

173 FERC ¶ 61,029  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and James P. Danly.

NextEra Energy, Inc.  
Florida Power & Light Company  
Gulf Power Company

Docket No. EC20-60-000

ORDER AUTHORIZING MERGER

(Issued October 15, 2020)

1. On May 1, 2020, pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA)<sup>1</sup> and Part 33 of the Commission's regulations,<sup>2</sup> NextEra Energy, Inc. (NextEra), Florida Power & Light Company (FPL) and Gulf Power Company (Gulf Power) (together, Applicants) filed an application (Application) for approval of an internal reorganization under which Gulf Power will merge into FPL, with FPL as the surviving entity (Proposed Transaction).
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.<sup>3</sup> As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

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<sup>1</sup> 16 U.S.C. § 824b(a)(1)(B).

<sup>2</sup> 18 C.F.R. pt. 33 (2020).

<sup>3</sup> *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), reconsideration denied, Order No. 592-A, 79 FERC ¶ 61,321 (1997); see also *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008); *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076

## I. Background

### 1. NextEra

3. Applicants state that NextEra is an energy holding company with more than 50,000 megawatts (MW) of net generating capacity in 36 states and Canada. Applicants state that NextEra's operations are conducted primarily through three business units: (1) FPL, a vertically-integrated public utility operating in peninsular Florida; (2) Gulf Power, a vertically-integrated public utility operating in the western panhandle of Florida; and (3) NextEra Energy Resources, LLC, the parent company of NextEra Energy's competitive generation and trading businesses.<sup>4</sup>

### 2. FPL

4. Applicants state that FPL is a rate-regulated franchised electric utility engaged primarily in the generation, transmission, distribution, and sale of electric energy in Florida. Applicants state that FPL's transmission facilities are located within the State of Florida and are administered pursuant to the FPL Open Access Transmission Tariff (OATT), which is on file with the Commission.<sup>5</sup> Applicants state that the rates for transmission service under the FPL OATT are determined under a formula rate, which was accepted by the Commission subject to the outcome of pending settlement judge or hearing procedures, effective April 1, 2020.<sup>6</sup>

5. Applicants state that FPL has market-based rate authority that applies to sales outside of peninsular Florida as well as sales inside of peninsular Florida in the balancing authority areas operated by Duke Energy Florida, LLC, Jacksonville Electric Authority, Seminole Electric Cooperative, Inc., Tampa Electric Company, and the City of Tallahassee. Applicants state that FPL provides full requirements service to Florida Keys Electric Cooperative Association, Inc. (Florida Keys) and Lee County Electric

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(2006); *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

<sup>4</sup> Application at 4.

<sup>5</sup> *Id.* (citing FPL FERC Electric Tariff, 2nd Revised Volume No. 6.).

<sup>6</sup> *Id.* (citing *Fla. Power & Light Co.*, 169 FERC ¶ 61,080 (2019)).

Cooperative, Inc. (Lee County) pursuant to long-term power purchase agreements that include production cost of service formula rates that are on file at the Commission.<sup>7</sup>

### **3. Gulf Power**

6. Applicants state that Gulf Power is a vertically-integrated electric utility and subsidiary of NextEra, that owns or controls approximately 2,277 MW of generating capacity and owns a 2,700-mile transmission system and 7,700-mile distribution system. Applicants state that service over Gulf Power's transmission system is provided under the Gulf Power OATT.<sup>8</sup> Applicants state that Gulf Power has limited market-based rate authorization to make sales through The Southern Company's (Southern Company)<sup>9</sup> power pool where such sales are executed by Southern Company Services, Inc.<sup>10</sup> Applicants state that Gulf Power also has the ability to make wholesale power sales at cost-based rates under its recently approved power sales tariff.<sup>11</sup>

#### **B. Description of the Proposed Transaction**

7. As background for the Proposed Transaction, Applicants explain that NextEra acquired Gulf Power from Southern Company on January 1, 2019.<sup>12</sup> Applicants state that Southern Company and NextEra determined that Gulf Power should continue to participate in the Southern Company power pool, remain an unaffiliated party to the Intercompany Interchange Contract, and remain in the Southern Company balancing authority area for a transitional period of five years (which could be terminated early by Gulf Power with 180 days' notice). Applicants state that Gulf Power and Southern Company also agreed to implement certain protections for transmission customers to shield them from any adverse effects of the acquisition of Gulf Power by NextEra.

