

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Municipal Power Agency
Complainant,

v.

Duke Energy Florida, LLC
Respondent.

Docket No. EL19-____

**COMPLAINT REQUESTING
FAST TRACK PROCESSING**

**COMPLAINT OF
FLORIDA MUNICIPAL POWER AGENCY
CHALLENGING DUKE ENERGY FLORIDA'S
IMPLEMENTATION OF ITS
OPEN ACCESS TRANSMISSION TARIFF**

Pursuant to Sections 206, 306, and 309 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824e, 825e, 825h, and Rule 206 of the Federal Energy Regulatory Commission's ("the Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.206, Florida Municipal Power Agency ("FMPA") brings this Complaint against Duke Energy Florida, LLC ("DEF"). FMPA requests that the Commission find that DEF has violated its Open Access Transmission Tariff ("DEF OATT" or "OATT") by rejecting requests for transmission delivery service submitted by FMPA and its members for deliveries from the Poinsett Solar Facility, a 74.5 MW solar facility to be located in Osceola County, Florida, and interconnected with the DEF transmission system. DEF claims that it is free to reject those transmission service requests until after a generator interconnection agreement has been executed for the Poinsett Solar Facility. But DEF's prohibition against concurrent transmission and interconnection requests is unsupported by DEF's OATT or Business Practices; expressly contradicted by Order No. 2003, the

Commission’s rulemaking on Standardization of Generator Interconnection Agreements and Procedures;¹ and inconsistent with long-standing, clear Commission precedent allowing interconnection and transmission delivery service requests to be submitted simultaneously under the *pro forma* OATT. In addition, DEF rejected three transmission delivery service requests, each submitted on behalf of an individual FMPA member that is a separate DEF transmission customer, for failing to constitute a “coordinated group”—another DEF-created pre-requisite with no grounding in DEF’s OATT or Commission precedent. By imposing these non-tariff barriers to acceptance and queuing of transmission service requests, DEF has wrongfully denied FMPA and its members the non-discriminatory transmission service the *pro forma* OATT requires.

Because FMPA has had good relations with DEF in the past, it has been reluctant to file this Complaint and has done its best to reach a reasonable negotiated resolution with DEF. However, given the fundamental open access issues implicated by this dispute, and potential for significant harm to FMPA and its members from DEF’s actions, FMPA feels compelled to ask for the Commission’s assistance in resolving this matter, and to assure that DEF properly implements its OATT. As discussed below, the Commission should, pursuant to a fast-track process, find DEF in violation of its OATT, require DEF to accept and restore the queue positions of the rejected transmission service requests of FMPA and its members, and take any such other actions that the Commission finds necessary or appropriate to remedy DEF’s tariff violations.

¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *clarified*, 106 FERC ¶ 61,009, *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1468 (2008) (“Generator Interconnection Rule”).

I. COMMUNICATIONS

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II. IDENTITY OF THE PARTIES

A. *Florida Municipal Power Agency*

Florida Municipal Power Agency is a joint action municipal power supply agency that is owned by thirty-one municipal electric systems located throughout the state of Florida. It was created in 1978 under Florida law to finance, construct, own, and operate generation, transmission, and other projects for its municipal electric system members. FMPA endeavors to provide low-cost, clean power supply to its members. It finances generation and transmission power supply projects and engages in many other joint action activities for its member cities, which together provide electricity to nearly 2.5 million Floridians.

Through its All-Requirements Project (“ARP”), FMPA plans and integrates power supply and loads for its member cities that request it to do so. Currently, thirteen of FMPA’s member cities purchase all or almost all of their capacity and energy needs

from FMPA's All-Requirements Project.² The ARP allows FMPA to jointly plan power supply for its requesting member cities and to integrate its and its member cities' resources to better serve ARP load economically, reliably, and environmentally. The ARP serves a combined peak demand of more than 1,200 MW. Six of the member cities participating in the All-Requirements Project are embedded within the DEF transmission system; six are located on the Florida Power & Light Company ("FPL") transmission system. FMPA therefore takes Network Integration Transmission Service ("NITS" or "network service") under both the DEF and FPL OATTs for its network load on the respective transmission systems.³ To access its generation, FMPA also purchases transmission services from other Florida utilities.

Most of FMPA's members that do not participate in the All-Requirements Project are also embedded within either the DEF or FPL transmission footprint, and they separately take network service under their host utility's OATT. Those members may participate in other FMPA projects and obtain services from FMPA related to those projects. As pertinent to this Complaint, the Cities of Bartow, Wauchula, and Winter Park are embedded within the DEF transmission system and individually take network service under the DEF OATT, are participating in the FMPA Solar Project group (described below), and have each appointed FMPA as agent to secure the network resource designation under its network service agreement with DEF of its respective entitlement to the FMPA Solar Project.

² These are the Cities of Bushnell, Clewiston, Fort Meade, Green Cove Springs, Leesburg, Newberry, and Starke, plus the Fort Pierce Utilities Authority, Beaches Energy Services (City of Jacksonville Beach), Keys Energy Services (Utility Board of the City of Key West, Florida), Kissimmee Utility Authority, Town of Havana, and Ocala Utility Services (City of Ocala).

³ These ARP network loads are included in the Florida Municipal Power Pool ("FMPP") Balancing Authority.

B. Duke Energy Florida

Duke Energy Florida is a subsidiary of Duke Energy Corporation.⁴ DEF serves over 1.7 million retail customers primarily in the northern half of Florida to whom it sells 39.9 million MWh of power, 35 million MWh of which it generates itself.⁵ DEF provides transmission service pursuant to an OATT that it shares with affiliates Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.⁶ Because DEF is a non-independent transmission provider, its OATT closely tracks the Commission's *pro forma* OATT, and the pertinent provisions of DEF's OATT related to applications for interconnection service and transmission delivery service are identical to the Commission's *pro forma* tariff.⁷

III. BACKGROUND

A. The Poinsett Solar Facility and Agreements of FMPA and its Members for the Purchase of its Output

The Poinsett Solar Facility is a 74.5 MW solar facility being developed by Florida Renewable Partners, LLC (f/k/a NextEra Florida Renewables, LLC, and a subsidiary of NextEra Energy, Inc.) ("NextEra") that is to be located in Osceola County, Florida, and interconnected with the DEF transmission system.⁸ It is one of three facilities that make up a 223.5 MW solar project among FMPA, Orlando Utilities Commission, and NextEra

⁴ S&P Global Platts, *UDI Directory of Electric Power Producers and Distributors*, Electrical World Directory, 151 (124th ed. 2017).

⁵ *Id.*

⁶ Joint OATT of Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, and Duke Energy Progress, LLC ("DEF OATT"), http://www.ferc.duke-energy.com/Tariffs/Joint_OATT.pdf.

⁷ In addition to the standard *pro forma* OATT services, the DEF OATT includes Network Contract Demand Transmission Service. See Part IV of the DEF OATT (Sections 36-46). The instant complaint pertains to NITS under the DEF OATT, the *pro forma* service taken by FMPA and its members, not Network Contract Demand Transmission Service.

⁸ NextEra has created a wholly-owned project-specific subsidiary, Poinsett Solar LLC, to construct and own the Poinsett Solar Facility.

(the “Florida Municipal Solar Project”). The Florida Municipal Solar Project is the largest municipal solar project in Florida, and one of the largest solely municipal-backed solar projects in the country. On December 14, 2017, NextEra applied to DEF for network resource interconnection service (“NRIS”) for the Poinsett Solar Facility.⁹ That application is still pending.¹⁰ The Poinsett Solar Facility has a planned commercial operation date of June 30, 2020.

By mid-2018, FMPA and its members had entered into a series of agreements to purchase the full 74.5 MW output of the Poinsett Solar Facility and to allocate that output among FMPA’s members.¹¹ As a result of these contractual arrangements, the FMPA All-Requirements Project’s total Poinsett Solar Facility entitlement is 46.5 MW; FMPA member cities Bartow, Wauchula, and Winter Park, each a participant in the FMPA Solar Project, make up the remaining 28 MW. Bartow, Wauchula, and Winter Park appointed FMPA as agent to secure the necessary transmission service for delivery of their respective shares of the FMPA Solar Project.

⁹ The two remaining facilities of the Florida Municipal Solar Project will be interconnected to transmission systems other than DEF’s.

¹⁰ See Queue Position 207 on DEF’s most-recently updated Duke Energy Florida, LLC FERC Generator Interconnection Queue (“Current DEF Generator Interconnection Queue”), available at: https://www.oasis.oati.com/woa/docs/FPC/FPCdocs/Oasis_Posting_Report_11119.pdf.

¹¹ On or before May 16, 2018, FMPA entered into two power purchase agreements with NextEra for the Poinsett Solar Facility:

1. A power purchase agreement for 17.5 MW on behalf of FMPA’s All-Requirements Project; and
2. A power purchase agreement for 57 MW on behalf of a new FMPA Solar Project group comprising six FMPA member cities.

The FMPA All-Requirements Project then entered into:

- a. An energy exchange agreement under which it purchased 20 MW of the Poinsett Solar Facility output from two FMPA Solar Project participants (Homestead and Lake Worth) located in the FPL transmission footprint.
- b. A power purchase agreement under which a third FMPA Solar Project participant, Alachua, sold its 9 MW share of the Poinsett Solar Facility to the All-Requirements Project until March 31, 2022.

B. Chronology of FMPA's Submission and DEF's Rejection of Transmission Delivery Service Applications for the Poinsett Solar Facility

After preliminary discussions with DEF in July 2018, FMPA commenced the two-step process of submitting, through DEF's OASIS, four separate network resource designations for the Poinsett Solar Facility on behalf of its All-Requirements Project and three members. After several attempts to complete the first step of that process,¹² FMPA's August 6, 2018 OASIS submissions for its three members and its August 14, 2018 OASIS submission for the FMPA ARP were confirmed by DEF on August 15, 2018 and September 5, 2018, respectively.¹³ Completion of this first step does not establish a queue position, but allows the customer to proceed to the second step of designating the network resource.

On September 5, 2018, FMPA submitted to DEF a request to designate as a network resource FMPA's 46.5 MW All-Requirements Project entitlement share of the Poinsett Solar Facility output.¹⁴ On the same date, FMPA also submitted three separate network resource designation requests, one for each of the three individual FMPA members that have entitlements to the Poinsett Solar Facility: Bartow (13 MW), Wauchula (5 MW), and Winter Park (10 MW).¹⁵ Each of these three FMPA members

¹² FMPA made a number of efforts to take the first step in July and early August 2018. Due to administrative errors on FMPA's part, DEF rejected those requests. FMPA is not challenging those rejections here.

¹³ See Exh. FMP-01 (OASIS screenshot showing DEF confirmation of the August 6, 2018 and August 14, 2018 ADDNITSRESOURCE submissions for the three members and FMPA ARP, respectively).

¹⁴ See Exh. FMP-02 at 1 (OASIS screenshots). FMPA's network resource designation for the Poinsett Solar Facility (i.e. "ADDNITSDNR" request) for its All-Requirements Project was assigned Application Reference number ("ARef") 87606402. The OASIS screenshot shows the FMPA ARP reservation as 47 MW because only whole MWs are permitted on the OASIS.

¹⁵ *Id.* at 2-4. FMPA's network resource designations for the Poinsett Solar Facility (i.e. "ADDNITSDNR" request) as agent for three Florida Municipal Solar Project members were assigned ARefs 87606391

has its own NITS agreement with DEF and is thus its own DEF network transmission service customer. We refer to these four network resource designation requests, which total 74.5 MW, collectively as the “Poinsett Transmission Service Requests” or “Poinsett TSRs.”¹⁶

On September 10, 2018, and September 25, 2018, DEF rejected the Poinsett TSRs submitted by FMPA on behalf of itself and its three members.¹⁷ DEF rejected all on the grounds that NextEra’s NRIS request for the Poinsett Solar Facility is still pending.¹⁸ According to DEF, its policy is to require an executed generator interconnection agreement before it accepts for study and queues a transmission delivery service request related to the resource:¹⁹

There is no execu[t]ed [Large Generator Interconnection Agreement] LGIA for Poinsett Solar. DEF only accepts DNR requests for generators that have an executed LGIA.

DEF’s invalidation of the three transmission service requests for individual FMPA members Bartow, Wauchula, and Winter Park stated that “[t]here is no coordinated group.”²⁰

C. Impact of Rejection of FMPA’s Transmission Service Requests

As a result of DEF’s rejection of the Poinsett TSRs, FMPA and its members will have to wait an indefinite period of time before DEF will accept and queue their requests

(Bartow), 87606227 (Wauchula), and 87606252 (Winter Park).

¹⁶ For additional details *see* Exh. FMP-03, a chronology pertaining to the transmission service requests whose rejection FMPA is here challenging.

