauchula, and Winter Park because they failed to constitute a “coordinated group.” FMPA argues that DEF’s prerequisite of a “coordinated group” has no basis in DEF’s OATT or Commission precedent.¹⁶

7. In particular, FMPA asserts that DEF’s OATT does not require an executed interconnection agreement to submit a transmission service request to designate a network resource (a process which is governed by Section 29.2 of DEF’s OATT).¹⁷ FMPA explains that Section 29.2 of DEF’s OATT provides a list of information that needs to be supplied to the transmission provider to submit a transmission service request to designate a network resource, and that list does not include an executed interconnection agreement.¹⁸ In addition, FMPA asserts that DEF’s OASIS business practices do not state that an executed interconnection agreement is a prerequisite for submitting a transmission service request to designate a network resource.¹⁹ FMPA also notes that Section 30.2 of DEF’s OATT expressly permits designation of a network resource based on a contractual commitment that is contingent on the availability of transmission service, and the Commission has long considered interconnection service an element of open access transmission service.²⁰

8. FMPA also argues that DEF’s application of its unwritten policy without clear tariff language that is on file with the Commission is a violation of the filed rate doctrine.²¹ FMPA asserts that, in *Cargill Power Markets, LLC v. Public Service*

¹⁵ *Id.* at 18-19 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287, at P 11 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

¹⁶ *Id.* at 25-28.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 13-14.

¹⁹ *Id.* at 14.

²⁰ *Id.* (citing *Laguna Irrigation Dist.*, 91 FERC at 62,152).

²¹ *Id.* at 14-15.

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Company of New Mexico,²² the Commission made clear that applying unwritten policies to transmission service requests under the OATT violates the filed rate doctrine because all practices that significantly affect rates, terms, and conditions of service must be on file with the Commission.²³

9. FMPA contends that the Commission's long-standing precedent makes "abundantly clear" that a generator's transmission service request may be submitted before an associated interconnection agreement exists.²⁴ Moreover, FMPA asserts that the Commission has recognized that simultaneous submission of interconnection and transmission service requests is the norm, and that the terms and conditions of the *pro forma* OATT are intended to accommodate the simultaneous submission of these requests.²⁵

10. FMPA also asserts that allowing requests for interconnection service and transmission service to be submitted simultaneously for a new generating facility is consistent with Order No. 2003. In particular, FMPA emphasizes that, in Order No. 2003-A, the Commission stated that "[a]lthough obtaining Interconnection Service under this rule and obtaining transmission delivery service under the OATT is a two-step process, the Interconnection Customer has every right to request the two services at the same time, just as it did in the past."²⁶ FMPA states that DEF has offered FMPA no plausible precedent or authority to justify the administration of its

²² 132 FERC ¶ 61,079 (2010) (*Cargill Pwr. Markets*).

²³ Complaint at 15 (citing *Cargill Pwr. Markets*, 132 FERC ¶ 61,079 at P 23).

²⁴ *Id.* at 17.

²⁵ *Id.* at 17-18 (citing *Tenn. Pwr. Co.*, 90 FERC at 61,761; *Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,193 at P 36 n.52; *S. Co. Servs., Inc.*, 94 FERC at 61,502; *Laguna Irrigation Dist.*, 91 FERC at 62,152).

²⁶ *Id.* at 18-19 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at P 535). FMPA also notes that, at the Commission meeting when Order No. 2003-A was issued, Commission staff explained that the rule's express preservation of the right to request interconnection service and transmission service at the same time was intended to address the concerns of municipal utilities that want to use new generators to serve their loads, which, FMPA states, is the precise situation in its complaint. *Id.* at 19-20 & n.38 (citing Transcript of the Commission's Open Meeting (March 3, 2004), at 38 (eLibrary No. 20040305-0015)).

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OATT in a manner directly contrary to Commission precedent, and DEF's position should be rejected.²⁷

11. FMPA argues that DEF's policy is discriminatory and disadvantages FMPA and its members. FMPA asserts that the first-come, first-served principle of the *pro forma* OATT is central to non-discriminatory transmission service. FMPA notes that Order No. 2003-A emphasized the importance of coordinating the timing of processing interconnection and transmission service requests.²⁸ FMPA explains that, as a result of DEF's policy and rejection of FMPA's four transmission service requests, FMPA and its members have been removed from DEF's queue and denied "first-come, first-served" access to DEF's available transmission capacity to support the deliverability of the Project. In addition, FMPA explains that DEF and other customers who submit interconnection and transmission service requests gain higher-priority access to DEF's available transmission capacity. FMPA states that, since September 5, 2018 (the submission date of FMPA's four rejected transmission service requests), there have been six new interconnection requests (including one for DEF) and at least one long-term firm transmission service request (for DEF's network resource designation of a solar resource) that now have priority access to DEF's available transmission capacity over the Project.²⁹ FMPA asserts that, given DEF's slow progress with the Project's interconnection process, more interconnection and transmission services requests will be submitted, and thus take precedence over FMPA's transmission service requests, before NextEra can execute an interconnection agreement with DEF.³⁰ FMPA argues that, as a result of this delayed process, there is a risk that FMPA and its members may be without firm network transmission service when the interconnection facilities are completed and the Project is

²⁷ *Id.* at 20, Exs. FMP-04, FMP-07.

²⁸ *Id.* at 21 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at P 541).

²⁹ *Id.* at 10, 22.

³⁰ *Id.* at 22. FMPA notes that NextEra applied to DEF for network resource interconnection service under DEF's OATT for the Project on December 14, 2017, and on January 11, 2019, DEF completed the Interconnection Feasibility Study. FMPA states that, at this pace, it could take another year for DEF to complete the two additional required studies, the Interconnection System Impact Study and Interconnection Facilities Study, and to identify the upgrades required and their associated costs. Only then would DEF and NextEra begin negotiating the interconnection agreement. *Id.* at 9.