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<sup>7</sup> *Id.* at 5 (citing *Fla. Power & Light Co.*, Docket Nos. ER20-166-000 and ER20-167-000 (Nov. 26, 2019) (delegated order)).

<sup>8</sup> *Id.* (citing *Gulf Power Co.*, 169 FERC ¶ 61,023 (2019)).

<sup>9</sup> Southern Company is the holding company for Alabama Power Company, Georgia Power Company, and Mississippi Power Company.

<sup>10</sup> Application at 6 (citing *Gulf Power Co.*, 165 FERC ¶ 61,262, at PP 3-4 (2018)).

<sup>11</sup> *Id.* (citing *Gulf Power Co.*, Docket No. ER20-267-000 (Dec. 18, 2019) (delegated order)).

<sup>12</sup> *See NextEra Energy, Inc.*, 165 FERC ¶ 61,263 (2018).

8. Applicants state that Gulf Power is currently engaged in a number of initiatives designed to prepare it for coordinated operations with FPL at the end of the transition period, including: (i) developing a 161 kilovolt transmission line that will directly interconnect Gulf Power with FPL and provide approximately 850 MW of bidirectional transfer capability; (ii) installing four combustion turbines at Gulf Power's Plant Crist; and (iii) pursuing recertification from the Florida Reliability Coordinating Council as part of the FPL balancing authority area.<sup>13</sup> Applicants state that NextEra has been in contact with Southern Company and has committed to make any necessary changes to existing agreements to clarify and preserve the pre-reorganization rights and obligations of Gulf Power and Southern Company during the Transition Period once those rights are assumed by FPL.<sup>14</sup>

9. Applicants state that under the Proposed Transaction, Gulf Power will merge with and into FPL. Applicants state that the separate legal existence of Gulf Power will cease, and FPL will continue as the surviving entity, effective January 1, 2021. Applicants state that FPL, as the surviving corporation, will assume all Gulf Power debts, liabilities, and physical assets dedicated to providing wholesale and retail utility service.

10. As part of the Proposed Transaction, Applicants state that FPL will continue to provide service to customers in Gulf Power's service territory in Northwest Florida under the existing Gulf Power brand during 2021, as a separate operating division with separate retail rates. Applicants state that concurrent with this Application, Gulf Power and FPL are seeking waivers of the applicable regulations of this Commission to allow the FPL and Gulf Power operating divisions to maintain separate OATTs during 2021, maintain separate books and records under the Uniform System of Accounts, and submit separate FERC Form No. 1s and Form No. 3-Qs for each operating division for that year.<sup>15</sup> Applicants state that in 2022, the existing Gulf Power and FPL systems will become separate rate zones under a consolidated FPL OATT, utility services in Northwest Florida will be provided under the unified FPL brand, and FPL will file a consolidated FERC Form No. 1 for the 2022 reporting year and thereafter.<sup>16</sup>

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<sup>13</sup> Application at 7.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> See *Florida Power & Light Company*, Docket No. AC20-106-000 (Oct. 15, 2020) (delegated order); *Florida Power and Light, Co.*, 173 FERC ¶ 61,030 (2020); *GulfPower Co.*, 173 FERC ¶ 61,031 (2020).

<sup>16</sup> Application at 9.

## **II. Notice of Filing and Responsive Pleadings**

11. Notice of the Application was published in the *Federal Register*, 85 Fed. Reg. 27,735 (May 11, 2020), with interventions and protests due on or before June 15, 2020. Timely motions to intervene were filed by Florida Municipal Power Agency; the City of Tallahassee; Seminole Electric Cooperative, Inc., Lee County, and Florida Keys; Orlando Utilities Commission; and PowerSouth Energy Cooperative.

12. Southern Company filed a timely motion to intervene and comments. Southern Company notes that the many complexities involved with Gulf Power's ongoing efforts to exit integrated operations with the Southern Company system create the potential for unintended or unanticipated consequences. Southern Company states that the development of a transmission line between Gulf Power and FPL, as well as the development of a separate Gulf Power balancing authority area, are issues that must be addressed between Southern Company and Gulf Power. Southern Company states that should the Proposed Transaction frustrate the protections designed to avoid adverse impacts to customers or produce results inconsistent with the pre-closing status quo, Southern Company would expect Applicants and Southern Company to cooperate in the development of any mechanisms or revisions that might be needed to address such unintended results. Accordingly, Southern Company states that it does not oppose the filing.<sup>17</sup>

## **III. Discussion**

### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>18</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **B. Substantive Matters**

#### **1. FPA Section 203 Standard of Review**

14. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.<sup>19</sup> The Commission's

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<sup>17</sup> Southern Company Comments at 5.