¹⁷ Exh. FMP-02 at 1-4.

¹⁸ *Id.* at 1; Exh. FMP-04 at 1 (July 30, 2018 email correspondence between Paul Graves (DEF) and Frank Gaffney (then, FMPA) with attached July 23, 2018 memorandum).

¹⁹ Exh. FMP-02 at 1.

²⁰ *Id.* at 2-4.

for transmission service from the Poinsett Solar Facility. Forty-one now-pending generator interconnection requests are ahead of the Poinsett Solar Facility NRIS application in DEF's Current Generator Interconnection Queue;²¹ and although the Poinsett Solar Facility NRIS application was submitted more than a year ago, the Interconnection Feasibility Study—i.e., the first of three studies required under DEF's (and the *pro forma*) Large Generator Interconnection Procedures—was not completed until January 11, 2019.²² At this pace,²³ it would be unsurprising for it to take another year for DEF to complete the two remaining studies (the Interconnection System Impact Study and the Interconnection Facilities Study) and identify the upgrades required and their associated cost. Only then will the negotiations between NextEra and DEF of the interconnection agreement commence. Because DEF requires an *executed* generator interconnection agreement as a prerequisite to accepting and queuing a transmission service request, FMPA and its members will be denied the right to request transmission service for even longer if DEF and NextEra are unable to agree on the terms and conditions of interconnection service.

This long deferral of the timing when DEF will permit FMPA to submit the Poinsett TSRs and the resulting loss of queue position denies FMPA and its members the “first-come, first-served” treatment that is the foundation for the non-discriminatory

²¹ See note 10 above, which includes the following link:
https://www.oasis.oati.com/woa/docs/FPC/FPCdocs/Oasis_Posting_Report_11119.pdf.

²² DEF's recent completion of that study is not yet posted on the DEF OASIS.

²³ Section 6.3 of the DEF's Standard Large Generator Interconnection Procedures, Attachment J to the DEF OATT, provides: “Transmission Provider shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement.”

service promised by the Commission's *pro forma* OATT.²⁴ It disadvantages them as compared with other customers (and DEF) that submit interconnection and transmission delivery service requests in the interim. As a result, other customers and, DEF itself will be afforded first access to the transmission capacity that would otherwise be used to serve FMPA's rejected Poinsett TSRs. As shown by DEF's Current Generator Interconnection Queue,²⁵ already some six interconnection requests (including one for DEF itself) have been submitted since September 5, 2018, the submission date of the rejected Poinsett TSRs. And based on information that can be viewed on the OASIS,²⁶ at least one long-term transmission service request – a DEF network resource designation for a solar resource – has been submitted since that date. These requests, along with any that get submitted before DEF and NextEra execute a generator interconnection agreement (which could be a year or more from now), will have priority access to DEF's Available Transmission Capacity ("ATC") over the transmission service request that DEF ultimately allows FMPA and its members to submit once that DEF-created prerequisite is satisfied.

In addition, the delayed processing that results from DEF's executed generation interconnection agreement prerequisite to accepting and queuing a related transmission service requests threatens to leave FMPA and its members without firm network service

²⁴ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, P 158 (referring to the "first-come, first-served physical rights model set forth in the *pro forma* OATT"), *order on reh'g and clarification*, 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 and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). See also Order No. 890, P 1418 (retaining the *pro forma* OATT's first-come, first-served approach with a limited exception (not application to the instant case)).

²⁵ See note 10 above, which includes the following link:
https://www.oasis.oati.com/woa/docs/FPC/FPCdocs/Oasis_Posting_Report_11119.pdf.

²⁶ See Exh. FMP-05 (DEF OASIS screenshot showing transmission requests).

for deliveries from the Poinsett Solar Facility when it becomes commercially operable and interconnection-related additions are completed. If DEF requires both System Impact Studies and Feasibility Studies for the Poinsett TSRs,²⁷ and especially if DEF concludes that construction of upgrades is required in order to grant the Poinsett TSRs, there is a risk that FMPA and its members will be unable to obtain firm deliveries of the output of the Poinsett Solar Facility on its commercial operation date.

DEF's additional grounds for rejecting the Poinsett TSRs of Bartow, Wauchula, and Winter Park—i.e., that “[t]here is no coordinated group”—deprives each of these DEF network customers of a queue position for its separate network resource designation. This additional non-tariff requirement could further delay acceptance of these members' transmission service requests, thereby increasing their risk as to the extent, cost, and timing of upgrades, and their risks as to the timing of firm service relative to the commercial availability of energy from the Poinsett Solar Facility. At worst, DEF's amorphous “coordinated group” prerequisite may prove an insurmountable barrier that denies these customers any ability to deliver their Poinsett entitlements to their network load.

D. Unsuccessful Efforts to Resolve Dispute Through Discussion and the DEF OATT's Informal Dispute Resolution Process

After learning about DEF's position that an executed generation interconnection agreement must be in place before DEF will accept, queue, and process a related network

²⁷ Section 32 of the DEF OATT allows 60-days each for those studies, with additional time allowed for the tendering (30-days) and execution (15-days) of related study agreements. And provision is made for notifying the customer if additional time is required for completion the studies. DEF OATT §§ 32.3, 32.4. Plus there is the potential for time associated with the service agreement. See DEF OATT § 32.4.

resource designation,²⁸ FMPA challenged the practice, expressing the view that interconnection and transmission delivery service can be requested concurrently, consistent with the OATT's explicit provision for seeking such service based on contracts contingent on transmission service.²⁹ During July 2018, FMPA and DEF held conference calls and exchanged legal support addressing DEF's requirement that there be an executed generator interconnection agreement before FMPA and its members can submit transmission delivery service requests, in an unsuccessful effort to resolve their disagreement on DEF's implementation of its OATT. FMPA provided DEF with a memorandum that: (1) summarized Commission precedent and rulemaking directives making clear that transmission delivery service requests for a generator may be submitted before the associated interconnection agreement exists; and (2) explained that none of the cases DEF cited to justify its implementation of its OATT supported DEF's position.³⁰

On September 25, 2018, after DEF had rejected all of the Poinsett TSRs, FMPA initiated informal dispute resolution procedures challenging DEF's actions in accordance with Section 12.1 of the DEF OATT. After additional discussions and the exchange of additional information, dispute resolution was concluded without resolution on November 16, 2018.

²⁸ In late-May 2018 into June 2018, FMPA began preliminary discussions with DEF regarding the Poinsett network resource designations. During these initial discussions, DEF indicated its position that a transmission service request must follow the generator interconnection agreement.

²⁹ See Exh. FMP-06 at 1-2 (July 12, 2018 email correspondence between Frank Gaffney (then, FMPA) and Paul Graves (DEF)). Although the two provisions cited by Mr. Gaffney in this initial correspondence come from the Part IV of DEF's OATT (Network Contract Demand Transmission Service), Sections 29.2 and 30.2, the corresponding provisions of Part III of DEF's OATT (NITS), similarly accept network resource designations supported by contracts contingent on the availability of transmission service and include no interconnection agreement prerequisite to requesting related transmission service.

³⁰ Exhs. FMP-04 at 3-9, FMP-07 (July 18, 2018 email correspondence between Paul Graves (DEF) and Frank Gaffney (then, FMPA)).

On November 19, 2018, FMPA contacted the Commission's Enforcement Hotline and requested Enforcement Staff's help to address DEF's improper administration of its OATT. FMPA has received no substantive communications from Enforcement Hotline Staff since that time.

IV. DEF VIOLATED ITS OATT BY REJECTING THE POINSETT TSRS BECAUSE THE POINSETT SOLAR FACILITY DOES NOT YET HAVE AN EXECUTED GENERATOR INTERCONNECTION AGREEMENT

DEF's rejection of the Poinsett TSRs submitted by FMPA and its members because of the absence of an executed generator interconnection agreement is a clear violation of its OATT. DEF has failed to identify any tariff language or Commission precedent or policy that supports that interpretation.³¹ In fact, as discussed below, clear Commission statements in both adjudications and the Generator Interconnection Rule directly contradict DEF's position and require DEF to accept and queue FMPA's transmission delivery service requests for the Poinsett Solar Facility while the interconnection request for the facility remains pending.

A. The DEF OATT Specifically Identifies What is Required to Designate a Network Resource; an Interconnection Agreement is Not Among Those Requirements.

Section 29.2 of DEF's OATT describes the application procedures for initiating NITS and provides a list of information to be supplied to the Transmission Provider, along with the required attestation, to request designation of a new network resource pursuant to Section 30.2. DEF has not contended that FMPA's requests fail to provide the listed information or attestation. Rather, it has imposed an additional non-tariff

³¹ See Exhs. FMP-04 at 1, 8-9, FMP-07.

obstacle to securing transmission service—an executed generator interconnection agreement prerequisite that prevents a customer from requesting transmission delivery service from a generator whose interconnection request remains pending.

An interconnection agreement—let alone an executed interconnection agreement—is not on Section 29.2’s list of required information. DEF’s OASIS Business Practices likewise make no mention of any interconnection agreement prerequisite for submitting a request for NITS.³² As FMPA noted in its July 23, 2018 memorandum to DEF, DEF conceded in its discussions with FMPA that neither its OATT nor its OASIS Business Practices state that an executed generator interconnection agreement is required before submittal of a request for network service from a planned generator.³³

Nor can DEF’s interconnection agreement requirement be inferred from any other provision of its OATT. To the contrary, Section 30.2 of the DEF OATT expressly permits designation of a network resource based on a contractual commitment that is contingent on the availability of transmission service, which includes interconnection service—the Commission has long made clear that interconnection service is an element of open access transmission service required to be provided by public utilities under Order No. 888.³⁴

Applying unwritten policies without clear tariff language is a violation of the filed rate doctrine. In *Cargill Power Markets, LLC v. Public Service Co. of New Mexico*, 132 FERC ¶ 61,079 (2010) (“*Cargill I*”), for example, the Commission ruled that Public

³² DEF, OASIS Business Practices (effective July 19, 2017), [http://www.oasis.oati.com/woa/docs/FPC/FPCdocs/DEF_Business_Practices_\(07-19-2017\).pdf](http://www.oasis.oati.com/woa/docs/FPC/FPCdocs/DEF_Business_Practices_(07-19-2017).pdf).

³³ Exh. FMP-04 at 6.

³⁴ See, e.g., *Laguna Irrigation Dist.*, 91 FERC ¶ 61,340, at 62,152 (2000); *Cent. Me. Power Co.*, 90 FERC ¶ 61,214, at 61,707 (2000).

Service Company of New Mexico (“PNM”) had violated its OATT when it rejected a transmission service request from Cargill Power Markets, LLC (“Cargill”), based on unwritten procedures that PNM followed when processing such requests. According to the Commission (*id.* P 23) (internal citations omitted):

Cargill’s predicament is a prime example of why 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. Customers need to have proper notice in order to be able to obtain services on a just and reasonable and not-unduly discriminatory basis. The types of transmission services PNM offers and the policies PNM uses to determine queue processing significantly affect rates, terms and conditions of service and, therefore, should be clearly and accurately set forth in PNM’s OATT. Therefore, while PNM may have adhered to its unwritten policies regarding types of services offered, even if these unpublished rollover and generation interconnection exceptions were reasonable, this still would not overcome the fact that these exceptions, combined with the express language contained in PNM’s OATT on file with the Commission, strongly suggest that in fact PNM was offering “sliding service” on February 21, 2008, when Cargill made its request for service. As a result, we grant Cargill’s complaint.

See also Cargill Power Mkts., LLC v. Pub. Serv. Co. of N.M., 137 FERC ¶ 61,259 (2011)

(noting that PNM violated the filed rate doctrine by denying Cargill’s valid transmission service request (P 35), and conditionally accepting a settlement providing that PNM would restore the queue position of Cargill’s February 21, 2008 transmission request (PP 5, 41)) (“*Cargill II*”).³⁵

³⁵ *See also Tenn. Gas Pipeline Co.*, 95 FERC ¶ 61,272, at 61,958 (2001) (“Tennessee’s unwritten policy against selective volumetric reductions through its right-of-first-refusal (ROFR) process is in violation of Tennessee’s tariff and Commission policy....Tennessee [can]not impose a condition on the exercise of a ROFR that is not contained in its tariff.”); *Transcon. Gas Pipe Line Corp.*, 33 FERC ¶ 63,035, at 65,130 (1985) (“Transco’s actions violate the basic tenets of the ‘filed tariff doctrine’ and the Commission’s Regulations that forbid utilities from ‘impos[ing] any classification, practice, rule, regulations, or contract with respect thereto, which is different from that provided in rate schedules required to be on file with the

The Commission in *Cargill I* made clear that applying unwritten policies to service requests under the OATT is improper even when the specific policies at issue are reasonable. DEF's failure to meet this basic standard, by itself, is therefore sufficient for the Commission to find that DEF has violated its OATT and the filed rate doctrine and to direct DEF to restore the queue positions of the Poinsett TSRs.