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commercially operable, especially if DEF concludes that upgrades must be constructed to grant FMPA's transmission service requests.³¹

12. FMPA asserts that DEF's policy provides DEF with the opportunity and incentive to discriminate because DEF could delay granting interconnection service so that DEF or a favored customer could submit interconnection or transmission service requests that use the same available transmission capacity. FMPA further asserts that DEF's policy allows DEF to hold the customer's transmission service request hostage, until the interconnection customer agrees to DEF's proposed terms of the interconnection agreement.³²

13. FMPA also argues that, even if DEF is applying its policy of requiring an executed interconnection agreement before submission of an associated transmission service request to all new generators, DEF's policy discriminates in favor of DEF's resources and loads. FMPA explains that DEF's load is very similar to the "aggregate load" used in the tests for network resource interconnection service, and, therefore, the transmission capacity needed to grant network resource interconnection service is likely very similar or identical to the transmission capacity needed to grant transmission service.³³ FMPA states that, for this reason, a grant of network resource interconnection service to DEF will usually assure that DEF receives transmission service without additional study or upgrades. FMPA states that other transmission customers, like FMPA and its members, are much less likely to resemble the "aggregate load" used in studies and so the grant of network resource interconnection service is less likely to assure the availability of transmission service.³⁴ FMPA asserts that, under DEF's policy, other transmission customers would be barred from entering the queue until years after the application for interconnection service has been submitted and would watch available transmission capacity disappear, while DEF obtains priority access to the available transmission capacity for transmission service from DEF's existing and new generating resources to its loads.³⁵ FMPA contends that, as a result, FMPA and its members may not only lose access to available transmission capacity, but the upgrades required to support transmission service from the Project may be less efficient, more expensive, and more time-consuming to construct. Finally, FMPA asserts that requiring an executed

³¹ *Id.* at 10.

³² *Id.* at 22-23.

³³ *Id.*

³⁴ *Id.* at 23-24.

³⁵ *Id.* at 24.

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interconnection agreement improperly prioritizes requests for transmission service from existing generators (most of which are owned by or committed to DEF) over new generators, which strongly favors DEF's generation over the generation developed by others.³⁶

14. FMPA states that, although DEF made clear in its prior and subsequent communications with FMPA that all four transmission service requests were rejected for lack of an executed interconnection agreement, DEF also rejected the requests for Bartow, Wauchula, and Winter Park because they failed to constitute a "coordinated group."³⁷ FMPA states that the term "coordinated group" does not appear in DEF's OATT, and the term in DEF's OASIS business practices is not relevant to the three requests for Bartow, Wauchula, and Winter Park.³⁸ FMPA explains that the term "coordinated group" in DEF's OASIS business practices refers to a group of qualifying requests and reservations across multiple transmission systems that the applicant wants to coordinate.³⁹ By contrast, FMPA explains that Bartow, Wauchula, and Winter Park are embedded in the DEF transmission system and will only use DEF's transmission service. FMPA argues that DEF's application of this unwritten policy violates its OATT obligations, and is the kind of delay tactic that the Commission sought to eradicate through open access transmission service.⁴⁰

15. FMPA requests that the Commission: (1) find DEF in violation of its OATT; (2) require DEF to accept and restore the queue positions of the rejected transmission service requests of FMPA and its members; and (3) take any other actions that the Commission finds necessary or appropriate to remedy DEF's OATT violations. FMPA argues that the longer the requested relief is delayed, the greater the likelihood that FMPA and its members may find themselves without firm network transmission service to deliver the Project output on June 30, 2020, when the Project is planned to be commercially operable with all of the necessary interconnection additions completed.⁴¹ In addition, FMPA states that the longer the requested relief is delayed, the more likely it

³⁶ *Id.* at 24-25.

³⁷ *Id.* at 25-26.

³⁸ *Id.* at 26.

³⁹ *Id.* at 26 & n.46 (citing DEF, OASIS Business Practices at 14-17 (Section 3.J, "Requests for Service Across Multiple Transmission Systems (SAMTS)")).

⁴⁰ *Id.* at 27.

⁴¹ *Id.* at 8-11, 36-37.

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is that others (who submitted transmission and interconnection service requests after September 5, 2018) will be impacted by the restoration of the queue positions for FMPA and its members.⁴²

III. Notice of Complaint and Responsive Pleadings

16. Notice of FMPA's complaint was published in the *Federal Register*, 84 Fed. Reg. 2843 (2019), with answers, interventions, and protests due on or before February 19, 2019. Solar Energy Industries Association (SEIA), Seminole Electric Cooperative, Inc. (Seminole), and Florida Renewable filed timely motions to intervene and comments. DEF submitted an answer. On February 25, 2019, PacifiCorp filed a motion to intervene out of time. On March 6, 2019, as supplemented on March 8, 2019, FMPA submitted an answer to DEF's answer.

A. Comments

17. SEIA and Seminole each support the complaint, and assert that competition is enhanced by Commission policies that promote open access transmission service. SEIA states that that DEF's OATT does not contain provisions preventing a network customer from designating a network resource until an interconnection agreement is executed.⁴³ Seminole asserts that demanding conditions that are not in the OATT as a condition precedent for granting transmission service can lead to discriminatory access to transmission service, and poses a significant threat to the competitiveness of the wholesale market.⁴⁴ Seminole also asserts that DEF's OATT is the filed rate, and, as a result, DEF cannot demand a rate or condition that is not included in its OATT.⁴⁵ SEIA encourages the Commission to make clear that an executed interconnection agreement is not a prerequisite for a transmission service request on DEF's system, or any other transmission system subject to the Commission's jurisdiction.⁴⁶ SEIA requests that the Commission restore the queue positions of any customers who have been denied transmission service requests because of DEF's policy, and take any other actions that the Commission finds necessary or appropriate to remedy DEF's unduly discriminatory

⁴² *Id.*

⁴³ SEIA Comments at 5.

