

147 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Florida Power & Light Company

Docket No. ER14-354-000

ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE
FILING, SUBJECT TO COMPLIANCE

(Issued April 17, 2014)

1. On November 8, 2013, Florida Power & Light Company (FPL) filed revisions to certain portions of its Open Access Transmission Tariff (OATT) and the OATT's *pro forma* Large Generator Interconnection Agreement (LGIA) to comply with Order No. 764 (Compliance Filing).¹ In its Compliance Filing, FPL proposes to adopt the *pro forma* language in Order No. 764 for transmission scheduling on 15-minute intervals, as well as the new data reporting requirements applicable to interconnection customers. In addition, FPL submitted non-conforming revisions to Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) of its OATT "to accommodate financial settlement of hourly and sub-hourly scheduling."²

¹ *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013). While FPL submitted these proposed revisions pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2012), as well as in compliance with Order No. 764, *see* Transmittal Letter at 1, the filing was coded in eTariff as a compliance filing and thus will be treated as such. *See Electronic Tariff Filings*, 130 FERC ¶ 61,047, at PP 3-8 (2010) (discussing treatment of combined filings and providing that a combined FPA section 205 filing and compliance filing will be treated as coded in eTariff).

² Transmittal Letter at 3.

2. As discussed below, we conditionally accept FPL's proposed revisions to sections 13.8 and 14.6 of its OATT, effective January 13, 2014, as requested,³ subject to FPL submitting revisions within 30 days of issuance of this order. We accept FPL's proposed revisions to its *pro forma* LGIA effective January 13, 2014. We reject FPL's proposed non-conforming revisions to Schedules 4 and 9.

I. Background

3. On June 22, 2012, the Commission issued Order No. 764, which requires each public utility transmission provider to: (1) offer intra-hourly transmission scheduling at 15-minute intervals; and (2) incorporate provisions into the *pro forma* Large Generator Interconnection Agreement (LGIA) requiring interconnection customers whose generating facilities are variable energy resources (VER)⁴ to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting. The Commission also provided guidance regarding the development and evaluation of proposals related to recovering the costs of regulation reserves associated with VER integration.⁵

4. The reforms adopted in Order No. 764 were designed to remove barriers to the integration of VERs and to ensure that the rates, terms, and conditions for Commission-jurisdictional services provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential.⁶ Upon noting the increasing number of VERs being brought online, the Commission found that reforms were needed to ensure that transmission customers are not exposed to excessive or unduly discriminatory charges, and that public utility transmission providers have the information needed to efficiently manage reserve-related costs.

³ *Id.* at 4.

⁴ Order No. 764 defined a VER as a device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 210.

⁵ *Id.* P 4.

⁶ *Id.* P 1.

5. On December 20, 2012, the Commission issued Order No. 764-A, largely affirming the reforms adopted in Order No. 764. Among other things, Order No. 764-A extended the deadline for compliance with Order No. 764 to November 12, 2013.⁷ On September 19, 2013, the Commission issued Order No. 764-B, which granted in part and denied in part the requests for clarification and denied the requests for rehearing of the Commission's determinations in Order No. 764-A.⁸

6. The filing parties' Compliance Filing to Order No. 764 is discussed by issue below.

II. Notice of Filing and Responsive Pleadings

7. Notice of the Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 69,407 (2013), with interventions and protests due on or before November 29, 2013.

8. On November 27, 2013, Seminole Electric Cooperative, Inc. (Seminole) filed a motion to intervene and protest (Seminole Protest). On November 29, 2013, the Florida Municipal Power Agency (FMPA) filed a motion to intervene and protest (FMPA Protest). On December 12, 2013, FPL filed an answer to the protests (FPL Answer). On December 20, 2013, FMPA filed a motion to reply and reply to FPL's Answer (FMPA Reply), and on December 23, 2013, Seminole filed a motion to respond and response to FPL's Answer (Seminole Reply) (together, Replies).

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make Seminole and FMPA parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept FPL's Answer and the Replies because they have provided information that assisted us in our decision-making process.

⁷ Order No. 764-A, 141 FERC ¶ 61,232 at P 8.

⁸ Order No. 764-B, 144 FERC ¶ 61,222.