DEF's violation is compounded in this case by the unreasonableness of its executed generator interconnection agreement requirement. As discussed below, this prerequisite directly contradicts long-standing Commission precedent on open-access transmission service and Commission rulemaking directives that repeatedly confirmed that an application for transmission delivery service can be requested under the *pro forma* OATT simultaneously with an application for generator interconnection. DEF's implementation of its unwritten policy frustrates a fundamental purpose of the *pro forma* tariff—i.e., to eliminate the transmission provider's ability to use its control over transmission facilities to impose additional obstacles that burden the non-discriminatory transmission access the Commission intended to require.³⁶

Commission.' The mischief created by Transco's ephemeral 'unwritten' policy are a matter of record in this case and these examples underscore the need for a written, filed, explicitly stated, availability policy.") (citing 18 C.F.R. § 35.1(e)). Even in the context of independent regional transmission organizations ("RTOs"), which have greater flexibility to propose terms and conditions that differ from the *pro forma* OATT (especially as to interconnection service), "each ISO and RTO must include in its OATT *all* of the rules, standards, and practices that significantly affect the transmission service provided by the ISO or RTO and must electronically post *all* of the rules, standards, and practices that relate to transmission service, but which are not included in the OATT." Order No. 890-A, P 990, emphasis in original.

³⁶ See *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, 75 FERC ¶ 61,078, FERC Stats. & Regs. ¶ 31,036, at 31,682-84, *clarified*, 76 FERC ¶ 61,009 (1996), *modified*, Order No. 888-A, 78 FERC ¶ 61,220, *order on reh'g*, 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 part and remanded in part sub nom. Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

B. The Commission Has Long Interpreted the Pro Forma OATT as Accommodating the Simultaneous Submission of Applications for Interconnection and Delivery Service

Longstanding Commission precedent makes abundantly clear that transmission delivery service requests for a generator may be submitted before the associated interconnection agreement exists. Indeed, customers have the right to apply simultaneously for interconnection service and delivery service for new generators. In *Tennessee Power Co.*, 90 FERC ¶ 61,238, at 61,761 (2000) (internal citations omitted), for example, the Commission held:

Interconnection is an element of transmission service and is already required to be provided under our *pro forma* [OATT]. This is true whether the interconnection request is tendered concurrently with the request for transmission service or in advance of a request for a specific transmission service.

The Commission recognized that simultaneous submission of interconnection and delivery service requests was the norm; and it stated that the terms and conditions of the *pro forma* OATT are intended to accommodate such simultaneous submission (*id.*, emphasis added):

We recognize that the *pro forma* tariff 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.**

See also Pac. Gas & Elec. Co., 115 FERC ¶ 61,193, P 36 n.52 (2006) (“the *pro forma* tariff originally envisioned a process where the separate interconnection and delivery

components of a transmission service request were made at the same time, [but] they do not necessarily have to be ..." (citing *Tenn. Power Co.*, 90 FERC ¶ 61,238, at 61,761)); *S. Co. Servs., Inc.*, 94 FERC ¶ 61,131, at 61,502 (2001) ("The *pro forma* tariff generally envisions a process in which both interconnection and delivery components of a transmission service request are made at the same time" (citing *Tenn. Power Co.*, 90 FERC ¶ 61,238, at 61,761)); *Laguna Irrigation Dist.*, 91 FERC ¶ 61,340, at 62,152 (2000) (same).

C. The Generator Interconnection Rule Confirmed that an Application for Transmission Delivery Service Need Not Await a Generator Interconnection Agreement

In its Generator Interconnection Rule, the Commission specifically addressed the timing of requests for interconnection and transmission delivery service for new generators. It emphasized that nothing in the Rule altered the Transmission Customer's pre-existing option to request interconnection and transmission delivery service simultaneously for a new generating facility.³⁷ Order No. 2003-A states at P 535 (emphasis added):

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

³⁷ This same right applies even when the interconnection customer and the transmission delivery service customer are different entities. In issuing its Generator Interconnection Rule, which confirmed the continuing right to request interconnection and delivery service at the same time, the Commission expressly recognized that "the Interconnection Customer, as owner of the Generating Facility, is rarely the customer that takes transmission delivery service." Order No. 2003-A, P 676. The Commission therefore provided, among other things, that the right of the interconnection customer to receive credits is fully assignable. *Id.*; see also Order No. 2003, PP 729, 734 (confirming, in response to concerns that in many instances the Interconnection Customer is not the transmission delivery customer, that LGIA Article 11.4 provides that refund rights are fully assignable).

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. For example, a Network Customer that does not need all of the features of Network Resource Interconnection Service may determine that the most economical and practical approach to interconnecting a new Network Resource is to request Energy Resource Interconnection Service and **at the same time** request Network Integration Transmission Service under the Transmission Provider's OATT. This process would be completely analogous to the approach that a Network Customer now uses when it constructs a new Network Resource to serve its Network Load. The fact that Energy Resource Interconnection Service, by itself, allows access to the existing capacity of the Transmission System only on an "as available" basis should be of no concern to the Network Customer. The Network Customer can **simultaneously** obtain firm deliverability to its Network Loads by requesting the Transmission Provider to construct, under the terms of the Network Integration Transmission Service provisions of the OATT, any additional upgrades that may be necessary to ensure deliverability of the Network Resource to serve Network Load.

The Commission reiterated that interpretation in Order No. 2003-B, P11 (emphasis added), where it clarified that the right to request interconnection and delivery service at the same time applies to both NRIS and Energy Resource Interconnection Service ("ERIS"):

Order No. 2003-A also clarified that . . . neither [NRIS nor ERIS] allows the Interconnection Customer the right to withdraw power at any particular Point of Delivery. **It also clarified that when an Interconnection Customer wants to deliver the output of its Generating Facility to a particular load (or set of loads), regardless of whether it has chosen ERIS or NRIS, it may simultaneously request [NITS] or Point-to-Point Transmission Service under the OATT.**

At the March 3, 2004 Open Meeting where Order No. 2003-A was issued, Commission Staff explained that the Rule's express preservation of the right to request

interconnection and delivery service simultaneously was intended to address the concerns of municipal utilities that want to use new generators to serve their own loads, rather than develop them as merchant plants—i.e., precisely the situation at issue here. In response to questions from then-Chairman Wood, Commission Staff explained that the *pro forma* OATT, as modified by the Large Generator Interconnection Rule, allowed for “one-stop shopping” by such transmission customers: if load-serving entities “know exactly where they want to go, they know where the generator is going, they know which loads they’re going to want to serve, they should be able to provide that information to the generator, combine their interconnection requests with a request for that specific set of services, and that should be a very easy modeling exercise for the transmission provider.”³⁸

DEF’s implementation of its OATT improperly turns Commission precedent and the Generator Interconnection Rule’s directives on their head. Even though the Commission has repeatedly held that the OATT was *designed for* simultaneous requests for interconnection and delivery service, DEF asserts that those same tariff provisions allow DEF to *prohibit* transmission delivery service requests until after an interconnection agreement has been executed. DEF has offered no plausible precedent or authority to justify administering its OATT in manner directly at odds with the Commission’s orders; the Commission should reject DEF’s position.³⁹

³⁸ Transcript of FERC Open Meeting (March 3, 2004), at 38, eLibrary No. 20040305-0015; *cf.* Order No. 890-A, PP 738, 741-44, 747 (declining to grant blanket waiver of OATT transmission service request processing timelines in response to MidAmerican concern that processing of simultaneously filed interconnection service and delivery service applications posed challenges).

³⁹ *See* Exhs. FMP-04, FMP-07. In the Appendix to the memorandum attached to the July 24, 2018 email from Frank Gaffney (then, FMPA) to Paul G. Graves, Ann L. Warren, and Michael Scott (DEF), FMPA explained why none of the references provided by DEF supported its practice of rejecting transmission delivery service applications for new generators until after the generator has executed an interconnection agreement. Exh. FMP-04 at 8-9. At most, the authority cited by DEF stands for the propositions that interconnection service and transmission delivery service are distinct, and that a grant of interconnection

D. DEF's Implementation of its OATT Disadvantages FMPA and its Members and Increases the Incentive and Opportunity to Discriminate

The right of FMPA and its members to promptly submit and secure queue positions for the Poinsett TSRs is crucial. As noted above, the first-come, first-served principle is central to the non-discriminatory transmission service required to be provided under the *pro forma* OATT. In the Generator Interconnection Rule, the Commission explained why the timing of applications for interconnection and transmission delivery service is so important (Order No. 2003-A, P 541):

Although interconnection and delivery are separate services, we agree that the queues for the two services must be closely coordinated. This means that in general, Interconnection Customers and transmission delivery service customers should have equal access to available transmission capacity, with priority being established on a first-come, first-served basis according to the date on which service is requested. Furthermore, Interconnection Studies for Interconnection Services should be coordinated with the facilities studies performed for transmission delivery services. This ensures that all required upgrades are planned and designed in a least cost manner.

By rejecting the Poinsett TSRs, removing them from DEF's queue, and requiring FMPA and its members to wait—likely more than a year—before their Poinsett TSRs may be submitted and queued, DEF has denied FMPA and its members equal, “first-come, first-served” access to the ATC needed to support deliverability of that resource to FMPA's

service is not a grant of transmission delivery service. (As noted in Exh. FMP-04 at 8-9, one of the citations provided by DEF is erroneous, and FMPA was unable to find a Commission order that matches DEF's description of the holding. According to DEF's description, however, that case stands for the proposition that it is improper for a transmission provider to “set[] aside transmission delivery capacity for the interconnection customer based solely on its generator interconnection request.”) Those propositions, and the fact that delivery service is distinct from interconnection service is exactly why FMPA submitted the Poinsett TSRs in September 2018, rather than waiting until after there is a generator interconnection agreement for the Poinsett Solar Facility.

and its members' specific network loads. Instead, DEF allows itself and other potential applicants to gain higher-priority access to that ATC.

As discussed above, a number of other interconnection and transmission service requests (including a DEF interconnection request and a DEF network resource designation for a solar project) have already been submitted since September 5, 2018, the submission date of the rejected Poinsett TSRs, and now will be considered ahead of the Poinsett TSRs. Given DEF's slow progress through the Poinsett interconnection process, plenty more will take precedence over the Poinsett TSRs once DEF finally permits their submission and queuing (after DEF and NextEra agree to and execute an interconnection agreement for the Poinsett Solar Facility).

DEF's tariff violation is compounded by its further requirement that any such generator interconnection agreement must be executed. This additional requirement contradicts the plain language of the DEF OATT.⁴⁰ Moreover, execution requires DEF's consent; so this prerequisite would allow DEF to control customer access to the transmission delivery service queue. And DEF would have both the incentive and opportunity to delay granting interconnection service to permit submission—by itself or a favored customer—of competing interconnection and delivery service requests that use the same ATC.

⁴⁰ The Commission's *pro forma* Generator Interconnection Agreement and Procedures expressly provide for the filing of *unexecuted* generator interconnection agreements where the parties have been unable to agree on the terms and conditions of interconnection service. Standard Large Generator Interconnection Procedures, Sections 11.2 (Negotiation), 11.3 (Execution and Filing), 11.4 (Commencement of Interconnection Activities); Standard Large Generator Interconnection Agreement, Article 2.1 (Effective Date). Section 11.4 of Attachment J to the DEF OATT, "Commencement of Interconnection Activities"—which tracks Section 11.4 of the *pro forma* Large Generator Interconnection Procedures—also provides that "[u]pon submission of an unexecuted LGIA, Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted LGIA, subject to modification by FERC."

DEF's practice of accepting transmission delivery service requests only for generators with executed interconnection agreements not only improperly denies transmission customers the right to submit a request for delivery service while a request for interconnection service is pending, but actually holds the customer's delivery service application hostage until the interconnection customer agrees to DEF's proposed terms of interconnection service—however unreasonable.

DEF's executed generator interconnection agreement prerequisite also improperly discriminates in favor of DEF's own resources and loads—even assuming that DEF applies it to all applications for delivery service from new generators. The studies and upgrades needed to support Network Resource Interconnection Service for a new generator may well be different from those needed to support deliverability to a specific load-serving entity under its NITS. Order 2003-A, P 545; *pro forma* LGIA, Article 4.1.2.2 (DEF OATT, Att. J, Standard LGIA, Article 4.1.2.2); Order No. 890-A, P 927. Because DEF is the dominant utility served by its transmission system, however, its own load should be very similar to the “aggregate load” used in the tests for NRIS.⁴¹ 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 *delivery* service to DEF's own loads; and a grant of NRIS will thereby usually assure the availability of that delivery service without additional study or upgrades.