<sup>18</sup> 18 C.F.R. § 385.214 (2020).

<sup>19</sup> 16 U.S.C. § 824b(a)(4).

analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>20</sup> FPA section 203(a)(4) also requires the Commission to find that the proposed transaction “will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”<sup>21</sup> The Commission’s regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>22</sup>

## **2. Analysis of the Proposed Transaction**

### **a. Effect on Horizontal Competition**

#### **i. Applicants’ Analysis**

15. Applicants state that the Proposed Transaction involves the intra-corporate consolidation of two sibling utilities, both of which are subsidiaries of NextEra. As a result, they argue, the Proposed Transaction will per se have no impact on horizontal market concentration because, when viewed as a corporate whole, the amount of generating capacity or transmission facilities owned or controlled by Applicants and their affiliates will not change as a result of the Proposed Transaction.<sup>23</sup>

#### **ii. Commission Determination**

16. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.<sup>24</sup>

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<sup>20</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

<sup>21</sup> 16 U.S.C. § 824b(a)(4).

<sup>22</sup> 18 C.F.R. § 33.2(j)(2020).

<sup>23</sup> Application at 10-11.

<sup>24</sup> *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

17. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. The Commission stated in Order No. 669 that anticompetitive effects are unlikely to arise with regard to internal corporate reorganizations.<sup>25</sup> As Applicants note, the Proposed Transaction is an internal consolidation that does not result in a change in market concentration for purposes of the Commission's section 203 analysis.<sup>26</sup>

**b. Effect on Vertical Competition**

**i. Applicants' Analysis**

18. Applicants state that the Proposed Transaction will not result in Applicants owning or controlling any new entities that provide inputs to electricity products and/or new entities that provide generation products. Moreover, they state that transmission service on the Gulf Power and FPL transmission systems will continue to be provided under open access transmission tariffs. Therefore, they argue, the Proposed Transaction will give rise to no vertical market power concerns.<sup>27</sup>

**ii. Commission Determination**

19. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the

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<sup>25</sup> *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 at P 190, *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076; *see also NV Energy, Inc.*, 145 FERC ¶ 61,170, at P 26 (2013) ("In this case, the merger between Sierra Pacific and Nevada Power is an internal reorganization of two utilities that are already affiliated within the same holding company system. Hence, the Proposed Transaction will not result in any concentration in the generation markets and will not change the existing competitive incentives.").

<sup>26</sup> We note that Applicants state that Gulf Power is developing a 161 kilovolt transmission line that will directly interconnect Gulf Power with FPL and provide approximately 850 MW of bidirectional transfer capability that will alter the footprint and composition of the FPL balancing authority area and the Southern Company balancing authority area. While this additional interconnection should allow for additional remote supply to the destination markets, we make no findings on the effect of the additional remote supply.

<sup>27</sup> Application at 11.

transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.<sup>28</sup>

20. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. Because the Proposed Transaction does not involve any transfer of generation facilities or inputs to electric power generation to an unaffiliated entity, we find that it will not have an adverse effect on vertical competition.<sup>29</sup>

**c. Effect on Rates**

**i. Applicants' Analysis**

21. Applicants explain that Gulf Power has higher average system costs than FPL, and while FPL is a much larger system, the result of combining the two systems could result in higher rates for some customers absent ratepayer protections (Cost Averaging Impacts). To address these potential rate impacts, Applicants propose a suite of mitigation measures, described below, to cover a five-year period following the closing of the Proposed Transaction. Additionally, Applicants propose a hold harmless commitment for five years, and pledge to leave intact the ratepayer protection mechanisms that were agreed to in the order approving the acquisition of Gulf Power from Southern Company.<sup>30</sup> Applicants also state that they intend to eliminate rate pancaking between the FPL and Gulf Power systems.<sup>31</sup>

**(a) Initial Ratepayer Protection**

22. Applicants state that for the first year following the closing of the Proposed Transaction, Gulf Power and FPL have requested a waiver of the Commission's Uniform System of Accounts (USofA) and FERC Form No. 1 filing requirements in order to

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<sup>28</sup> *Upstate Power Producers*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

<sup>29</sup> *See ITC Midwest LLC*, 140 FERC ¶ 61,125, at P 13 (2012).

<sup>30</sup> *See NextEra Energy, Inc.*, 165 FERC ¶ 61,263 at P 41.