B. Substantive Matters**1. Intra-Hour Scheduling**

11. In Order No. 764, the Commission amended the *pro forma* OATT to provide all transmission customers the option of using more frequent transmission scheduling intervals within each operating hour, specifically, 15-minute intervals.⁹ The Commission found that transmission customers' inability to adjust their transmission schedules within the hour to reflect changes in generation output can cause charges for Schedule 9 generator imbalance service to be unjust and unreasonable or unduly discriminatory. Thus, this reform was designed to allow transmission customers the flexibility to adjust their transmission schedules, in advance of real-time, to reflect the variability of output in generation, more accurate power production forecasts, and other changes in load profiles and system conditions.¹⁰ It was also designed to allow public utility transmission providers, over time, to use fewer reserves to maintain overall system balance.¹¹ Finally, the Commission implemented this reform to ensure that charges for generator imbalance service under Schedule 9 of the *pro forma* OATT and for other ancillary services through which reserve-related costs are recovered are just and reasonable and are not unduly discriminatory.

a. Compliance Filing

12. In its Compliance Filing, FPL states that it proposes to revise OATT sections 13.8 and 14.6 to add intra-hour scheduling at 15-minute intervals in accordance with the Commission's specific directive, as set forth in the *pro forma* language in Appendix B of Order No. 764.¹²

⁹ Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 91.

¹⁰ *Id.* P 92.

¹¹ *Id.* P 95.

¹² Transmittal Letter at 2.

b. Protests

13. FMPA and Seminole point out that FPL's proposed changes do not fully comply with Order No. 764 because the revisions still retain references to "clock hour," as in "before the start of the next *clock hour*," rather than "before the next *scheduling interval*."¹³

c. FPL's Answer

14. FPL acknowledges that when it attempted to file the proper *pro forma* language for sections 13.8 and 14.6 of the OATT, it inadvertently made a mistake by not including all of the *pro forma* text changes that Order No. 764 requires.¹⁴ Specifically, FPL states that the proposed revisions erroneously still retained references to "clock hour" rather than "scheduling interval." As part of the FPL Answer, FPL submits a corrected set of clean and redlined copies of sections 13.8 and 14.6 of its OATT. FPL states that it will resubmit the corrected versions of the *pro forma* language for those sections in eTariff after the Commission acts on the Compliance Filing.

d. Commission Determination

15. We conditionally accept FPL's proposed modifications to FPL OATT sections 13.8 and 14.6 to implement 15-minute scheduling. As FPL acknowledges, its proposed changes retain references to "clock hour" rather than "scheduling interval" and thus do not fully comply with Order No. 764.¹⁵ Therefore, we direct FPL to submit a compliance filing within 30 days of issuance of this order that corrects these provisions and incorporates the tariff modifications to sections 13.8 and 14.6 required by Order No. 764.

2. Imbalance Settlement

16. In Order No. 764, in response to concerns regarding the cost of implementing intra-hour scheduling and possibly required changes in settlement procedures, the Commission stated that to the extent a public utility transmission provider believes that

¹³ FMPA Protest at 3-5; Seminole Protest at 2.

¹⁴ See FPL Answer at 2-3 & n.3 and Appendix A.

¹⁵ Order No. 764, FERC Stats. & Regs. ¶ 31,331 at Appendix B.

aligning the imbalance settlement with the intra-hour scheduling interval or implementing sub-hourly dispatch will result in more efficient operations, provide appropriate price signals to customers, or address other potential issues, it may seek any authorizations necessary from the Commission to do so under section 205 of the FPA. Such a proposal could be submitted contemporaneously with the compliance filing in response to Order No. 764.¹⁶ In addition, in response to requests for regional variation in scheduling protocols, the Commission acknowledged that future market enhancements in addition to existing 30-minute scheduling practices and other tools might yield equivalent or greater benefits to transmission customers and public utility transmission providers when reducing the scheduling interval from 30 to 15 minutes and thus could be consistent with or superior to Order No. 764's intra-hour scheduling requirements. Thus, the Commission affirmed the ability of a public utility transmission provider to submit alternative proposals that are consistent with or superior to the intra-hour scheduling requirements. Specifically, the Commission required that a public utility transmission provider demonstrate on compliance how its proposal provides equivalent or greater opportunities for transmission customers to mitigate Schedule 9 generator imbalance charges, and for the public utility transmission provider to lower its reserve-related costs, compared to market practices already in place within the region.¹⁷

a. Compliance Filing

17. In its Compliance Filing, FPL states that it believes it would be beneficial to align the imbalance settlement provisions in OATT Schedules 4 and 9 concurrently with the start date of the new intra-hour scheduling option mandated by Order No. 764.¹⁸ Thus, FPL proposes revisions to Schedules 4 and 9 of its OATT for financial settlement of imbalances for hourly and sub-hourly scheduling.