⁴⁴ Seminole Comments at 4.

⁴⁵ *Id.*

⁴⁶ SEIA Comments at 2.

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actions.⁴⁷ In particular, SEIA states that the Commission should investigate whether DEF itself has submitted a transmission service request for the available transmission capacity that properly belongs to FMPA and, if so, direct an appropriate remedy.⁴⁸ SEIA argues that, because FMPA and its members executed their purchase contract for the Project in May 2018 and intend to use the Project output to serve network load, they comply with DEF's OATT requirements and there is no basis for DEF to deny the FMPA's transmission service requests.⁴⁹

18. SEIA asserts that, according to DEF's OATT, interconnection and transmission services are distinct and an application for interconnection service has no applicability to transmission service.⁵⁰ SEIA also asserts that DEF's OATT requires DEF to use reasonable efforts to complete the Interconnection Feasibility Study no later than 45 calendar days after the transmission provider receives the fully executed Interconnection Feasibility Study Agreement.⁵¹ SEIA points out, however, that DEF did not complete the Interconnection Feasibility Study until 13 months after its receipt of the December 2017 interconnection request for the Project. SEIA asserts that FMPA presumably submitted its transmission service requests in an attempt to "dislodge the unreasonable delay" in DEF's interconnection studies because DEF's OATT requires penalties to be assessed on DEF for failing to meet study deadlines associated with transmission service requests.⁵²

19. SEIA asserts that DEF's policy and actions are inconsistent with Commission precedent, which has acknowledged the industry practice of simultaneously submitting interconnection and transmission service requests.⁵³ SEIA points out that, in Order No. 2003, the Commission explicitly acknowledged that the *pro forma* OATT provides an interconnection customer with "every right to request the two services [i.e.,

⁴⁷ *Id.*

⁴⁸ *Id.* at 4 (citing Complaint at 10).

⁴⁹ *Id.* at 5.

⁵⁰ *Id.* at 6 & n.7 (citing Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreements, Tariff Volume No. 4, OATT, Attach. J, § 2.4).

⁵¹ *Id.* at 6.

⁵² *Id.* at 7.

⁵³ *Id.* at 7 & n.21 (citing *Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,193 at P 36 n.52; *Tenn. Power Co.*, 90 FERC ¶ 61,238; *Laguna Irrigation Dist.*, 91 FERC ¶ 61,340).

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interconnection and transmission services] at the same time, just as it did in the past.”⁵⁴ SEIA argues that DEF’s prerequisite of an executed interconnection agreement for a valid transmission service request violates these long-established open access principles.

20. SEIA states that, although Order No. 2003 reduced undue discrimination in the generator interconnection process, the Commission recognized, in Order No. 845,⁵⁵ that interconnection customers have continued to experience discriminatory practices. SEIA asserts that discriminatory practices drive up the price of electricity and hurt consumers, and that when such conduct is uncovered, it is appropriate for the Commission to take swift and prompt action to remedy the violation by placing the third party in the position in which it would have been absent the discrimination.⁵⁶ SEIA states that, if the allegations in the complaint are accurate, the Commission should be concerned about the degree to which DEF is using its discretion in its OATT administration to discriminate against competitors.⁵⁷ SEIA alleges that DEF may have abused its position by submitting a transmission service request for its own solar facility shortly after rejecting FMPA’s transmission service requests, ensuring that the utility itself will have rights to the available transmission capacity that FMPA sought, while the Project must wait for an indefinite period for DEF to complete its interconnection studies and execute the associated interconnection agreement.⁵⁸

21. Florida Renewable states that, as a developer of the Project and counterparty to the Renewable Energy Power Purchase Agreement with FMPA, it is concerned that all studies be completed, agreements executed, and interconnection and network facilities be constructed in time to achieve the June 2020 planned in-service date for the Project. Florida Renewable states that it is committed to working with DEF and FMPA to resolve

⁵⁴ *Id.* at 7 & n.22 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at P 535).

⁵⁵ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh’g & clarification*, Order No. 845-A, 166 FERC ¶ 61,137 (2019).

⁵⁶ SEIA Comments at 10. In addition, SEIA notes that if the Commission were to authorize DEF’s conduct, FMPA and its network load would likely be denied the full benefit of the federal investment tax credit for solar projects due solely to the delay of the interconnecting transmission owner. SEIA states that, meanwhile, DEF’s policy allows DEF priority access to available transmission capacity for its own solar projects prior to the federal investment tax credit step-down. *Id.* at 10 -11.

⁵⁷ *Id.* at 11.

⁵⁸ *Id.*

(continued ...)

any issues that may cause delay, and hopes for a speedy resolution of the concerns raised in this proceeding.⁵⁹

B. DEF's Answer

22. DEF acknowledges that it rejected FMPA's transmission service requests because NextEra's network resource interconnection service request for the Project is pending. However, DEF argues that its rejection of the requests was just and reasonable and consistent with its OATT and OASIS business practices. DEF states that its long-standing policy has been to require an executed interconnection agreement or filing with the Commission of an unexecuted interconnection agreement before it accepts for study and queue a transmission service request related to designation of a network resource.⁶⁰ DEF states that it has applied this policy on a non-discriminatory basis to DEF's own generation and to similarly situated entities.