Meanwhile, under DEF's practice, wholesale transmission customers like FMPPA and its members—whose loads are much less likely to resemble the “aggregate load”

⁴¹ Order No. 2003, P 768; Order No. 890-A, P 927.

used in NRIS studies, and for which a grant of NRIS is therefore less likely to assure the availability of delivery service—would be barred from even entering the queue for the transmission delivery service they need from a new generator until years after the application for interconnection service has been submitted. The effect of DEF’s practice, therefore, is to give DEF’s own load priority access to ATC for delivery service from both existing and new generating resources, while transmission customers like FMPA and its members are forced to sit on the sidelines as the ATC needed to deliver the output of the new generator to their network loads disappears. DEF’s elongated interconnection process (described in Part III.C above) provides ample opportunity for service to DEF’s own loads to claim priority access to ATC ahead of DEF’s other transmission customers.

DEF’s refusal to accept and queue the Poinsett TSRs while the associated interconnection request is pending also means that it will not be able to coordinate transmission delivery and interconnection studies for the Poinsett Solar Facility, so that required upgrades are planned and designed efficiently and cost-effectively, as intended by the Commission.⁴² As a result, FMPA and its members may not only lose access to existing ATC, but the upgrades required may well be less efficient, more expensive, and more time-consuming to construct.

Further, DEF’s implementation of its OATT improperly prioritizes requests for transmission delivery service from *existing* generators over requests for delivery service from *new* generators, giving priority to the former even if a load-serving entity has already entered into a long-term commitment to purchase the output of the new resource. Since the vast majority of existing generation in DEF’s footprint is owned by or currently

⁴² Order No. 2003-A, P 541.

committed to DEF,⁴³ DEF's practice of requiring an executed generator interconnection agreement before accepting and queuing a transmission delivery service application strongly favors DEF's own generation over generation developed by others.

Indeed, as described in Part III.C above, DEF's improper delay in queuing and initiating the processing of Poinsett TSRs may mean that the grant of firm transmission service is delayed beyond the commercial operation date of the Poinsett Solar Facility and the completion of interconnection-related additions.

The Commission's *pro forma* OATT and standardized Generator Interconnection Agreement and Procedures were promulgated to address these types of undue discrimination. FMPA urges the Commission to take prompt, decisive action in this proceeding to remedy DEF's discriminatory practice and to reiterate that such abuses of the OATT and generator interconnection processes will not be tolerated.

V. DEF VIOLATED ITS OATT BY REJECTING THE NETWORK RESOURCE DESIGNATIONS FOR BARTOW, WAUCHULA, AND WINTER PARK BECAUSE "THERE IS NO COORDINATED GROUP"

Although DEF made clear in prior and subsequent communications that it rejected all of the Poinsett TSRs based on the lack of an executed generator interconnection

⁴³ See Exh. FMP-08, a list of current Designated Network Resources ("DNR") that are located within the DEF footprint, which shows that the capacity of current on-system DEF DNRs (12,234 MW) is an order of magnitude larger than the current on-system DNRs of any other DEF NITS customer. Exhibit FMP-08 also shows that, for the NITS customers other than DEF that have designated a Power Purchase Agreement for an on-system resource as a DNR, the majority of those PPAs appear to be purchases from DEF rather than from a DEF competitor (e.g., identified in Column E of Exhibit FMP-08 as DUKE RCF, DUKE RCH, DEF_SEASONAL_PEAKING, DEF_SUMMER_SEASONAL, or DEF_SYSTEM_CC, DEF_SYSTEM_INTM_PPA). (Although FMPA is a DEF network customer, it does not appear on this list because all of its current DNRs are located outside of the DEF system and then transmitted through DEF to FMPA's network loads on the DEF system.)

The data from which Exh. FMP-08 is derived is publicly available from DEF's OASIS, https://www.oasis.oati.com/woa/docs/FPC/FPCdocs/DEF_DNR_List_rev50.mht. For presentation, that data was downloaded into an Excel file and filtered to show only current, on-DEF-system resources.

agreement for the Poinsett Solar Facility,⁴⁴ DEF invalidated the three Poinsett TSRs for individual FMPA members Bartow, Wauchula, and Winter Park with the comment that “There is no coordinated group.”⁴⁵ This justification for rejecting the TSRs is improper.

The term “coordinated group” appears nowhere in the DEF OATT. And in DEF’s OASIS Business Practices, the term “Coordinated Group” refers to a group of qualifying requests and reservations across multiple transmission systems that the applicant wants to coordinate, so that it need not make a commitment to one transmission provider before knowing whether its request can be accommodated on all of the transmission systems on which it has sought transmission service.⁴⁶ This issue is irrelevant to the three Poinsett TSRs of individual FMPA members. For each of the three cities, a separate Poinsett TSR was submitted to designate its respective share of the Poinsett Solar Facility output as a network resource. Bartow, Wauchula, and Winter Park are each embedded within DEF’s footprint, and accordingly each would use only its existing Network Integration Transmission Service to deliver its share of the Poinsett Solar Facility’s output to its load. None requested “coordinat[ion]” of its Poinsett TSR with delivery service requests on another transmission system.

DEF’s invalidation of these Poinsett TSRs for lack of a “coordinated group” should be rejected. As discussed above in Part IV.A, applying an unwritten policy to reject transmission service requests is a violation of the filed rate doctrine. Because the “Coordinated Group” provisions of DEF’s OASIS Business Practices are inapplicable,

⁴⁴ See Exh. FMP-04 at 1.

⁴⁵ Exh. FMP-02 at 2-4.

⁴⁶ DEF, OASIS Business Practices at 14-17 (Section 3.J, “Requests for Service Across Multiple Transmission Systems (SAMTS)”).

DEF's comment is also nonsensical. Bartow, Wauchula, and Winter Park are each a DEF network customer under its own individual network service agreement. Pursuant to Section 30.2 of the DEF OATT, each is entitled to request designation of its Poinsett entitlement as a new network resource and have its Poinsett TSR request queued and studied. Conspicuously absent from Section 30.2 is any requirement that individual network customers submit TSRs as a "coordinated group."

DEF's "coordinated group" prerequisite is just the type of practice by vertically integrated transmission providers that the Commission sought to eliminate by adopting the *pro forma* OATT. Order No. 888's recitation of the subtle and indirect forms of discrimination warranting that remedy specifically included "delaying tactics have been used to frustrate access."⁴⁷ More than twenty years after the Commission fulfilled what it characterized as its "duty to eradicate" discriminatory practices,⁴⁸ it should not tolerate DEF's actions that undermine the non-discriminatory open access the Commission found essential to competitive markets,⁴⁹ and that defeat the Commission's expressed intention, by adopting the *pro forma* tariff, "to ensure that [discriminatory practices] can no longer occur."⁵⁰

In short, DEF's rejection of the Poinsett TSRs for FMPA members Bartow, Wauchula, and Winter Park because "[t]here is no coordinated group" is a clear violation of DEF's tariff obligations. It will also have significant impacts: at minimum, it changes the queue positions of these Poinsett TSRs, increasing the customers' risk as to the

⁴⁷ Order No. 888 at 31,683. These delay tactics are further described in Appendix C to Order No. 888.

⁴⁸ *Id.* at 31,682.

⁴⁹ *Id.* at 31,684.

⁵⁰ *Id.*

extent, cost, and timing of upgrades, and may delay DEF's grant of firm transmission service beyond the commercial operation date of the Poinsett Solar Facility and the completion of interconnection-related upgrades. At worst, DEF's "coordinated group" prerequisite may prove an insurmountable barrier to the transmission service these customers need to deliver their Poinsett Solar Facility entitlements to their network loads.

VI. RELIEF REQUESTED AND BASIS FOR THAT RELIEF

The Commission has the authority and the obligation under FPA Section 206 to ensure that rates are just, reasonable, and not unduly discriminatory.⁵¹ It also has the authority and duty to ensure that rules or practices "affecting" wholesale rates are just and reasonable.⁵² And it has exclusive authority to enforce tariffs on file with the Commission and to assure that public utilities comply with the terms of their filed rates.⁵³

The Commission should exercise those authorities here to: (1) direct DEF to accept and restore the queue positions of the Poinsett TSRs, consistent with the requirements of the OATT and the Commission's precedent and rulemaking directives, and immediately commence the processing of those requests; (2) find that DEF's practice of not accepting and queuing transmission delivery service requests until there is an executed generator interconnection agreement is a violation of DEF's OATT that must be corrected; and (3) find that DEF's imposition of a "coordinated group" prerequisite for

⁵¹ 16 U.S.C. § 824e.

⁵² 16 U.S.C. §§ 824d(a), 824e(a); *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 764 (2016).

⁵³ *See, e.g., Cal. ex rel Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 853 (9th Cir. 2004) (recognizing the Commission's exclusive authority to enforce filed tariffs); *Transcon. Gas Pipe Line Corp.*, 71 FERC ¶ 61,266, at 62,059 (1995); *Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,336, PP 38-39 (2003); *Am. Elec. Power Serv. Corp.*, 106 FERC ¶ 61,020, P 21 (2004) (recognizing the Commission's authority to enforce compliance with the tariffs). Section 309 of the FPA also provides that "the Commission shall have power to perform any and all acts, and to prescribe, issue, make amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions" of the Federal Power Act.

acceptance and queuing of individual network customer transmission delivery service requests is a violation of DEF's OATT that must be corrected.

A. *DEF Should be Directed to Accept and Restore the Queue Positions of the Poinsett TSRs*

As established above, DEF's tariff violations resulted in FMPA and its members being wrongfully deprived of their rightful place in DEF's transmission queue. The Commission should act promptly, using its broad remedial authority,⁵⁴ to put FMPA and its members back into the position they would have been in had DEF complied with its OATT and Commission orders. Thus, DEF should be required to accept and restore the queue positions of the following TSRs of FMPA and its members as of September 5, 2018 (the date submitted):⁵⁵

- FMPA's 47 MW network resource designation for its entitlement to the output of the Poinsett Solar Facility (i.e. "ADDNITSDNR" request) for its All-Requirements Power Supply Project (ARef: 87606402); and
- FMPA's three network resource designations (i.e. "ADDNITSDNR" request), as agent for three Florida Municipal Solar Project members, for their respective entitlements to the output of the Poinsett Solar Facility (Bartow 13 MW, ARef: 87606391; Wauchula 5 MW, ARef: 87606227; Winter Park 10 MW, ARef: 87606252).

The Commission has previously remedied the wrongful rejection of transmission service requests by requiring the Transmission Provider to accept the requests and to

⁵⁴ The Commission's discretion is at its "zenith" when fashioning remedies. *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 159 (D.C. Cir. 1967). *See also Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018) (expansive range afforded by the Commission's remedial powers).

⁵⁵ *See* Exh. FMP-02.

restore the queue positions they would have had “in accordance with the OATT.”⁵⁶ It has also ordered queue position reinstatement as a remedy for removal of interconnection requests from the queue due to the Transmission Provider’s improper application of new milestone requirements to requests exempted from those requirements by the tariff.⁵⁷ And where a Transmission Provider misapplied the tariff language to grant transmission service to a later-submitted competing request, the Commission found that the earlier request was entitled to queue priority, ordered the Transmission Provider to file a new service agreement with the earlier-submitted requestor in seven days, and then reinstate the later requestor into the queue.⁵⁸

The requested relief is reasonable under the circumstances. While restoring the Poinsett TSR queue positions could impact transmission and interconnected requests submitted after September 5, 2018, such requests (including a pending DEF transmission request and a pending DEF interconnection request) would otherwise be unjustly benefited by DEF’s violation of its tariff. As the Commission has explained, “parties should not be allowed to retain transmission capacity that they should not have received in the first place.”⁵⁹ Prompt action by the Commission on this request will also minimize the disruption to transmission and interconnection requests submitted after the Poinsett

⁵⁶ See, e.g., *Cargill II*, 137 FERC ¶ 61,259, PP 5, 41 (conditionally accepting a contested settlement providing that PNM would restore the queue position of Cargill’s February 21, 2008 transmission request, which had been wrongfully rejected by PNM); *Tenaska Power Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,230, P 53 (2004) (queue reprocessing required where the Transmission Provider applied rollover procedures inconsistent with its Business Practices and Commission rulemakings).

⁵⁷ *Edison Mission Energy v. Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,035 P 47 & Ordering Paragraph B (2011).

⁵⁸ *Idaho Power Co. v. PacifiCorp*, 95 FERC ¶ 61,148, at 61,477 (2001).