18. Imbalance service is provided when there is a deviation between the scheduled and actual delivery of energy (Schedule 4) or between the output of a generator and a delivery schedule (Schedule 9).¹⁹ The transmission provider may charge the transmission

¹⁶ *Id.* P 105.

¹⁷ *Id.* PP 106-107.

¹⁸ Transmittal Letter at 2-3.

¹⁹ *See generally* Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 93.

customer a penalty for either energy or generator imbalances. Schedules 4 and 9 of the *pro forma* OATT provide three tiers of progressively higher imbalance penalties. Tier 1 penalties credited/charged to a transmission customer are equal to 100 percent of the transmission provider's incremental/decremental costs. Tier 2 penalties are equal to 90 percent/110 percent of the transmission provider's incremental/decremental costs. Tier 3 penalties are equal to 75 percent/125 percent of the transmission provider's incremental/decremental costs. The threshold for each of the tiers is the greater of either a specified percentage of schedule deviation or MW amount of imbalances.²⁰

²⁰ Schedule 9 of the *pro forma* OATT provides as follows:

The Transmission Provider shall establish charges for generator imbalance based on the deviation bands as follows: (i) deviations within +/- 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of each month, at 100 percent of incremental or decremental cost, (ii) deviations greater than +/- 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of the month, at 110 percent of incremental or decremental cost or 90 percent of decremental cost, and (iii) deviations greater than +/- 7.5 percent (or 10 MW) of the scheduled transaction(s) will be settled at 125 percent of incremental cost or 75 percent of decremental cost[.]

Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at 31,395-96, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (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 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). Schedule 4 is the same in pertinent part. Additionally, while existing FPL OATT Schedules are somewhat different than the *pro forma* OATT, *see* FPL Answer at 2, the thresholds and penalty tiers are the same.

19. FPL's proposed revisions to the imbalance schedules would allow FPL to use lower sub-hourly thresholds to define imbalances. Specifically, FPL's current imbalance schedules provide for charges and credits at 100 percent of its incremental/decremental cost for imbalances within Tier 1, as defined as the larger of "(i) +/- 1.5 percent of the scheduled amount of energy or (ii) +/- 2 MW." FPL proposes to revise the +/- 2MW threshold in subsection (ii) to "+/- .5 MWH for sub-hourly intervals." FPL asserts that "[t]his change makes sense as .5 MWH is one-fourth of 2MW, just as 15 minutes is one-fourth of an hour."²¹ Likewise, FPL proposes to reduce the MW thresholds in Tiers 2 and 3 to one-fourth of the existing threshold amounts.²² FPL proposes to change Tier 2 to greater than or equal to .5 MWH but less than +/-2.5 MWH for sub-hourly intervals, instead of the existing 2 MW to 10 MW range. FPL proposes to change Tier 3 to greater than +/-2.5 MWH, in lieu of the existing greater than 10 MW threshold.

b. Comments and Protests

20. Seminole and FMPA oppose FPL's proposal to add sub-hourly imbalance bandwidths to Schedules 4 and 9. They assert that FPL has not explained, factually supported, or justified its proposal, which, they argue, would result in increased imbalance charges. They emphasize that the proposed revisions, as drafted, do not limit FPL to calculating imbalances on a sub-hourly basis for sub-hourly schedules only. They assert that revised Schedules 4 and 9 give FPL the option to push a customer's imbalances into a higher tier band (subject to more punitive compensation) for the sub-hourly interval than the imbalances would have been exposed to on an hourly basis, even if the customer continues to schedule on an hourly basis.²³

21. To illustrate how the proposed revisions could increase imbalance penalties, FMPA provides the following example: Assume a customer schedules 3 MW for the hour but the deliveries are 4 MW in the first 15 minutes, 3 MW in the second, 2 MW in the third, and 3 MW in the fourth. In this example, on an hourly basis, there is no imbalance. However, using FPL's proposed 0.5 MWH sub-hourly minimum, the customer would be charged/credited for imbalances at the Tier 2 rate (90 percent of incremental/decremental cost) for the first and third intervals. Thus, FMPA argues,

²¹ Transmittal Letter at 3.

²² FPL does not explain its proposal to change units from MW to MWH.

²³ FMPA Protest at 2; Seminole Protest at 2.

FPL's proposal effectively eliminates Tier 1 as the basis for settling even minimal imbalances on small schedules.²⁴

22. FMPA adds that the requirement to schedule in whole megawatts (increments of 1,000 "kW [kilowatts] per hour") in OATT sections 13.8 and 14.6 is inconsistent with FPL's use of thresholds expressed in partial MWs.