23. DEF asserts that its policy is consistent with Section 30.2 of DEF's OATT, which outlines the process for designating a network resource. In particular, DEF states that Section 30.2 requires two attestations, in which the new network customer certifies that it satisfies the following conditions:

(1) the Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) the Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program.^[61]

DEF states that the application procedures to designate a network resource under Section 29.2 of DEF's OATT require the same two attestations included in Section 30.2. In addition, DEF states that the definition of a "Network Resource" in Section 1.37 of

⁵⁹ Florida Renewable Comments at 3.

⁶⁰ DEF Answer at 3.

⁶¹ *Id.* at 6-7 (quoting Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreements, Tariff Volume No. 4, OATT, § 30.2).

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DEF's OATT reiterates that the network resource must be able "to be called upon to meet the Network Customer's Network Load on a non-interruptible basis." DEF states that, prior to the execution of an interconnection agreement or its filing unexecuted, there is no obligation or commitment on behalf of an interconnection customer or DEF to construct the interconnection facilities and network upgrades required to interconnect a generating facility. DEF asserts that without a commitment to construct necessary interconnection facilities and network upgrades, that particular generating facility cannot be a resource that is able to "be called upon to meet the Network Customer's Network Load."⁶² DEF asserts that, for this reason, it has applied the attestation requirement of Section 30.2(2) to mean that the generating resource that is the subject of a particular transmission service request must have an associated interconnection agreement.

24. DEF argues that its policy under Section 30.2(2) of DEF's OATT supports least-cost planning and mitigates restudy risks. DEF asserts that it is not possible to conduct and complete reliable and accurate transmission service studies to designate the proposed generator as a network resource until the Interconnection Facilities Study has been completed, which identifies the interconnection facilities and network upgrades that are needed to interconnect a generator.⁶³ DEF states that, by applying an interconnection agreement requirement in Section 30.2(2) of its OATT, DEF incorporates into its transmission studies only existing, confirmed transmission reservations for generators that have committed to fund and construct necessary facilities or that are already online.⁶⁴ DEF states that this allows DEF to proceed with transmission service studies in a timelier manner, consistent with the transmission study deadlines in its OATT, and to produce more reliable study results that are less susceptible to changes in the interconnection queue.⁶⁵

25. DEF points out that, if a customer could submit a request to designate a network resource without any associated interconnection studies or agreements, the customer would be able to reserve transmission capacity for delivery of generation that may never exist. DEF argues that this risks: (1) unnecessary overbuilding by tying up existing transmission capacity for generators that may never be built; and (2) requiring later queued customers to bear the costs of upgrades to create the new capacity on top of the

⁶² *Id.* at 7.

⁶³ *Id.* at 8 (citing Order No. 2003-A, 106 FERC ¶ 61,220 at P 541).

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

(continued ...)

potentially unused existing capacity.⁶⁶ DEF notes that these risks are accentuated by the fact that there are approximately 6,200 MW worth of pending interconnection requests in DEF's generation interconnection queue, with more requests and MWs being added regularly, and, in its experience, a very significant portion of these requests will be withdrawn and the generation will never be built.⁶⁷

26. DEF also explains that, if a customer could submit a transmission service request to designate a network resource before completion of any interconnection studies, DEF would be obligated to proceed with the transmission service studies on 60-day timelines for transmission System Impact Studies and Facilities Studies, or it would face penalties for failure to meet the transmission study deadlines.⁶⁸ DEF asserts that, to coordinate the transmission service studies, which have OATT-required deadlines, with interconnection service studies, DEF would inevitably face the need for restudies for transmission service when projects that request to be designated a network resource withdraw from the interconnection queue.⁶⁹ DEF argues that such a process would introduce more uncertainty, delay, and cost in the interconnection and transmission service request processes.

27. DEF asserts that FMPA's requested relief—to insert FMPA's four requests back into DEF's transmission queue—is not just and reasonable. DEF explains that it has applied its policy on a non-discriminatory basis for many years and other customers have relied on its policy. DEF points out that other affiliated and non-affiliated generating resources have entered the transmission queue since FMPA's September 5, 2018 submissions, have reasonably formed expectations about their queue positions, and any remedy should avoid harm to these customers.⁷⁰ DEF explains that these transmission service requests (submitted after September 5, 2018) may be subject to restudy if DEF is directed to reinsert FMPA and its members back into the queue as of their original September 5, 2018 submission date.⁷¹

⁶⁶ *Id.* at 9-10.

⁶⁷ *Id.* at 10.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 15.

⁷¹ *Id.*

(continued ...)

28. DEF asserts that, if the Commission grants the complaint, the only just and reasonable remedy would be to provide all customers with pending interconnection requests (not just FMPA) with the same opportunity to submit designated network resource requests. In particular, DEF believes that it would need to post a notice on its OASIS to notify all of its customers with a pending interconnection request of the new policy to comply with the Commission's order and to explain the timing to implement the new policy, so that these customers have the same opportunity as FMPA to submit a new request to designate a network resource.⁷² To mitigate uncertainties, inefficiencies, and restudy risks, DEF argues that the Commission should direct that transmission System Impact Studies or Facilities Studies for transmission service requests should not commence until the interconnection customer has executed an interconnection agreement or the interconnection agreement has been filed unexecuted at the Commission.⁷³

29. Regarding FMPA's three requests for Bartow, Wauchula, and Winter Park, DEF explains that, in its OASIS submissions, FMPA selected the option to propose a "coordinated group," but then failed to provide the information required to establish a coordinated group, in accordance with DEF's OATT and OASIS business practices.⁷⁴ DEF notes that FMPA appears to have made a mistake because the coordinated group criteria do not apply to Bartow, Wauchula, and Winter Park, since they are embedded in DEF's system. DEF states that, regardless of FMPA's mistake, DEF's OATT and OASIS business practices required it to reject the three requests for failing to provide all required information for a coordinated group.⁷⁵ DEF argues that FMPA has failed to explain how DEF can both comply with its OATT obligations for a coordinated group, but selectively treat requests that mistakenly choose the coordinated group option differently.⁷⁶

⁷² *Id.* at 14.