<sup>31</sup> Application at 12.

maintain separate accounting for Gulf Power and FPL (accounting waiver).<sup>32</sup> Applicants explain that this will allow for the status quo to continue with respect to rates during 2021.<sup>33</sup>

**(b) Ratepayer protection 2022 through 2025**

23. Applicants state that starting in 2022 and lasting for four years, Applicants propose ratepayer protection mechanisms for three distinct groups of customers: (1) FPL's full requirements customers, Lee County and Florida Keys; (2) FPL's transmission customers; and (3) Gulf Power's transmission customers. Applicants commit to protect these formula rate customers from adverse Cost Averaging Impacts for a period of five years, commencing on the date of the consummation of the Proposed Transaction.<sup>34</sup>

24. For the full requirements customers, Applicants state that FPL, Lee County, and Florida Keys have agreed that FPL will make a future filing to modify the formula rates that determine demand and energy charges for Lee County and Florida Keys, effective January 1, 2022, to mitigate any Cost Averaging Impacts associated with the Proposed Transaction.<sup>35</sup> Applicants state that since this ratepayer protection mechanism was agreed to by the customers that are directly impacted by the Proposed Transaction, the effect on rates should not be considered adverse.<sup>36</sup>

25. For FPL's transmission customers, Applicants indicate that, after consummation of the Proposed Transaction, the Gulf Power OATT will be canceled in 2022. In conjunction with that cancellation, the FPL OATT will be amended such that Gulf Power and FPL transmission facilities will have separate zonal rates calculated using consolidated figures from the 2022 FERC Form No. 1. Applicants explain that FPL's transmission customers could experience increased rates because of the higher average system cost of Gulf Power. Applicants note that this increase would likely be small due

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<sup>32</sup> The accounting waiver is addressed in *Florida Power & Light Company*, Docket No. AC20-106-000 (Oct. 15, 2020) (delegated order).

<sup>33</sup> Application at 13.

<sup>34</sup> *Id.* at 12.

<sup>35</sup> Applicants indicate that FPL and its requirements customers have executed contract amendments obligating FPL to make a future section 205 filing, effective January 1, 2022, implementing the rate mitigations. *Florida Power & Light Co.*, 173 FERC ¶ 61,030; *GulfPower Company*, 173 FERC ¶ 61,031.

<sup>36</sup> Application at 14.

to the disparity in size between FPL and Gulf Power.<sup>37</sup> However, to protect FPL's transmission customers, Applicants commit that FPL will file a stated rate for FPL's transmission customers that excludes the costs of the former Gulf Power system effective January 1, 2022. Applicants explain that this commitment is not a rate freeze as FPL would have the ability to file a different stated rate through 2025 that continues to exclude Cost Averaging Impacts.<sup>38</sup>

26. With respect to Gulf Power's transmission customers, Applicants anticipate that under a combined system Gulf Power would have lower rates than as a stand-alone entity. Nevertheless, they propose to cap the formula rate for the Gulf Power pricing zone under the FPL OATT from 2022-2025 at the stand-alone rate produced by the Gulf Power formula using Gulf Power's 2021 FERC Form No. 1.<sup>39</sup>

## ii. Commission Determination

27. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on rates. When the Commission reviews a proposed transaction's effect on rates, the Commission's focus is on the effect the proposed transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the proposed transaction.<sup>40</sup> In the Merger Policy Statement, the Commission indicated that "the most promising and expeditious means of addressing ratepayer protection is for the parties to negotiate an agreement on ratepayer protection mechanisms."<sup>41</sup> Here, Applicants have proposed commitments to protect both Gulf Power and FPL customers from potential adverse effects of the Proposed Transaction.<sup>42</sup> We find that these commitments are sufficient to mitigate any potential adverse effect on rates resulting from the Proposed Transaction. We note that no party has objected to the proposed

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<sup>37</sup> Applicants estimate that FPL's 2019 rate would have increased from \$2.10 per kW month to \$2.24 per kW month if Gulf Power's 2019 costs and load were blended in. *Id.* at 18.

<sup>38</sup> *Id.* at 19..

<sup>39</sup> *Id.*

<sup>40</sup> *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 5 (2016) (Hold Harmless Policy Statement).

<sup>41</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123.

<sup>42</sup> *See supra* PP 21-26; Application at 15-22.

commitments and indeed some of the commitments are a product of a settlement with Lee County and Florida Keys, customers of FPL.