23. FMPA argues that FPL has not met its burden under Order No. 764 because the Compliance Filing is silent regarding how the proposed revisions will result in "more efficient operations, provide appropriate price signals to customers, or address other potential issues."²⁵ Seminole contends that FPL has not met its burden under section 205 of the FPA to demonstrate that the specific revisions it proposes are just and reasonable. FMPA adds that nothing in the Compliance Filing demonstrates that FPL's non-conforming changes satisfy the "consistent with or superior to" standard for deviations from the *pro forma* tariff. FMPA notes that the Commission instituted the 2 MW minimum in Order No. 888 to protect customers with small schedules,²⁶ and retained it in Order No. 890 in conjunction with other reforms to reduce imbalance penalties.²⁷

²⁴ See FMPA Protest at 8 n.4.

²⁵ *Id.* at 9 (quoting Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 105).

²⁶ See *id.* at 10 & n.6 (citing Order No. 888-A, 62 Fed Reg. at 12,308 (setting a 2 MW minimum to meet the needs of small customers)). In Order No. 888-A the Commission explained:

For example, a transmission customer that transfers less than 133 MW (1.5 percent of 133 MW is 2 MW, the minimum energy imbalance) has a larger percentage bandwidth than ± 1.5 percent. The bandwidth set forth in the *pro forma* tariff provides a needed incentive for a transmission customer to deliver an amount of energy each hour that is reasonably close to the amount scheduled, while at the same time recognizing the needs of small utilities.

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,232-33, *order on reh'g*,

(continued...)

24. More generally, FMPA argues that FPL is wrong in its assertion that it “makes sense” to apply quarter-hour thresholds that are a quarter of the hourly threshold. FMPA explains that even maintaining the existing 2 MW Tier 1 minimum and 10 MW Tier 2 minimum on a quarter-hour basis would be more stringent than the same minimum applied on an hourly basis. For example, according to FMPA, for a small customer, a 10 MW schedule could be more than the greater of +/- 1.5 percent or 2 MW off in the quarter hour (e.g., by scheduling 13 MW during that sub-hourly period), but within the imbalance threshold over the remaining 45 minutes of the hour, such that its imbalance for the hour would be within Tier 1, if there was any imbalance at all. However, applying the existing 2 MW limit on a sub-hourly basis, that customer would be subject to Tier 2 charges/credits for that first quarter hour, and perhaps other segments as well.²⁸ FMPA

Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²⁷ FMPA Protest at 11 & n.7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,261 at PP 663-65). FMPA asserts that the Commission is particularly demanding with respect to the showing required to deviate from *pro forma* imbalance schedules:

Any deviations from these provisions must be consistent with or superior to the pro forma OATT as modified by this Final Rule and must meet the following criteria: the charges must: (1) be related to the cost of correcting the imbalance; (2) be tailored to encourage accurate scheduling behavior, such as by increasing the percentage of the adder as the deviations become larger; and (3) account for the special circumstances presented by intermittent generators, such as by waiving the higher ends of the deviation penalties.

Id. n.7 (quoting Order No. 890, FERC Stats. & Regs. ¶ 31,261 at P 85). FMPA argues that FPL does not attempt to show how reducing the 2 MW minimum to 0.5 MW on a sub-hourly basis meets these tests, e.g., is related to cost and promotes good scheduling.

²⁸ FMPA provides the following example: If the customer scheduled 10 MW for the hour, but it actually flowed 13 MW for the first quarter hour, 11 MW for the second quarter hour, 10 MW for the next quarter hour and 7 MW for the last quarter hour, it would be charged/credited at the Tier 2 rate for the first and last quarter, even though its imbalance was only 1 MW, well within the 2 MW minimum, on an hourly basis. *Id.* at 11 n.8.

adds that the same is true with regard to application of the +/- 7.5 percent/10 MW minimum on a sub-hourly versus hourly basis.