⁷³ *Id.*

⁷⁴ *Id.* at 4. DEF notes that its OASIS business practices state that customers may use a coordinated group to request "Service Across Multiple Transmission Systems (SAMTS)" and SAMTS will be administered following NAESB Business Practice Version 003 WEQ 001-23. DEF also notes that Section 4.2 of its OATT incorporates this NAESB standard by reference. DEF states that, in its OASIS requests, FMPA set the "CG Status" to "PROPOSED," which triggered its coordinated group requests and requirements. *Id.*

⁷⁵ *Id.* at 6.

⁷⁶ *Id.* at 15.

(continued ...)

C. FMPA's Answer to DEF's Answer

30. FMPA points out that DEF does not assert that its policy is in its OASIS business practices, and does not identify any language in its OATT that expressly requires an interconnection agreement to be in place before a customer can apply for transmission service.⁷⁷ FMPA also notes that DEF cites no precedent to support its position, and that DEF's only argument is that its unwritten policy is implicit in the requirement (under Section 30.2 of DEF's OATT) that a network customer attest that a designated network resource "can be called upon to meet the Network Customer's load."⁷⁸

31. FMPA asserts that DEF's interpretation of Section 30.2, which would permit DEF to make judgments about the transmission customer's attestations, contradicts Order No. 890.⁷⁹ FMPA states that, in Order No. 890, the Commission (1) rejected proposals that would have enabled transmission providers to look behind a network customer's attestations, and (2) made clear that if a transmission provider has concerns about the adequacy of the attestations, it should report the network customer to the Commission's Office of Enforcement.⁸⁰ FMPA also points out that DEF has failed to address the numerous rulings in which the Commission has confirmed that interconnection and transmission service requests can be submitted at the same time,⁸¹ and DEF's interpretation of Section 30.2 cannot override these rulings.⁸² FMPA also notes that DEF's interpretation of section 30.2 cannot override the express provision in Section 30.2, which allows a customer to designate a network resource based on a

⁷⁷ FMPA Answer at 2-3.

⁷⁸ *Id.* at 3.

⁷⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁸⁰ FMPA Answer at 3 (citing Order No. 890, 118 FERC ¶ 61,119 at P 1526).

⁸¹ *See* discussion *supra* PP 9-10.

⁸² FMPA Answer at 3-4.

(continued ...)

contractual commitment that is contingent on the availability of transmission service, which includes interconnection service.⁸³

32. FMPA asserts that DEF's argument that its policy is needed to support least-cost planning and mitigate restudy risks has already been rejected by the Commission. FMPA argues that, in Order No. 890-A, the Commission rejected an argument that the *pro forma* OATT's timelines for processing transmission service requests are incompatible with allowing such requests in advance of a Large Generator Interconnection Agreement. In particular, FMPA states that the Commission denied a request that the 60-day targets for completing transmission service studies should not apply when transmission service requests are submitted with new generator interconnection requests, noting that transmission providers can request case-by-case penalty waivers by explaining the extenuating circumstances that led to the delay and demonstrating that they used due diligence in processing the studies.⁸⁴ FMPA also argues that, in Order No. 890, the Commission emphasized that transmission providers cannot use self-help to avoid operational penalties by denying or inadequately studying a request for transmission service.⁸⁵ FMPA therefore asserts that any concerns that DEF has about potential conflicts between the timelines for completing generator interconnection and transmission service studies do not justify rejecting FMPA's transmission service requests. FMPA also states that, as long as FMPA's transmission queue position is restored and its priority to DEF's available transmission capacity associated with that queue position is preserved, FMPA is willing to work with DEF to develop mutually agreeable alternative dates for commencement of DEF's system impact studies and facilities studies for its transmission service requests.⁸⁶

33. FMPA argues that DEF's concerns about tying up existing transmission capacity and risks of unnecessary building⁸⁷ are problems created by DEF's administration of its

⁸³ *Id.* at 4 & n.11 (citing Complaint at 14 & n.34).

⁸⁴ *Id.* at 5-6 (citing Order No. 890-A, 121 FERC ¶ 61,297 at PP 738, 743-44). FMPA notes that, in that rulemaking DEF's predecessor, sought a categorical exemption from penalties applicable to transmission providers that fail to process transmission service requests within the Commission's time deadlines if prior submitted generator interconnection requests would impact the same interfaces as transmission service requests. *Id.* at 5 n.14 (citing Order No. 890-A, 121 FERC ¶ 61,297 at P 737).

⁸⁵ *Id.* at 5 (citing Order No. 890-A, 121 FERC ¶ 61,297 at P 1344).

⁸⁶ *Id.* at 6.

⁸⁷ *See supra* P 25.