⁵⁹ *Tenaska*, 106 FERC ¶ 61,230, P 53.

requests.⁶⁰ And the filing of this Complaint puts those requests, and any submitted subsequently, on notice that the Poinsett TSRs may be returned to the queue.

FMPA therefore asks the Commission to direct DEF to promptly accept, restore the queue position of, and commence processing the Poinsett TSRs.

B. The Commission Should Find that DEF Has Violated its OATT and Direct DEF to Correct its Practices

The Commission should also find that DEF has violated its OATT and direct DEF to correct its improper implementation of that tariff. Specifically, DEF should be directed to discontinue its current practice under which it only accepts transmission delivery service requests for generators that have an executed generator interconnection agreement. Instead, consistent with the *pro forma* OATT, precedent, and Commission rulemaking directives, DEF should be required to accept and queue transmission delivery service requests for new generators simultaneously with, or any time after, an application for interconnection service has been submitted.

In addition, the Commission should find that DEF has violated its OATT by implementing a “coordinated group” prerequisite for acceptance and queuing of individual DEF network customer transmission service requests for delivery of generation on the DEF transmission system to loads on the DEF transmission system. Instead, DEF should be required to accept and queue such individual network customer network resource designations upon satisfaction of the requirements set forth in OATT

⁶⁰ As noted in Part III.C above, only six interconnection requests have been submitted since September 5 (one of which is DEF’s). See DEF’s Current Generator Interconnection Queue, available at https://www.oasis.oati.com/woa/docs/FPC/FPCdocs/Oasis_Posting_Report_11119.pdf. We have found no equivalent transmission queue on the OASIS, although we have identified one post-September 5, 2018 DEF long-term transmission service request that remains pending. See Exh. FMP-05.

Sections 29.2 and 30.2, without imposing additional and undefined “coordinated group” burdens.

Finally, the Commission should take any such other actions that it finds necessary or appropriate to remedy DEF’s tariff violations.

VII. OTHER INFORMATION REQUIRED BY RULE 206

To the extent not already provided herein, FMPA provides the following additional information required by Rule 206(b) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206(b).

A. Good Faith Estimate of Financial Impact or Harm (Rule 206(b)(4))

The full financial impact of DEF’s improper rejection of the Poinsett TSRs cannot be calculated at this time, as it depends on whether and to what extent DEF grants other interconnection customers and transmission delivery service customers priority access, ahead of FMPA and its members, to the ATC needed to deliver the output of the Poinsett Solar Facility to the loads of FMPA and its members. It also depends on how any such change in queue position affects the extent, costs, and timing of the upgrades necessary to support the Poinsett TSRs. And the longer it takes for DEF to complete the Poinsett interconnection process, and enter an executed interconnection agreement with NextEra, the greater the potential that FMPA and its members will be significantly harmed by the loss of their September 5, 2018 queue positions. As discussed in Part VI.A above, the Commission has previously recognized the significant potential impact of a loss of queue position, and therefore has required queue positions to be restored when a transmission service request has been wrongfully rejected.

In addition, DEF's improper rejection of the Poinsett TSRs denies FMPA and its members the Commission-required opportunity for concurrent processing of NextEra's NRIS application and the Poinsett TSRs. DEF's insistence on an executed generator interconnection agreement before it will even accept a related transmission service agreement means that DEF will not start evaluating the Poinsett TSRs until it is commencing construction of any additions required for interconnection of the Poinsett Solar Facility. DEF's sequential treatment not only denies FMPA and its members the efficient planning and design of upgrades in a least cost manner that the Commission expressly intended,⁶¹ but threatens to leave FMPA and its members without firm network service for deliveries of the Poinsett Solar Facility when it becomes commercially operable and the required interconnection facilities are completed, as described in Part III.C above.

Similarly, the financial impact of DEF's improper tariff administration practices also depends on how DEF chooses to apply its undefined and subjective "coordinated group" prerequisite for submission of individual network customer TSRs to deliver each of their respective entitlements to the output of the Poinsett Solar Facility to their network load on the DEF transmission system. At minimum, DEF's rejection of the TSRs submitted on behalf of three FMPA members on this basis changes their queue position, thereby increasing these customers' risk as to the extent, cost, and timing of upgrades, and thereby delaying DEF's commencement of evaluation of the requests, with the attendant risks of delayed service. At worst, DEF's amorphous "coordinated group"

⁶¹ Order No. 2003-A, P 541.

prerequisite may prove an insurmountable barrier that denies these customers any ability to deliver their Poinsett entitlements to their network load.

B. Operational or Nonfinancial Impacts (Rule 206(b)(5))

DEF's practice of only accepting transmission delivery service requests for generators that have an executed generator interconnection agreement is discriminatory and directly contradicts clear Commission precedent and directives. As discussed above, it favors interconnection and delivery requests submitted after the wrongfully rejected Poinsett TSRs of FMPA and its members. It also favors DEF's existing generation fleet over new generators; and it favors DEF's own load over the loads of transmission customers like FMPA and its members whose loads are less likely to approximate the "aggregate load" used in studies for Network Resource Interconnection Service.

DEF's improper practice of rejecting TSRs submitted on behalf of individual network customers for lack of a "coordinated group" is similarly burdensome, discriminatory, and contrary to DEF's OATT. DEF's non-tariff barrier to requesting transmission service will delay, if not bar, the queuing of the TSRs necessary for three FMPA members to deliver their respective Poinsett Solar Facility entitlements to each of their network loads.

C. Related Matters Pending in any Other FERC Case or Other Proceeding (Rule 206(b)(6))

There are actions involving other parties currently pending before the Commission regarding DEF's implementation of its generator interconnection agreement and procedures.⁶² None of those cases, however, involves the Poinsett Solar Facility or

⁶² See, e.g., *Duke Energy Florida, LLC*, Docket Nos. ER18-1298, ER18-2126 (Consolidated); *Duke Energy Florida, LLC*, Docket Nos. ER19-125, EL19-23; *Duke Energy Florida, LLC*, Docket No. ER18-1791.

DEF's practice of only accepting transmission delivery service requests for generators that have an executed generator interconnection agreement. Nor do they pertain to rejection of individual network customers' separate network resource designations on the basis that they were not a coordinated group.

D. Specific Relief or Remedy Requested (Rule 206(b)(7))

See Part VI above.

E. Exhibit List (Rule 206(b)(8))

Pursuant to Rule 206(b)(8), all documents supporting the facts are attached herein as Exhibits FMP-01 to FMP-08.

FMP-01: Screenshots of DEF OASIS showing DEF's confirmations of ADDNITSResource submissions of FMPA and its three members

FMP-02: Screenshots of DEF OASIS showing DEF's rejection of FMPA's DNR requests (ADDNITSDNR) submissions of FMPA and its three members

FMP-03: Chronology pertaining to the transmission service requests

FMP-04: July 30, 2018 email correspondence between Paul Graves (DEF) and Frank Gaffney (then, FMPA) with attached July 23, 2018 memorandum

FMP-05: Screenshot of DEF OASIS showing transmission service requests

FMP-06: July 12, 2018 email correspondence between Frank Gaffney (then, FMPA) and Paul Graves (DEF)

FMP-07: July 18, 2018 email correspondence between Paul Graves (DEF) and Frank Gaffney (then, FMPA)

FMP-08: List of current DNRs that are located within the DEF footprint (compiled from data publicly available on DEF OASIS)

F. Alternative Dispute Resolution (Rule 206(b)(9))

On September 25, 2018, after DEF had rejected all of the Poinsett TSRs, FMPA initiated informal dispute resolution proceedings in accordance with Section 12.1 of DEF's OATT. After conference calls and the exchange of additional information, including extensive legal support, dispute resolution was concluded without resolution on November 16, 2018.

In addition, on November 19, 2018, FMPA contacted the Commission's Enforcement Hotline and requested Enforcement Staff's help to address DEF's improper administration of its OATT. FMPA has received no substantive communications from Enforcement Hotline Staff since that time.

Although FMPA generally supports the use of ADR procedures, its experience to date with respect to this dispute suggests that they would be of limited value in this instance.

VIII. FAST TRACK PROCESSING

FMPA requests fast track processing because the issues presented are straightforward questions of law on which the Commission has previously ruled. In addition, the longer the remedy for DEF's tariff violations is delayed, the more likely it is that others will be impacted by the remedies needed to correct DEF's tariff violations with respect to the Poinsett TSRs or DEF's continued improper implementation of its OATT. And the longer the requested relief is delayed, the greater the likelihood that FMPA and its members may find themselves without firm network service to receive the output of the Poinsett Solar Project when it is commercially operable with all the necessarily interconnection additions completed. *See* Parts III.C and VI.A above. Absent expedited action on this Complaint, FMPA fears that the Commission will be unable to provide meaningful and effective relief.⁶³

Specifically, FMPA urges the Commission to grant relief within three months (i.e., no later than May 1). Because of uncertainties in DEF's timing to conduct the

⁶³ Review of complaints filed at the Commission since January 1, 2017 reveal a wide range of processing times, ranging from two months to more than a year. While some are addressed in a shorter period, durations of eight months or more are not rare. Thus, expedited treatment is warranted.

studies it concludes are required prior to confirmation of the Poinsett TSRs⁶⁴, uncertainties as to whether the studies will result in the need for upgrades, and if so, uncertainties as to how extensive those upgrades may be and the time it takes for construction, there is no assurance that Commission action within that period will assure that DEF confirms network resource designations for FMPA and its three members in time for the June 30, 2020 planned commercial operation of the Poinsett Solar Project.⁶⁵ However, Commission action at that time requiring immediate acceptance of the rejected Poinsett TSRs, restoration of their queue position, and immediate processing of those TSRs will significantly reduce the likelihood of such occurrence. Commission action in that period will also minimize the potential impact of the requested reinstatement of the Poinsett TSRs on transmission service or interconnection requests were submitted after September 5, 2018. Early action may also enable at least some of the coordination of any required transmission System Impact and Facilities Studies with the remaining NextEra's NRIS studies, as Order No. 2003-A, P 541 envisioned. Finally, action within three months would prevent DEF from continuing its improper administration of its OATT, with the potential for harm to other customers.

FMPA is not aware of any issues of disputed fact with respect to the Poinsett TSRs, and Commission precedent on the issues presented by the Complaint is clear.

⁶⁴ As described in note 27 above, while the DEF OATT allots sixty days for the System Impact Studies and Feasibility Studies, it makes provision for DEF to alert the transmission service customer if a study is delayed.

⁶⁵ Of course, there are also uncertainties as to the extent and timing of facilities that may be required by DEF for the interconnection of the Poinsett Solar Facility. While the recent DEF's Interconnection Feasibility Study for Poinsett is not yet public (but should shortly be publicly available through DEF's OASIS), the information it provides as to possible additions and project schedule is heavily caveated.

FMPA therefore believes that summary disposition is appropriate, and it requests that the Commission grant its requested relief based on the papers filed.

IX. FORM OF NOTICE (RULE 206(B)(10))

A Form of Notice of Complaint suitable for publication in the Federal Register accompanies this Complaint as Exhibit FMP-09

CONCLUSION

For the reasons discussed above, the Commission should proceed by a fast-track process, to direct DEF to immediately accept, restore the queue positions of, and process the Poinsett TSRs of FMPA and its members, find DEF in violation of its OATT, and take any such other actions that the Commission finds necessary or appropriate to remedy DEF's improper treatment of the Poinsett TSRs and correct its tariff violations.

Respectfully submitted,

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad
William Huang

Attorneys for
Florida Municipal Power Agency

Law Offices of:
Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 879-4000

January 30, 2019

EXHIBIT FMP-01

NITS Request Detail

Provider: FPC	Assignment Ref: 87481899	Application Ref: 1300	Transaction Ref:
Seller: FPC	Seller Duns: 006923700	Customer: FMPA	Customer Duns: 798326856
Status: CONFIRMED	Preconfirmed: NO	Affiliate: No	Created By: FMPA
Time Queued: 08/14/2018 09:09:48	Response Time Limit:	TOL: 09/05/2018 08:38:14	Modified By: FMPA

Status Comments

Customer Comments

Seller Comments

Provider Comments

Designation of 47 MWs of Poinsett Solar for FMPA ARP members.

Incorrect Resource Area.