25. FMPA asserts that FPL's proposal quadruples the bandwidth stringency by calculating sub-hourly bands at one-fourth the hourly bandwidth minimum, which would be unduly punitive. FMPA emphasizes that a stated goal of Order No. 764 was to provide customers with a means to limit their exposure to imbalance charges.²⁹ Thus, FMPA insists that even if alignment with 15-minute scheduling were sufficient to justify settling imbalances on a sub-hourly basis, FPL has not justified the level of its sub-hourly thresholds, particularly as applied to imbalances on customers with small schedules.

c. FPL's Answer

26. FPL contends that its proposed revisions to Schedules 4 and 9 should not be summarily rejected "because none of the potential adverse or negative consequences that concern protestors will come to pass[.]"³⁰ FPL states that it will not apply sub-hourly imbalance penalties to a customer engaged in traditional hourly scheduling. FPL states that even for customers using the 15-minute scheduling option, it will continue to calculate imbalance settlements on an hourly basis as directed by the Commission in Order No. 764-A.³¹ FPL points out that, in its transmittal letter accompanying the Compliance Filing, it stated that the revisions "are intended to accommodate financial settlement of imbalance for hourly and sub-hourly scheduling."³² FPL states that the term "accommodate" here means "the revisions are designed to *make room* for the use of sub-hourly energy imbalance settlement for customers using 15-minute schedules."³³ FPL explains that "[t]he purpose of the revisions is to put in place tariff provisions that make sub-hourly energy imbalance settlement permissible under the FPL OATT, but only for those customers using 15-minute scheduling, *and only in the event FPL determines, at*

²⁹ *Id.* at 12 & n.10 (citing Order No. 764, FERC Stats & Regs. ¶ 31,331 at P 22).

³⁰ FPL Answer at 3.

³¹ *Id.* at 4 (citing Order No. 764-A, 141 FERC ¶ 61,232 at P 19).

³² *Id.* at 8 (citing Transmittal Letter at 3).

³³ *Id.* (emphasis in original).

some point in the future, that the use of hourly settlement of energy imbalance for 15-minute schedules is not incentivizing accurate scheduling practices.”³⁴

27. FPL adds that at this time it “does not intend to modify its billing system software to calculate energy imbalance settlements on sub-hourly 15 minute intervals as permitted by the proposed revisions.”³⁵ FPL states that it hesitates to implement such software changes at the outset due to “basic comparability concerns and recognition that such a change, once made, would need to apply to all sub-hourly OATT schedulers in the same manner at the same time.”³⁶ FPL adds that “accomplishing a fair and effective fit between sub-hourly imbalance settlement and 15-minute scheduling will require adequate communication and publication of specific business practices if and when such a decision is made.”³⁷ FPL proposes to add a condition at the end of each of Schedules 4 and 9 stating that prior to implementing sub-hourly settlement, “FPL will publish for review and comment a business practice on its OASIS.”³⁸

28. FPL states that it “is in no better position than Protestors to anticipate the level of use of 15-minute scheduling on its transmission system and how such use and practices will impact hourly energy imbalance settlements” under Schedules 4 and 9.³⁹ FPL explains that it is concerned that use of hourly imbalance settlement will allow customers to deliberately over- or under-schedule energy in sub-hourly intervals simply to cancel out a previous sub-hourly energy imbalance, and thereby minimize the resulting average

³⁴ *Id.* at 4 (emphasis added). FPL states that, while the reforms adopted in Order No. 764 were designed, in large part, to remove barriers to the integration of variable energy resources, FPL’s understanding is that the spirit and intent of the energy imbalance penalty tiers as well as the availability of intra-hour 15-minute scheduling are to incentivize accurate scheduling practices by all OATT customers. *Id.* at 4 n.9.

³⁵ *Id.* at 4.

³⁶ *Id.*

³⁷ *Id.* at 4-5.

³⁸ *Id.* at 10.

³⁹ *Id.*

hourly imbalance.⁴⁰ FPL acknowledges that FMPA makes a “good point” in questioning how the use of the 0.5 and 2.5 MWH thresholds will operate in combination with 1000 KWH scheduling minimums.⁴¹

d. FMPA’s and Seminole’s Replies

29. FMPA states that the FPL Answer makes clear that FPL has no current intention of implementing its proposed provisions and has no idea whether such changes will be needed or how they can be implemented. FMPA adds that FPL’s proposal to include tariff provisions that it does not presently plan to implement is inconsistent with the filed rate doctrine, which, among other things, prohibits variances between the terms of the tariff and a public utility’s billing practices or provision of service.⁴² FMPA asserts that, “given FPL’s statements, a customer would have no idea whether or when it may become subject to sub-hourly imbalance thresholds and settlements.”⁴³ Seminole asserts that FPL failed to justify or explain its proposed changes because FPL will not implement the changes until it determines they are warranted. FMPA and Seminole argue that FPL’s agreement to condition use of sub-hourly energy imbalance settlement on the publication of an OASIS business practice is insufficient and skirts due process.

e. Commission Determination

30. FPL proposes to modify the settlement provisions of its OATT to accommodate 15-minute scheduling, but states that it currently has no plans to modify its software to implement them. Essentially, FPL proposes these revisions just in case “FPL determines at some point in the future”⁴⁴ that they are needed to address scheduling problems that

⁴⁰ *Id.* at 5.