(continued ...)

interconnection queue and are not a basis to reject transmission service requests. FMPA asserts that any issues that DEF has with speculative, unlikely-to-be-built generation projects in DEF's interconnection queue should be addressed by DEF's prompt processing of the interconnection queue, so that interconnection customers are required to either commit the resources necessary to proceed with their projects or withdraw their projects.⁸⁸

34. FMPA also asserts that DEF's confidential table in its answer confirms that DEF's unwritten policy is discriminatory because it gives DEF's generation an advantage. FMPA notes that DEF's answer does not attempt to rebut FMPA's argument that DEF's policy gives DEF's generation an advantage because DEF's load is very similar to the "aggregate load" used in tests of network resource interconnection service.⁸⁹

35. With respect to DEF's answer concerning the "coordinated group" selection, FMPA notes that DEF failed to alert FMPA of the problem within 15 days of its transmission service request, as required under Section 29.2 of DEF's OATT.⁹⁰ FMPA also points out that Section 29.2 of DEF's OATT requires DEF, wherever possible, to attempt to remedy deficiencies with the customer through informal communications.⁹¹ FMPA states that it cannot find any record of any formal or informal communications from DEF on this issue, and DEF does not claim, in its answer, that it attempted to contact FMPA regarding this issue.⁹²

36. FMPA states that, on February 27, 2019, it resubmitted the transmission service requests for the three cities and FMPA's all-requirements members with the correction to deselect the "coordinated group" status, out of an abundance of caution.⁹³ FMPA states that if the Commission concludes that FMPA's inadvertent error in selecting the "coordinated group" status prevents the Commission from reinstating the transmission

⁸⁸ FMPA Answer at 7.

⁸⁹ *See supra* P 13.

⁹⁰ FMPA Answer at 11.

⁹¹ *Id.*

⁹² *Id.* at 12.

⁹³ *Id.* at 13. FMPA notes that although DEF only rejected the requests for the three cities based on the selection of the "coordinated group" status, FMPA also mistakenly made this selection for FMPA's request for its all-requirements members. *Id.* at 13-14.

(continued ...)

service requests at the original submission dates, then it should reinstate the requests at the February 27, 2019 resubmission dates.

37. In response to DEF's argument that it is not just and reasonable to only give relief to FMPA and its members because other customers have relied on DEF's policy, FMPA responds that FMPA is the only customer to raise an objection and the complaint was publicly noticed by the Commission.⁹⁴ FMPA argues that DEF's proposal of an open season is not just and reasonable because it would not be appropriate to allow customers that have interconnection requests, but have not yet submitted transmission service requests, to jump ahead of FMPA and its members in the transmission service queue.⁹⁵ In response to SEIA's request for relief, FMPA states that it would not object to extending the relief to other customers (if any) that have been denied transmission service requests because of still-pending interconnection service requests.⁹⁶

IV. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

39. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant PacifiCorp's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

40. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits answers to an answer unless otherwise ordered by the decisional authority. We accept FMPA's answer to DEF's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

41. For the reasons discussed below, we grant FMPA's complaint. We find that DEF's unwritten policy of requiring an executed interconnection agreement or an unexecuted interconnection agreement filed with the Commission before a customer can submit a valid transmission service request to designate a network resource is contrary to

⁹⁴ *Id.* at 15.

⁹⁵ *Id.* at 16.

⁹⁶ *Id.* at 15-16.

DEF's OATT and OASIS business practices, FPA section 205, and Commission precedent. Accordingly, we grant FMPA's complaint and direct DEF to reinstate the transmission queue positions of FMPA, Bartow, Wauchula, and Winter Park, effective September 5, 2018, consistent with their original transmission service requests to designate the Project as a network resource.

42. DEF's unwritten policy is contrary to DEF's OATT and OASIS business practices. Section 29.2 of DEF's OATT specifically identifies what is required to designate a network resource in a transmission service request, including certain required attestations from Section 30.2 of DEF's OATT. An executed interconnection agreement, or unexecuted interconnection agreement filed with the Commission, is not identified as required information under Section 29.2 and the section cannot reasonably be read as requiring such information. DEF's OASIS business practices likewise make no mention of any interconnection agreement prerequisite for submitting a request for network transmission service. Accordingly, we find that DEF acted in contravention of Section 29.2 of its OATT when it rejected FMPA's four transmission service requests to designate the Project as a network resource on the basis that there is no associated interconnection agreement.

43. Also, we find that DEF's unwritten policy violates FPA Section 205,⁹⁷ which requires all practices that significantly affect rates, terms, and conditions of service to be on file with the Commission.⁹⁸ Here, DEF admits that it denied transmission service to FMPA, Bartow, Wauchula, and Winter Park based on an unwritten policy.⁹⁹ This unwritten policy constitutes a practice that significantly affects the terms and conditions

⁹⁷ 16 U.S.C. § 824d.

⁹⁸ *Cargill Pwr. Markets*, 132 FERC ¶ 61,079 at P 23 (finding that the transmission provider violated its OATT when it rejected a transmission service request based on unwritten procedures because the Commission, consistent with the FPA, requires all practices that significantly affect rates, terms, and conditions of service to be on file with the Commission); *Energy Storage Assoc. v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296, at P 103 (2018) (footnotes omitted) ("Decisions regarding whether an item should be placed in a tariff or in a business practice manual are guided by the Commission's rule of reason policy, under which provisions that 'significantly affect rates, terms, and conditions' of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in the tariff, while items better classified as implementation details may be included only in the business practice manual.").

⁹⁹ DEF Answer at 7-8.

(continued ...)

of transmission service under DEF's OATT and, therefore, should have been filed with the Commission for Commission review.

44. Nevertheless, even if DEF had filed its policy with the Commission, we find here that DEF's policy is contrary to long-standing Commission precedent that allows customers to simultaneously submit interconnection and transmission service requests. For instance, in *Tennessee Power Co.*, the Commission acknowledged that "[i]nterconnection is an element of transmission service" that must be provided under the *pro forma* OATT "whether the interconnection request is tendered concurrently with the request for transmission service or in advance of a request for a specific transmission service."¹⁰⁰ In fact, the Commission has recognized that simultaneous submission of interconnection and transmission service requests is the norm, and has stated that the terms and conditions of the *pro forma* OATT are intended to accommodate such simultaneous submission.¹⁰¹ The Commission specifically addressed this issue in Order No. 2003-A and confirmed that requests for interconnection service and transmission service may be submitted simultaneously for a new generating facility.¹⁰²

45. We also find that DEF's interpretation of the attestation requirement in Section 30.2(2) of DEF's OATT is contrary to Order No. 890.¹⁰³ DEF interprets

¹⁰⁰ *Tenn. Pwr. Co.*, 90 FERC at 61,761 (internal citations omitted).