NITS Resource Description

Resource Name: POINSETT SOLAR ARP	Resource Class: ON_SYSTEM	Resource Type: EXECUTED_PPA	Forecast Method: OFF_OASIS
Source Area: FPC	Title Area: FPC	Resource Description: FMPA ARP share of Poinsett Solar 46.5 MWs.	
Effective Start Time: 01/01/2020 00:00:00	Effective Stop Time: 01/01/3000 01:00:00		

NITS Request Detail

Provider:	FPC	Assignment Ref:	87433035	Application Ref:	1299	Transaction Ref:	
Seller:	FPC	Seller Duns:	006923700	Customer:	BRTW	Customer Duns:	041585162
Status:	CONFIRMED	Preconfirmed:	NO	Affiliate:	No	Created By:	FMPA
Time Queued:	08/06/2018 16:10:01	Response Time Limit:		TOL:	08/15/2018 13:39:39	Modified By:	FMPA
Status Comments		Customer Comments		Seller Comments		Provider Comments	
		Bartow share of Poinsett Solar Facility (13 MWs)		Incorrect Resource Area.			

NITS Resource Description

Resource Name:	POINSETT SOLAR BARTOW	Resource Class:	ON_SYSTEM	Resource Type:	EXECUTED_PPA	Forecast Method:	OFF_OASIS
Source Area:	FPC	Title Area:	FPC	Resource Description:	Bartow share of Poinsett Solar Facility (13 MWs)		
Effective Start Time:	01/01/2020 00:00:00	Effective Stop Time:	01/01/3000 01:00:00				

NITS Request Detail

Provider:	FPC	Assignment Ref:	87432976	Application Ref:	1295	Transaction Ref:	
Seller:	FPC	Seller Duns:	006923700	Customer:	FPLM	Customer Duns:	959553389
Status:	CONFIRMED	Preconfirmed:	NO	Affiliate:	No	Created By:	FMPA
Time Queued:	08/06/2018 16:03:45	Response Time Limit:		TOL:	08/15/2018 13:40:23	Modified By:	FMPA

Status Comments

Customer Comments

Seller Comments

Provider Comments

Designation of Wauchula share of Poinsett Solar (5 MWs)

Incorrect Resource Area.

NITS Resource Description

Resource Name:	POINSETT SOLAR WAUCHULA	Resource Class:	ON_SYSTEM	Resource Type:	EXECUTED_PPA	Forecast Method:	OFF_OASIS
Source Area:	FPC	Title Area:	FPC	Resource Description:	Wauchula 5 MW share of Poinsett Solar Facility		
Effective Start Time:	01/01/2020 00:00:00	Effective Stop Time:	01/01/3000 01:00:00				

NITS Request Detail

Provider: FPC	Assignment Ref: 87433001	Application Ref: 1296	Transaction Ref:
Seller: FPC	Seller Duns: 006923700	Customer: FPLM	Customer Duns: 959553389
Status: CONFIRMED	Preconfirmed: NO	Affiliate: No	Created By: FMPA
Time Queued: 08/06/2018 16:06:23	Response Time Limit:	TOL: 08/15/2018 13:40:02	Modified By: FMPA

Status Comments

Customer Comments

Seller Comments

Provider Comments

Designation of 10 MWs of Poinsett Solar Facility for Winter Park.

Incorrect Resource Area.

NITS Resource Description

Resource Name: POINSETT SOLAR WINTER PARK	Resource Class: ON_SYSTEM	Resource Type: EXECUTED_PPA	Forecast Method: OFF_OASIS
Source Area: FPC	Title Area: FPC	Resource Description: Winter Park share (10 MWs) of Poinsett Solar Facility	
Effective Start Time: 01/01/2020 00:00:00	Effective Stop Time: 01/01/3000 01:00:00		

EXHIBIT FMP-02

ADDNITSDNR Details [AREF: 87606402] - [REFUSED]



NITS Request Detail

Provider: FPC	Assignment Ref: 87606402	Application Ref: 1300	Transaction Ref:
Seller: FPC	Seller Duns: 006923700	Customer: FMPA	Customer Duns: 798326856
Status: REFUSED	Preconfirmed: YES	Affiliate: No	Created By: FMPA
Time Queued: 09/05/2018 11:26:49 ED	Response Time Limit:	TOL: 09/10/2018 09:35:05 ED	Modified By: FPC
Status Comments	Customer Comments	Seller Comments	Provider Comments
	Designation of 47 MWs of Poinsett Solar for FMPA ARP from 6/1/20.	There is no executed LGIA for Poinsett Solar. DEF only accepts DNR requests for generators that have an executed LGIA.	

NITS Resource Designation

Resource Name: POINSETT SOLAR ARP	DNR Action: DESIGNATION	POR: FPC	Source: FPC
Posting Ref:	Sale Ref:	Request Ref:	Deal Ref:
Attested: YES	Attestor Name: Francis P. Gaffney	Attestation Submitter: Peter Moore	Concomitant: NO
DNR Attestation: It is attested that (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.			CG Status: PROPOSED
Effective Start Time: 06/01/2020 00:00:00 ED	Effective Stop Time: 01/01/3000 00:00:00 ES	Time Of Last Update: 09/05/2018 11:26:49 ED	CGDeadline: 09/06/2018 11:26:49 ED

NITS Resource Capacity

Resource Name	Start Time	Stop Time	Gen Name	MW Req	MW Granted	Time of Last Update
POINSETT SOLAR ARP	06/01/2020 00:00:00 ED	01/01/3000 00:00:00 ES		47		09/05/2018 11:26:49 ED

Auxiliary Transmission

CR Primary Provider	CR AssignmentRef	CR Service Increment	CR TS Class	CR TS Type	CR Disposition	CR Disposition Time	Time of Last Update
FPC	TBD	YEARLY	FIRM	NETWORK	PENDING		09/05/2018 11:26:49 ED

NITS Request Detail

Provider: FPC	Assignment Ref: 87606391	Application Ref: 1299	Transaction Ref:
Seller: FPC	Seller Duns: 006923700	Customer: BRTW	Customer Duns: 041585162
Status: INVALID	Preconfirmed: YES	Affiliate: No	Created By: FMPA
Time Queued: 09/05/2018 11:23:20	Response Time Limit:	TOL: 09/25/2018 10:42:49	Modified By: FPC
Status Comments	Customer Comments	Seller Comments	Provider Comments
	Designation of Bartow share of Poinsett Solar (13 MWs) from 6/1/20.	There is no coordinated group	

NITS Resource Designation

Resource Name: POINSETT SOLAR BARTOW	DNR Action: DESIGNATION	POR: FPC	Source: FPC
Posting Ref:	Sale Ref:	Request Ref:	Deal Ref:
Attested: YES	Attestor Name: Francis P. Gaffney	Attestation Submitter: Peter Moore	Concomitant: NO
DNR Attestation: It is attested that (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.			CG Status: PROPOSED
Effective Start Time: 06/01/2020 00:00:00	Effective Stop Time: 01/01/3000 00:00:00	Time Of Last Update: 09/05/2018 11:23:20	CGDeadline: 09/06/2018 11:23:21

NITS Resource Capacity

Resource Name	Start Time	Stop Time	Gen Name	MW Req	MW Granted	Time of Last Update
POINSETT SOLAR BARTOW	06/01/2020 00:00:00	01/01/3000 00:00:00		13		09/05/2018 11:23:20

Auxiliary Transmission

CR Primary Provider	CR AssignmentRef	CR Service Increment	CR TS Class	CR TS Type	CR Disposition	CR Disposition Time	Time of Last Update
FPC	TBD	YEARLY	FIRM	NETWORK	PENDING		09/05/2018 11:23:20

NITS Request Detail

Provider: FPC	Assignment Ref: 87606227	Application Ref: 1295	Transaction Ref:
Seller: FPC	Seller Duns: 006923700	Customer: FPLM	Customer Duns: 959553389
Status: INVALID	Preconfirmed: YES	Affiliate: No	Created By: FMFA
Time Queued: 09/05/2018 11:06:09 ED	Response Time Limit:	TOL: 09/25/2018 10:52:45 ED	Modified By: FPC

Status Comments	Customer Comments	Seller Comments	Provider Comments
	Designation of Wauchula share of Poinsett Solar from 6/1/20	There is no coordinated group	

NITS Resource Designation

Resource Name: POINSETT SOLAR WAUCHULA	DNR Action: DESIGNATION	POR: FPC	Source: FPC
Posting Ref:	Sale Ref:	Request Ref:	Deal Ref:
Attested: YES	Attestor Name: Francis P. Gaffney	Attestation Submitter: Peter Moore	Concomitant: NO
DNR Attestation: It is attested that (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.			CG Status: PROPOSED
Effective Start Time: 06/01/2020 00:00:00 ED	Effective Stop Time: 01/01/3000 00:00:00 ES	Time Of Last Update: 09/05/2018 11:06:09 ED	CGDeadline: 09/06/2018 11:06:10 ED

NITS Resource Capacity

Resource Name	Start Time	Stop Time	Gen Name	MW Req	MW Granted	Time of Last Update
POINSETT SOLAR WAUCHULA	06/01/2020 00:00:00 ED	01/01/3000 00:00:00 ES		5		09/05/2018 11:06:09 ED

Auxiliary Transmission

CR Primary Provider	CR AssignmentRef	CR Service Increment	CR TS Class	CR TS Type	CR Disposition	CR Disposition Time	Time of Last Update
FPC	NA	YEARLY	FIRM	NETWORK	PENDING		09/05/2018 11:06:09 ED

ADDNITSDNR Details [AREF: 87606252] - [INVALID]



NITS Request Detail

Provider: FPC	Assignment Ref: 87606252	Application Ref: 1296	Transaction Ref:
Seller: FPC	Seller Duns: 006923700	Customer: FPLM	Customer Duns: 959553389
Status: INVALID	Preconfirmed: YES	Affiliate: No	Created By: FMPA
Time Queued: 09/05/2018 11:10:38	Response Time Limit:	TOL: 09/25/2018 10:53:45	Modified By: FPC

Status Comments	Customer Comments	Seller Comments	Provider Comments
	Designation of 10 MWs of Poinsett Solar Facility for Winter Park	There is no coordinated group	

NITS Resource Designation

Resource Name: POINSETT SOLAR WINTER PARK	DNR Action: DESIGNATION	POR: FPC	Source: FPC
Posting Ref:	Sale Ref:	Request Ref:	Deal Ref:
Attested: YES	Attestor Name: Francis P. Gaffney	Attestation Submitter: Peter Moore	Concomitant: NO
DNR Attestation: It is attested that (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.			CG Status: PROPOSED
Effective Start Time: 06/01/2020 00:00:00	Effective Stop Time: 01/01/3000 00:00:00	Time Of Last Update: 09/05/2018 11:10:37	CGDeadline: 09/06/2018 11:10:38

NITS Resource Capacity

Resource Name	Start Time	Stop Time	Gen Name	MW Req	MW Granted	Time of Last Update
POINSETT SOLAR WINTER PARK	06/01/2020 00:00:00	01/01/3000 00:00:00		10		09/05/2018 11:10:37

Auxiliary Transmission

CR Primary Provider	CR AssignmentRef	CR Service Increment	CR TS Class	CR TS Type	CR Disposition	CR Disposition Time	Time of Last Update
FPC	TBD	YEARLY	FIRM	NETWORK	PENDING		09/05/2018 11:10:37

EXHIBIT FMP-03

CHRONOLOGY

12/14/2017 – NextEra submits a Network Resource Interconnection Service request to DEF for the 74.5 MW Poinsett Solar Facility.

On or before 5/16/2018 – FMPA enters into Power Purchase Agreements with NextEra for the purchase of 74.5 MW of output from the Poinsett Solar Facility, as well as related agreements between FMPA and certain Florida Municipal Solar Project members.

Late May - June 2018 – FMPA begins preliminary discussions with DEF regarding the Poinsett Solar Facility network resource designations. During these initial discussions, DEF indicates its position that a transmission customer may not designate a network resource until there is an executed generator interconnection agreement.

July 2018 – FMPA confirms DEF’s position that FMPA may not submit a DNR request for the Poinsett Solar Facility until there is an executed LGIA in place. FMPA argues that this is contrary to FERC Orders and precedent. These positions are communicated through a July 12 email exchange between FMPA’s Frank Gaffney and DEF’s Paul Graves (Exh. FMP-06), as well as other email correspondence. *See* Exh. FMP-04 and Exh. FMP-07. On July 20, 2018, a call between DEF and FMPA, which included both parties’ legal counsel, was held to discuss the matter; follow-up correspondence, including FMPA’s July 24 email attaching its July 23 memo detailing the support for its position, and DEF’s July 30 response email reasserting its initial position, is included as Exhibit FMP-04.

July 16, 2018 - Early August 2018 – FMPA initiates the first of the two-step process required to secure a network resource designation by submitting the OASIS requests that identify the Poinsett Solar Facility as a future network resource (i.e. “ADDNITSRESOURCE” requests). FMPA made a number of efforts to take this first step; however, these were rejected by DEF due to administrative errors on FMPA’s part, which FMPA is not challenging here.