⁴¹ *Id.* at 10 & n.21 (citing FMPA Protest at 8).

⁴² FMPA Reply at 4 & n.15 (citing *Am. Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 225 (1998) (“Any assurance by the [utility] that it would allocate usage and charges and take responsibility for the task would have been in flat contradiction of the tariff.”)).

⁴³ *Id.* at 4.

⁴⁴ FPL Answer at 4.

could potentially arise under the shift to a 15-minute scheduling regime. We find FPL's proposed revisions to be premature because, as FPL acknowledges, it does not even have a plan to put in place the software necessary to implement them. An OATT should clearly indicate the rate, terms and conditions of service.⁴⁵ We also find FPL's proposed revisions to be vague because, as drafted, they could potentially be applied to both customers who schedule hourly as well as customers who schedule sub-hourly. For these reasons, we find that FPL has not shown the proposed revisions to be just and reasonable and that they may be unjust, unreasonable, and unduly discriminatory.⁴⁶

3. Data Reporting to Support Power Production Forecasting

31. In Order No. 764, the Commission amended the *pro forma* LGIA to require new interconnection customers, whose generating facilities are VERs, to provide meteorological and forced outage data to the public utility transmission provider with which the customer is interconnected.⁴⁷ Such data would only be required where it is necessary for that public utility transmission provider to develop and deploy power production forecasting. This reform was designed to facilitate public utility transmission providers' use of power production forecasts, which the Commission found can provide public utility transmission providers with advanced knowledge of system conditions needed to manage the variability of VER generation through the unit commitment and dispatch process, rather than through the deployment of more costly reserve service, such as regulation reserves. In requiring this change to the *pro forma* LGIA, the Commission specified that reporting requirements for meteorological and forced outage data would be set forth in Appendix C, Interconnection details of an LGIA, as they may change from time to time.⁴⁸ The Commission declined to modify existing LGIAs or to require changes to the *pro forma* OATT,⁴⁹ upon finding that such changes would, in effect,

⁴⁵ See 64 Am. Jur. 2d Public Utilities § 61 ("The purpose of the tariff is to ensure uniformity of utility rates and prevent a utility from discriminating based on price or service.").

⁴⁶ See generally *Electrical Dist. No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985) (discussing customers' need for predictability and "fixed" rates).

⁴⁷ Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 3.

⁴⁸ *Id.* P 193.

⁴⁹ *Id.* P 195.

impose the data reporting requirements on existing interconnection customers, including small generator interconnection customers, retroactively.⁵⁰

32. In Order No. 764, the Commission stated that the flexibility of providing meteorological and forced outage data requirements in business practices or market rules is not a superior alternative in implementing the reforms of Order No. 764.⁵¹ Rather, the Commission addressed public utility transmission providers' need for flexibility by requiring the reporting requirement to be set forth in Appendix C of the LGIA. Appreciating that public utility transmission providers in some regions have already implemented meteorological or forced outage data requirements in their business practices and market rules, the Commission allowed public utility transmission providers to demonstrate on compliance how continued use of such practices is consistent with or superior to the requirements of Order No. 764.⁵²

a. Compliance Filing

33. In its Compliance Filing, FPL submitted revisions to its *pro forma* LGIA requiring interconnection customers whose generating facilities are VERs to provide meteorological and forced outage data to the transmission provider for the purpose of power production forecasting. No party commented on or protested these proposed revisions.

b. Commission Determination

34. We accept FPL's proposed revisions to its *pro forma* LGIA, effective January 13, 2014, as requested, because they comply with the requirements of Order No. 764.⁵³

⁵⁰ *Id.* P 196.

⁵¹ *Id.* P 194.

⁵² *Id.*

⁵³ *Id.* P 193 (revising proposed Article 8.4 to specify that the reporting requirements for meteorological and forced outage data would be set forth in Appendix C, Interconnection Details, of the LGIA).

The Commission orders:

(A) FPL's proposed tariff revisions are hereby accepted in part and rejected in part, effective January 13, 2014, subject to further compliance filing, as discussed in the body of this order.

(B) FPL is hereby directed to submit a compliance filing within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.