¹⁰¹ *See, e.g., id.* ("We recognize that the *pro forma* [OATT] generally envisions a process in which both the interconnection and delivery components of a transmission service request are made at the same time. Accordingly, all of the transmission request procedures (application process, information exchange process, preparation of system studies and facilities studies, notification by transmission provider as to the disposition of the request and the cost of any necessary system upgrades, and the execution of a service agreement) accommodate situations in which both interconnection and delivery are requested at the same time."); *Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,193 at P 36 n.52; *S. Co. Servs., Inc.*, 94 FERC at 61,502; *Laguna Irrigation Dist.*, 91 FERC at 62,152.

¹⁰² Order No. 2003-A, 106 FERC ¶ 61,220 at P 535 ("As a further clarification, we emphasize that this rule should not be construed as taking away any option that a Network Customer, or any other Transmission Customer, now has with respect to interconnecting a new Generating Facility and obtaining firm transmission service to load. Although obtaining Interconnection Service under this rule and obtaining transmission delivery service under the OATT is a two-step process, the Interconnection Customer has every right to request the two services at the same time, just as it did in the past.").

¹⁰³ *See discussion supra* P 23.

Section 30.2(2) as requiring an executed interconnection agreement or an unexecuted interconnection agreement filed with the Commission before a customer can submit a valid transmission service request to designate a network resource. Specifically, DEF argues that the requirement in Section 30.2(2) of an attestation that the new network resource does “not include any resources, or any portion thereof, that . . . *cannot be called upon to meet the Network Customer’s Network Load on a non-interruptible basis*”¹⁰⁴ cannot be made prior to the execution of an interconnection agreement or the filing of an unexecuted interconnection agreement with the Commission. That is because, according to DEF, prior to this point there is no obligation or commitment on behalf of an interconnection customer or DEF to construct the interconnection facilities and network upgrades required to interconnect a generating facility, and therefore the particular generating facility cannot be a resource that is able to “be called upon to meet the Network Customer’s Network Load.” In Order No. 890, however, the Commission rejected proposals that would have enabled transmission providers to analyze a network customer’s attestations, stating that, if a transmission provider has concerns about the adequacy of the attestations, it should report the network customer to the Commission’s Office of Enforcement.¹⁰⁵ That is precisely what DEF is doing with its interpretation of the attestation requirement, contrary to Order No. 890.

46. The Commission has also previously rejected the argument that processing interconnection and transmission service requests sequentially is needed to support least-cost planning and mitigate restudy risks. In Order No. 890-A, the Commission: (1) denied a request that the 60-day due diligence deadlines for completing transmission service studies should not apply when transmission service requests are submitted with

¹⁰⁴ Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreements, Tariff Volume No. 4, OATT, § 30.2(2) (emphasis added). This attestation statement is the same as that required in the *pro forma* OATT.

¹⁰⁵ Order No. 890, 118 FERC ¶ 61,119 at PP 1523, 1526. In Order No. 890, the Commission “reject[ed] requests to allow the transmission provider to voluntarily seek information which verifies that contractual terms meet the requirements in Sections 30.1 and 30.7 of the *pro forma* OATT. Allowing transmission providers to verify terms and conditions of power purchase agreements would put transmission providers in the position of interpreting contracts and accepting or rejecting designations based on their interpretations.” *Id.* P 1526. The Commission stated that: “[t]he only ‘additional’ restrictions that the transmission provider is called upon to police is that network customers submit the appropriate attestations when requesting designation of a network resource, which places a particularly small burden on the transmission provider.” *Id.* P 1528.

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new generator interconnection requests; and (2) made case-by-case penalty waivers available when the transmission provider can explain the extenuating circumstances that led to the delay, and demonstrate that it used due diligence in processing the studies.¹⁰⁶ Thus, the Commission specifically contemplated the concerns now raised by DEF.

47. Additionally, we find that DEF did not follow the requirements of its OATT when it rejected FMPA's transmission service requests for Bartow, Wauchula, and Winter Park on the basis that FMPA selected the option to propose a "coordinated group" in its OASIS submissions, but then failed to provide the information required to establish a coordinated group. Section 29.2 of DEF's OATT requires DEF to notify the customer within 15 days of a failed transmission service request, specify the reasons for the failure, and, wherever possible, to attempt to remedy deficiencies in the request through informal communications with the customer. The record reflects that, when DEF rejected the three requests for Bartow, Wauchula, and Winter Park, it only provided a cursory note on its OASIS that "[t]here is no coordinated group[.]"¹⁰⁷ without indication or explanation that FMPA selected the "coordinated group" status in FMPA's OASIS submissions, but failed to supply the information required to establish a coordinated group. Instead, the record reflects that FMPA had to research DEF's OATT and OASIS business practices to understand the meaning of DEF's passing rejection note.¹⁰⁸ Furthermore, there is no evidence in the record that DEF attempted to pursue formal or informal communications with FMPA to remedy the deficiency in the requests (i.e., either to provide the supporting information needed for coordinated groups or to uncheck the coordinated group box in the OASIS form), in contravention of the requirements of Section 29.2 of DEF's OATT.¹⁰⁹

¹⁰⁶ Order No. 890-A, 121 FERC ¶ 61,297 at PP 738, 743-44. The Commission also recognized that certain transmission studies can present challenges or other circumstances may justify a longer study period and stated that, in the transmission provider's filing for a case-by-case penalty waiver, transmission providers "should discuss any factors that they believe are relevant, including reasonable resource limitations, the accommodation of customer requests (including clustering), inter-regional and seams coordination, the scope of particular studies, or fluctuations in study volumes." *Id.* P 743.