8/6/2018 and 8/14/2018 – FMPA makes corrections and resubmits ADDNITSRESOURCE requests (on 8/6/2018) as agent on behalf of the Cities of Bartow’s 13 MW (ARef: 87433035), Wauchula’s 5 MW (ARef: 87432976), and Winter Park’s 10 MW (ARef: 87433001), and (on 8/14/2018, after withdrawing and further correcting an earlier submission) for the FMPA All-Requirements Power Supply Project’s (“ARP”) 47 MW (ARef: 8748199). *See* Exh. FMP-01.

8/15/2018 and 9/5/2018 – DEF confirmed the ADDNITSRESOURCE requests for the Cities of Bartow’s 13 MW (ARef: 87433035), Wauchula’s 5 MW (ARef: 87432976), and Winter Park’s 10 MW (ARef: 87433001) on 8/15/2018, and confirmed the ADDNITSRESOURCE request for FMPA’s 47 MWs (ARef: 87481899) on 9/5/2018. *See* Exh. FMP-01. (The ADDNITSRESOURCE requests are the first of a two-step OASIS process necessary to designate a network resource at a future point, and their confirmation does not by itself establish a queue position.)

9/5/2018 – FMPA submits network resource designations (“DNRs”) for the Poinsett Solar Facility (i.e. “ADDNITSDNR” requests) for ARP’s 47 MWs (ARef: 87606402), Bartow’s 13 MWs (ARef: 87606391), Wauchula’s 5 MWs (ARef: 87606227), and Winter Park’s 10 MWs (ARef: 87606252). *See* Exh. FMP-02.

9/10/2018 – DEF refuses FMPA’s ADDNITSDNR request for the FMPA ARP (ARef: 87606402). DEF’s comment on OASIS is “There is no executed LGIA for Poinsett Solar. DEF only accepts DNR requests for generators that have an executed LGIA.” *See* Exh. FMP-02. This prevents FMPA’s DNR request from obtaining a position in the DEF queue.

9/25/2018 – DEF rejects FMPA’s ADDNITSDNR requests for Bartow (ARef: 87606391), Wauchula (ARef: 87606227), and Winter Park (ARef: 87606252). DEF’s comment on OASIS as to each is “There is no coordinated group.” *See* Exh. FMP-02. This prevented FMPA’s three additional TSRs from obtaining a position in the DEF queue.

9/25/2018 - 11/16/2018 – FMPA initiates dispute resolution proceedings in accordance with Section 12.1 of DEF’s OATT. Dispute resolution is concluded on 11/16/2018 without resolution.

11/19/2018 – FMPA calls the FERC Enforcement Hotline for help addressing DEF’s improper administration of its OATT in connection with rejecting the Poinsett transmission service requests.

1/11/2019 – NextEra receives Poinsett Interconnection Feasibility Study from DEF.

EXHIBIT FMP-04

Bogorad, Cynthia S.

From: Graves, Paul G <Paul.Graves@duke-energy.com>
Sent: Monday, July 30, 2018 11:52 AM
To: Frank Gaffney; Warren, Ann L; Scott, Michael
Cc: Bogorad, Cynthia S.; Huang, William S.; Dan O'Hagan
Subject: RE: Designated Network Resource requests for proposed Solar Plant

Frank,

DEF has not found any FERC precedent which prohibits a transmission provider from requiring an executed LGIA in order to satisfy the DNR requirements for the resource. We have applied our policy in a non-discriminatory manner across our customers including DEF itself. If DEF diverted from applying its policy for FMPA, doing so would provide preferential treatment toward FMPA and the customers FMPA is representing as a transmission agent (The Cities of Wauchula, Bartow and Winter Park). Since the FERC Standards of Conduct prohibit a transmission provider from providing preferential treatment, we will continue to apply our policy to FMPA in this case.

Paul Graves

(727) 384-7519
(727) 710-0015 (Cell)



From: Frank Gaffney [<mailto:Frank.Gaffney@fmpa.com>]
Sent: Tuesday, July 24, 2018 11:57 AM
To: Graves, Paul G; Warren, Ann L; Scott, Michael
Cc: Bogorad, Cynthia S. (cynthia.bogorad@spiegelmc.com); Huang, William S.; Dan O'Hagan
Subject: RE: Designated Network Resource requests for proposed Solar Plant

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

As we discussed on our call last Friday, it is quite clear that the LGIP and the TSR process for NITS can occur concurrently. Attached is our position that further emphasizes that there is no distinction between ERIS and NRIS in regard to this (see page 2 of the attached, reference to Order 2003-B, P11). We hope that you will not deny our request for a new network resource.

Frank Gaffney
Chief Operating Officer

Florida Municipal Power Agency
Direct: 321-239-1026 | Mobile: 407-761-1038



-----Original Appointment-----

From: Graves, Paul G [<mailto:Paul.Graves@duke-energy.com>]

Sent: Friday, July 13, 2018 11:09 AM

To: Graves, Paul G; Warren, Ann L; Frank Gaffney; Scott, Michael

Subject: Designated Network Resource requests for proposed Solar Plant

When: Friday, July 20, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: (866) 385-2663 3905428

EXTERNAL EMAIL - USE CAUTION

Background:

FMPA is a party to a proposed NEXTERA generator that is currently in our study queue. FMPA is also a transmission agent for several municipalities that are Network Transmission Integration Transmission customers of DEF who plan to take power from the Solar plant. DEF accepts requests only after a LGIA has been executed by both parties which in this case would be NEXTERA and DEF. FMPA is questioning this DEF policy and is taking the position they should be able to request DNR's now.

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MEMORANDUM

TO: Paul Graves and Ann Warren
FROM: Cindy Bogorad and William Huang
DATE: July 23, 2018
SUBJECT: Duke's Treatment of FMPA's Network Resource Designation
Application for the Poinsett Solar Project

During our July 20, 2018 conference call, Duke Energy Florida, LLC ("Duke") informed the Florida Municipal Power Agency ("FMPA") that it is Duke's policy to reject all applications for transmission delivery service involving a new generator, until after the generator has executed a generator interconnection agreement. Duke stated that it has followed this practice for some time. It confirmed that neither the Duke Companies' Joint OATT, nor Duke's OASIS Business Practices, states that an executed generator interconnection agreement is a prerequisite to submission of such a request for Network Integration Transmission Service ("NITS") or Point-to-Point Service.¹

¹ The OATT is very clear on what is required to designate a network resource, and an executed interconnection agreement is not among the specified requirements. See Duke Joint OATT §§ 29.2, 30.1, 30.2. In fact, Section 30.2 of the Joint OATT expressly provides that a network resource can be designated based on a contractual commitment that is contingent on the availability of transmission service. Because FERC has long made clear that interconnection service is an element of open access transmission service required to be provided by public utilities under Order 888 (see, e.g., *Laguna Irrigation Dist.*, 91 FERC ¶ 61,340, at 62,152 (2000); *Central Maine Power Co.*, 90 FERC ¶ 61,214, at 61,707 (2000)), a network resource can be designated based on a contractual commitment that is contingent on the availability of interconnection service.

Duke's Treatment of FMPA's Network Resource Designation
 Application for the Poinsett Solar Project
 2
 July 23, 2018

Page

However, Duke stated that the practice is based on Duke's interpretation of FERC's policy.

FMPA strongly disagrees with Duke's position, which is contradicted by long-standing FERC rules and precedent that make clear transmission customers have the right to apply simultaneously for interconnection service and delivery service for new generators. FERC specifically addressed the issue in its Large Generator Interconnection Rule² (Order 2003-A, P 535 (emphasis added)):

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.*

FERC also confirmed in Order 2003-B, P 11 (emphasis added):

[Order 2003-A] explained that . . . neither [Network Resource Interconnection Service ("NRIS") nor Energy Resource Interconnection Service ("ERIS")] allows the Interconnection Customer the right to withdraw power at any particular Point of Delivery. *It also clarified that when an Interconnection Customer wants to deliver the output of its Generating Facility to a particular load (or set of loads), regardless of whether it has chosen ERIS or NRIS, it may simultaneously request [NITS] or Point-to-Point Transmission Service under the OATT.*

As Order 2003-A, P 535, recognized, the customer's right to submit interconnection service and transmission delivery service applications for new generators simultaneously under the OATT pre-dates FERC's standardized generator

² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,846 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) ("Order 2003"), *modified*, 68 Fed. Reg. 69,599 (Dec. 15, 2003), *clarified*, 69 Fed. Reg. 2135 (Jan. 14, 2004), 106 FERC ¶ 61,009 (2004), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) ("Order 2003-A"), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004) ("Order 2003-B"), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005) ("Order 2003-C"), *aff'd sub nom. NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1468 (2008) ("Large Generator Interconnection Rule").

Duke's Treatment of FMPA's Network Resource Designation
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interconnection agreements and procedures. In *Tennessee Power Co.*, 90 FERC ¶ 61,238, at 61,761 (2000) (emphasis added), FERC held:

Interconnection is an element of transmission service and is already required to be provided under our *pro forma* tariff. This is true whether the interconnection request is tendered concurrently with the request for transmission service or in advance of a request for specific transmission service. . . . *We recognize that the pro forma tariff 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 [OATT's] 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.*

See also Southern Co. Servs., Inc., 94 FERC ¶ 61,131, at 61,502 (2001) (“The *pro forma* tariff generally envisions a process in which both interconnection and delivery components of a transmission service request are made at the same time.” (citing *Tenn. Power Co.*, 90 FERC at 61,761)); *Laguna Irrigation Dist.*, 91 FERC at 62,152 (same).

FMPA's right to immediately submit, and secure a queue position for its transmission delivery service request for the Poinsett Solar Project is crucial. The studies and upgrades needed to support interconnection service for the Poinsett Solar Project may well be different from those needed to support deliverability to FMPA under its NITS. Order 2003-A, P 545; Large Generator Interconnection Agreement (“LGIA”), Article 4.1.2.2. And FERC has recognized that interconnection customers and transmission delivery service customers should have equal access to Available Transfer Capability (“ATC”), with priority on a first-come, first-served basis (Order 2003-A, P 541).

By rejecting FMPA's transmission delivery service request and requiring FMPA to wait until *after* Duke has granted interconnection service for the Poinsett Solar Project, Duke would deny FMPA the equal, first-come first-served access to the ATC needed to support deliverability to FMPA's specific loads. Indeed, during the July 20 call, Duke stated that one of its reasons for invalidating any such delivery service request is so that other potential applicants can gain higher priority access to the transmission capacity needed to serve FMPA loads from the Poinsett Solar Project.

FMPA also believes that Duke's practice of requiring an executed generator interconnection agreement before accepting a transmission delivery service application improperly discriminates in favor of Duke's own resources and loads, even assuming that Duke applies that requirement to all new generators. Because Duke is the dominant utility served by its transmission system, its own load should be very similar to the "aggregate load" used in the tests for NRIS. 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 *delivery* service to Duke's own loads; and a grant of NRIS will thereby assure the availability of that delivery service without additional study or upgrades. Meanwhile, under Duke's practice, wholesale transmission customers like FMPA—whose loads are much less likely to resemble the "aggregate load" used in NRIS studies, and for which a grant of NRIS is therefore less likely to assure the availability of delivery service—would be barred from even entering the queue for the transmission delivery service they need from a new generator until much later.

As shown in the attached Appendix and as discussed during our July 20 call, none of the citations that Duke has provided to FMPA support Duke's practice of requiring an executed generator interconnection agreement before accepting a transmission delivery service application. Indeed, if anything, the citations highlight FERC's requirement that FMPA *must* submit its transmission delivery service application now if it wants to secure a queue position for the transmission service it needs to deliver the output of the Poinsett Solar Project.

FMPA urges Duke to reconsider its treatment of the transmission delivery service application for the Poinsett Solar Project. Not only does it directly contradict clear FERC rules and precedent, Duke's practice imposes restrictions on open access service that do not appear in the Joint OATT, or even in Duke Energy Florida's Business Practices. As FERC made clear in *Cargill Power Markets, LLC v. Public Service Co. of New Mexico*, 132 FERC ¶ 61,079, P 23 (2010) ("*Cargill v. PNM*") (footnotes omitted), in which it held that Public Service Company of New Mexico ("PNM") had violated its tariff when it rejected a Cargill transmission service request, causing Cargill to lose its queue position:

Cargill's predicament is a prime example of why 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. Customers need to have proper notice in order to be able to obtain services on a just and reasonable and not-unduly discriminatory basis. The types of transmission services PNM offers and the policies PNM uses to determine queue processing significantly affect rates, terms and conditions of service and, therefore, should be clearly and accurately set forth in PNM's OATT.