28. Our approval of the Proposed Transaction is based on Applicants' representations that they will submit future section 205 filings complying with the commitments made herein. The Commission retains the authority under section 203(b) to ensure that these commitments are fulfilled in future filings.<sup>43</sup>

29. We also accept Applicants' commitment to hold customers harmless from costs related to the Proposed Transaction. We interpret Applicants' hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction's consummation in accordance with the Commission's policy on hold harmless commitments.<sup>44</sup>

**d. Effect on Regulation**

**i. Applicants' Analysis**

30. Applicants argue that the Proposed Transaction will not have an adverse effect on regulation at either the federal or state level. Applicants state that FPL, as the surviving entity, will remain subject to the regulation of the Florida Public Service Commission as to its retail rates and to the Commission's jurisdiction as to its wholesale power sales and transmission charges. Applicants argue that there will thus be no diminution of regulatory oversight and no creation of a regulatory gap as a result of the Proposed Transaction.<sup>45</sup>

**ii. Commission Determination**

31. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.<sup>46</sup> As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this

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<sup>43</sup> 16 U.S.C. § 824b(b).

<sup>44</sup> Hold Harmless Policy Statement, 155 FERC ¶ 61,189.

<sup>45</sup> Application at 23.

<sup>46</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.<sup>47</sup>

32. Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. As Applicants state, FPL, as the surviving entity, will continue to be subject to regulation by the Florida Public Service Commission at the state level, and by the Commission at the federal level. We note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

**e. Cross-Subsidization**

**i. Applicants' Analysis**

33. Applicants state that the Proposed Transaction, will not create any inappropriate cross-subsidization or a pledge or encumbrance of utility assets. Applicants verify that there are no existing pledges and/or encumbrances of traditional utility assets for the benefit of an associate company relating to the Proposed Transaction. Specifically, under the Proposed Transaction, none of the Commission-jurisdictional transmission facilities owned by Gulf Power or FPL are or will be pledged or otherwise encumbered for the benefit of any of their affiliates or associate companies.

34. Applicants verify that the Proposed Transaction will not result in: (1) transfers of facilities between a traditional utility associate company that has captive customers, or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) new issuances of securities by a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.<sup>48</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at Ex. M.

ii. **Commission Determination**

35. Based on Applicants' representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

3. **Accounting Analysis**

36. In Attachment 1, FPL provided *pro forma* accounting entries to record the acquisition of Gulf Power's debts, liabilities, and physical assets dedicated to providing wholesale and retail utility service. FPL's proposal foregoes the use of Account 102, Electric Plant Purchased or Sold, for the proposed transfer. However, Account 102 is used as an interim control account to record all aspects of a transaction involving the acquisition or transfer of operating units or systems. The use of this account is an important accounting control that helps ensure that acquisitions and transfers of operating units or systems are properly accounted for, whether or not the entities involved in the transaction are members of the same corporate family. Therefore, we require FPL to record the transfer through Account 102 consistent with the instructions of Electric Plant Instruction (EPI) No. 5, Electric Plant Purchased or Sold, of the Commission's USofA.

37. Additionally, FPL's proposed accounting entries do not provide estimated dollar amounts. Section 33.5 of the Commission's regulations requires that if the applicant is required to maintain its books of account in accordance with the Commission's USofA, the applicant must present proposed accounting entries showing the effect of the transaction to indicate the effects on all account balances, including amounts transferred on an interim basis.

38. Applicants state that Gulf Power will record an opposite entry for the same amounts to eliminate these balances on its books and records. Therefore, we require Gulf Power to record the transfer through Account 102 consistent with the instructions of EPI No. 5 of the Commission's USofA, consistent with the directive above for FPL.

4. **Other Considerations**

39. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.<sup>49</sup> Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected

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<sup>49</sup> 16 U.S.C. § 824o.

to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

40. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to PUHCA 2005<sup>50</sup> are subject to the record-keeping and books and records requirements of PUHCA 2005.

41. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>51</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

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<sup>50</sup> 42 U.S.C. §§ 16451-63.

<sup>51</sup> 18 C.F.R. § 35.42 (2020); *see also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

(H) If Applicants seek to recover transaction-related costs through their transmission or wholesale requirements rates, they must make a new FPA section 205 filing and submit concurrently an informational filing in the instant FPA section 203 docket. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction.

(I) FPL and Gulf Power shall account for the transaction in accordance with EPI No. 5 and Account 102, Electric Plant Purchased or Sold, of the USofA. FPL and Gulf Power shall submit the proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.