¹⁰⁷ Complaint, Ex. FMP-02 at 2-4.

¹⁰⁸ Complaint at 26; FMPA Answer at 11.

¹⁰⁹ In DEF's answer, DEF does not claim to have attempted to contact FMPA regarding this issue and FMPA also states that it cannot find any record of communications from DEF on this issue. FMPA Answer at 12.

(continued ...)

48. In previous cases where the transmission provider has violated the terms of its OATT, OASIS business practices, and/or Commission precedent, the Commission has used its broad remedial authority¹¹⁰ to provide the transmission customer relief by reinstating the transmission customer's rejected transmission service request into the transmission queue, and reordering the transmission queue.¹¹¹ We find that FMPA's proposed remedy—to reinstate the transmission queue positions of FMPA, Bartow, Wauchula, and Winter Park based on their original September 5, 2018 requests, and to reorder the queue positions of transmission service requests submitted after that date—is just and reasonable and not unduly discriminatory or preferential. As FMPA argues, the complaint was publicly noticed and no transmission customer, except for DEF, filed comments to object to FMPA's requested relief.¹¹² Although DEF generally argues that other customers have relied on DEF's unwritten policy,¹¹³ there is no evidence in the record of any such customers. DEF also argues that any remedy should avoid harm to transmission customers who have entered DEF's transmission queue since

¹¹⁰ The breadth of the Commission's discretion is at its "zenith" when fashioning remedies. *See, e.g., Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

¹¹¹ *Idaho Pwr. Co. v. PacifiCorp*, 95 FERC ¶ 61,148, at 61,475-77 (2001) (directing the transmission provider to reorder the transmission queue where it misapplied its OATT requirement to a transmission service request); *Tenaska Power Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,230, at PP 49-51, 53 (2004) (*Tenaska*) (directing the transmission provider to reorder the transmission queue where it violated its OASIS business practices and Commission precedent with respect to a transmission service request), *order denying reh'g*, 107 FERC ¶ 61,308 (2004); *Cargill Pwr. Markets*, 132 FERC ¶ 61,079 at PP 20, 22-25 (finding that the transmission provider violated its OATT requirements when it denied a transmission service request, and setting the remedy for hearing and settlement judge procedures); *order approving settlement*, 137 FERC ¶ 61,259 (2011) (conditionally accepting a contested settlement that restored the customer's transmission queue position), *order denying reh'g*, 141 FERC ¶ 61,141 (2012); *Edison Mission Energy v. Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,035 (2011) (directing the transmission provider to reorder the interconnection queue where it violated its OATT requirements and Commission precedent with respect to an interconnection service request).

¹¹² FMPA Answer at 15-16. Seminole, a large DEF transmission customer, filed comments in support of the complaint. Seminole Comments at 3-5.

¹¹³ DEF Answer at 13.

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September 5, 2018.¹¹⁴ While we recognize that reordering DEF's transmission queue may impact customers who entered the transmission queue after DEF improperly rejected FMPA's transmission service requests, the Commission has stated that "parties should not be allowed to retain transmission capacity that they should not have received in the first place."¹¹⁵ Therefore, we find that, on balance, it is just and reasonable and not unduly discriminatory or preferential to reinstate the transmission queue positions of FMPA, Bartow, Wauchula, and Winter Park based on their original September 5, 2018 requests, and to move subsequent transmission service requests back in the transmission queue.¹¹⁶

49. We also find that the record in this proceeding does not support: (1) SEIA's proposed relief—to extend the relief to any customer who has had a transmission service request rejected because of DEF's unwritten policy;¹¹⁷ or (2) DEF's proposed relief—to post a notice on OASIS so that all customers with pending interconnection requests have an opportunity to submit designated network resource requests.¹¹⁸ There is no evidence in the record of other customers that have had a transmission service request rejected because of DEF's unwritten policy. Furthermore, we find that it would not be appropriate to provide an opportunity for customers who have interconnection requests, but have not yet submitted transmission service requests, to jump ahead of FMPA and its members in the transmission queue in the circumstances before us.

50. Accordingly, under our remedial authority under FPA section 309,¹¹⁹ we direct DEF to: (1) reinstate the transmission queue positions of FMPA, Bartow, Wauchula, and Winter Park, effective September 5, 2018, consistent with their original requests to designate the Project as a network resource, with priority to DEF's available transmission

¹¹⁴ *Id.* at 15.

¹¹⁵ *Tenaska*, 106 FERC ¶ 61,230 at P 53.

¹¹⁶ Based on the record, reinstating FMPA, Bartow, Wauchula, and Winter Park into the transmission queue based on their original September 5, 2018 transmission service requests would move back at least one long-term firm transmission service request (for DEF's network resource designation of a solar resource) in the transmission queue. Complaint at 10.

¹¹⁷ SEIA Comments at 2.

¹¹⁸ DEF Answer at 14.

¹¹⁹ 16 U.S.C. § 825h (2012).

capacity over all subsequent competing requests; and (2) reorder the queue positions of transmission service requests submitted thereafter.

The Commission orders:

(A) The complaint is hereby granted, as discussed in the body of this order.

(B) DEF is hereby directed to reinstate the transmission queue positions of FMPA, Bartow, Wauchula, and Winter Park, effective September 5, 2018, with priority to DEF's available transmission capacity over all subsequent competing requests, and reorder the queue positions of transmission service requests submitted thereafter, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.