Duke's Treatment of FMPA's Network Resource Designation
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According to FERC in that case, even if PNM's unwritten policies were reasonable, applying them in the absence of clear tariff language was a violation of the filed-rate doctrine. *Id.*; see also *Cargill Power Markets LLC v. Pub. Serv. Co. of New Mexico*, 137 FERC ¶ 61,259, P 35 (2011) ("*Cargill v. PNM II*") (finding that PNM had violated the filed rate doctrine). Where, as here, Duke's unwritten practice directly contradicts clear FERC directives, the tariff violation is even clearer.

APPENDIX

On July 13, 2018, Duke Energy Florida, LLC, provided FMPA with the following three references that it claims support Duke's practice of rejecting transmission delivery service applications for new generators until after the generator has executed an interconnection agreement.

LGIP § 4.1.2.2 (emphasis in quotation sent by Duke). [Note: This should be a reference to LGIA, Article 4.1.2.2].

LGIA Article 4.1.2.2: Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. ... **The provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades.**

This provision states that transmission *delivery* service may require studies and upgrades that are in addition to those required to grant *interconnection* service. FMPA does not dispute that point; indeed, the fact that different studies and upgrades may be needed for transmission delivery service is precisely why FMPA is filing its delivery service application now. Nothing in the cited language states that transmission delivery service requests cannot be submitted until after interconnection service has been granted. In fact, as discussed in the text of the memo, FERC's Large Generator Interconnection Rule, which promulgated LGIA Article 4.1.2.2, expressly clarified that both applications can be filed simultaneously.

Transmission customers like FMPA need to know that they have both interconnection *and* deliverability to their loads in order to support the development of new generation. FERC specifically designed the LGIA/LGIP to enable interconnection customers to enter the queue for both at the same time.

Cargill Power Markets, LLC, 135 FERC ¶ 61,259 (2012). This citation provided by Duke is erroneous; Duke appears to be referring to *Cargill Power Markets, LLC v. Public Service Co. of New Mexico*, 137 FERC ¶ 61,259 (2011) ("*Cargill v. PNM I*")

Cargill v. PNM II, however, does not address the issue of the timing of transmission delivery service requests versus interconnection requests. Only transmission delivery service requests were at issue in the proceeding, which involved a complaint by Cargill that PNM had violated its tariff by improperly rejecting a Cargill transmission service request due to the start and end dates Cargill specified. In an earlier related order, FERC

held that PNM's rejection of Cargill's service request violated PNM's tariff. *Cargill Power Markets, LLC v. Pub. Serv. Co. of New Mexico*, 132 FERC ¶ 61,079, PP 20-24 (2010) ("*Cargill v. PNM I*"). In the 2011 order to which Duke appears to be referring, FERC approved a settlement that restored Cargill to the position it would have been in if PNM had processed its queue properly. *Cargill v. PNM II*, PP 35-36.

After FMPA pointed out the likely citation error, Duke sent an email stating that the relevant case is in Docket No. ER12-1699. That proceeding involved a request by PNM for a waiver that would have allowed a merchant transmission developer to jump to the front of PNM's transmission service queue (FERC rejected the request). It is not relevant to the issue of the timing of interconnection service requests versus transmission delivery service requests, either.³

Duke described the still-unidentified case as follows:

PNM had been setting aside transmission delivery capacity based solely on the customer's generation interconnection request, without requiring the customer to have submitted a valid TSR, and without any designation of the new generator as a Network Resource. In a telephone conference call, Enforcement Staff informed PNM that setting aside transmission delivery capacity in this manner is contrary to Commission policy. "Enforcement Staff determined that PNM improperly processed its queue by setting aside transmission delivery capacity for the interconnection customer based solely on its generator interconnection request."

Based on that description, even the unidentified case does not support Duke's position that transmission delivery requests cannot be submitted until after interconnection service has been granted. The description simply states that interconnection service does not grant transmission delivery rights. FMPA agrees with that position, which is expressly stated in Order 2003. As discussed above and in the main text of the memo, it is also why FMPA is submitting its transmission delivery service request now.

Entergy Services, Inc., 137 FERC ¶ 61,199 (2012).⁴ This case does not support Duke's position. Instead, the case involved the issue of how Entergy should model units with interconnection service, but no transmission delivery service, when evaluating lower-queued transmission delivery service applications, and modeling situations when a load-serving entity's designated resources or secondary network service is insufficient to meet its load and losses. The case is irrelevant to the issue of simultaneous filing of interconnection and transmission delivery requests.

³ *Pub. Serv. Co. of New Mexico*, 140 FERC ¶ 61,230 (2012).

⁴ The correct citation is: *Entergy Services, Inc.*, 137 FERC ¶ 61,199 (2011).

EXHIBIT FMP-05



NITS Request Summary

Filtered By: Provider: FPC ReqType: ADDNITSDNR DataSource: Operational Time - Active Today Forward: 01/30/2019 - 01/01/3000

Provider: FPC Customer: ALL Request: ADDNITSDNR Status: ALL Appl Ref: Time: Active Today Forward 01/30/2019 01/01/3000

Table with columns: Provider, Customer, Status, Assign Ref, Queued Time, Update Time, Application Ref, Effective Start Time, Facility Name, Effective Stop Time, NITS Request, Provider Comments, Seller. Contains 20 rows of request data.

EXHIBIT FMP-06

RE: Time to talk?

Graves, Paul G <Paul.Graves@duke-energy.com>

Thu 7/12/2018 2:35 PM

To: Frank Gaffney <Frank.Gaffney@fmpa.com>; Scott, Michael <Michael.Scott@duke-energy.com>;

Frank.

Duke does have the opposite viewpoint.

Talk with you at 3.

Paul

From: Frank Gaffney [mailto:Frank.Gaffney@fmpa.com]

Sent: Thursday, July 12, 2018 2:18 PM

To: Graves, Paul G; Scott, Michael

Subject: RE: Time to talk?

Pertinent to our discussion at 3:00, I am hearing that you are saying the interconnection request and the DNR request must be sequential. We do not believe that is the case and believe strongly that they can be concurrent.

Section 39.1 of your OATT:

The Network Contract Demand Customer must demonstrate that it owns generation or has committed to purchase or has leased generation pursuant to an executed contract, that can be called upon to meet the Customer's Network Contract Demand on a non-interruptible basis in order to designate such generation as a Network Resource for Network Contract Demand Transmission Service. Alternatively, the Network Contract Demand Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part IV of the Tariff.

Nowhere does it say the network resource must already have interconnection service (neither does section 37.2). And, we have a signed contract contingent on the transmission service being available.

Order 2003-A, P535:

*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.** For example, a Network Customer that does not need all of the features of Network Resource Interconnection Service may determine that the most economical and practical approach to interconnecting a new Network Resource is to request Energy Resource Interconnection Service and **at the same time** request Network Integration Transmission Service under the Transmission Provider's OATT. This process would be completely analogous to the approach that a Network Customer now uses when it constructs a new Network Resource to serve its Network Load. The fact that Energy Resource Interconnection Service, by itself, allows access to the existing capacity of the Transmission System only on an "as available" basis should be of no concern to the Network Customer. The Network Customer can **simultaneously** obtain firm deliverability to its Network Loads by requesting the Transmission Provider to construct, under the terms of the Network Integration Transmission*

Service provisions of the OATT, any additional upgrades that may be necessary to ensure deliverability of the Network Resource to serve Network Load.

Looking forward to our conversation.

Frank Gaffney
Chief Operating Officer
Florida Municipal Power Agency
Direct: 321-239-1026 | Mobile: 407-761-1038



From: Graves, Paul G [mailto:Paul.Graves@duke-energy.com]
Sent: Thursday, July 12, 2018 11:17 AM
To: Frank Gaffney <Frank.Gaffney@fmpa.com>
Subject: RE: Time to talk?

EXTERNAL EMAIL - USE CAUTION

Frank,

After 3:00 PM either day works for me.

Thanks,

Paul

Paul Graves

(727) 384-7519

(727) 710-0015 (Cell)



From: Frank Gaffney [mailto:Frank.Gaffney@fmpa.com]
Sent: Thursday, July 12, 2018 10:52 AM
To: Graves, Paul G
Subject: Time to talk?

***** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. *****

Paul,

I'd like to set up some time today or tomorrow to talk about TSR requests for FMPA's solar project. Would you have some time this afternoon or tomorrow?

Frank Gaffney
Chief Operating Officer
Florida Municipal Power Agency
Direct: 321-239-1026 | Mobile: 407-761-1038



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EXHIBIT FMP-07

Frank Gaffney

From: Graves, Paul G <Paul.Graves@duke-energy.com>
Sent: Wednesday, July 18, 2018 10:13 AM
To: Frank Gaffney
Cc: Scott, Michael; Warren, Ann L
Subject: RE: Designated Network Resource requests for proposed Solar Plant

Follow Up Flag: Follow up
Flag Status: Flagged

Frank,

I researched and the Cargill docket # is ER12-1699 and all of it is available in FERC elibrary.

Thanks,

Paul

From: Frank Gaffney [mailto:Frank.Gaffney@fmpa.com]
Sent: Wednesday, July 18, 2018 8:29 AM
To: Graves, Paul G
Cc: Scott, Michael; Warren, Ann L
Subject: Re: Designated Network Resource requests for proposed Solar Plant

***** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. *****

Paul,

In an effort to try to make Friday's call as productive as possible, we're reviewing the citations you provided in your July 13 email. Unfortunately, we haven't been able to track down one of them -- Cargill Power Markets, LLC, 135 FERC ¶ 61,259 (2011). The case at 135 FERC ¶ 61,259 is a natural gas pipeline case, TransCanada Keystone Pipeline, LP; and while we located a case with a similar title in volume 137 (Cargill Power Markets, LLC v. Public Service Co. of New Mexico, 137 FERC ¶ 61,259 (2011)), it does not match the description, or contain the quotation, you included in your email.

Particularly since your write-up under the Cargill citation does not appear to support Duke's position that the DNR request cannot be submitted until there is an associated interconnection agreement or until there is a plant, it would be helpful for us to see the case you had in mind. Could you send that along?

Thank you,

Frank Gaffney
Chief Operating Officer
Florida Municipal Power Agency

Direct 321-239-1026, Mobile 407-761-1038

On Fri, Jul 13, 2018 at 4:15 PM -0400, "Graves, Paul G" <Paul.Graves@duke-energy.com> wrote:

EXTERNAL EMAIL - USE CAUTION

Frank,

As I promised, here is DEF's position and the FERC support for it.

Paul

DEF Position:

For a Network Customer to reserve long-term firm network transmission service from a resource that has submitted a generator interconnection service request ("GISR") for Network Resource Integration Service ("NRIS"), the customer must submit the following:

1. a designated network resource ("DNR") application that abides by OATT § 29.2 and the process set forth in DEF Business Practice § 5.H, and
2. a transmission service request ("TSR") per DEF Business Practice § 3.

The customer will be assigned a transmission queue position upon submission of completed applications for DNR status and TSR, after which the TSR would be included in relevant models for later-in-time, lower-queued requests for PTP Transmission Service or Network Service that would overlap with the TSR.

If no other potentially-impacted TSRs have been received in the transmission queue since the NRIS study was completed, the NRIS study should be sufficient to grant DNR status to the Network Customer. But, if a higher-queued TSR exists or other changes to the transmission system have occurred that alter the conditions under which the NRIS study was performed, an additional study might be required in order to grant the Network Customer's DNR/TSR request.

DEF's position is supported by the following:

- LGIP § 4.1.2.2: Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. ... **The provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades.**
- *Cargill Power Markets, LLC*, 135 FERC ¶ 61,259 (2011). PNM had been setting aside transmission delivery capacity based solely on the customer's generation interconnection request, without requiring the customer to have submitted a valid TSR, and without any designation of the new generator as a Network Resource. In a telephone conference call, Enforcement Staff informed

PNM that setting aside transmission delivery capacity in this manner is contrary to Commission policy. “Enforcement Staff determined that PNM improperly processed its queue by setting aside transmission delivery capacity for the interconnection customer based solely on its generator interconnection request.”

- *Entergy Servs., Inc.*, 137 FERC ¶ 61,199 (2012). FERC approved Entergy proposal for studies of long-term TSRs. Base Case Models did not include NRIS generators without DNR status. If the model did not solve for future years without additional generation, generating facilities that had obtained NRIS, but have not obtained Long-Term Firm service (either PTP Service or Network Service) to a specific sink were to be dispatched first.

The current DEF position is well-supported by the cases above.

Paul Graves

(727) 384-7519

(727) 710-0015 (Cell)



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EXHIBIT FMP-08

Customer	Capacity Designated	Application Ref	Customer Code	Resource Name	Resource Class	Resource Type	Source Area	Title Area	Gen Name	Gen Location	Gen Max Capacity	Point Of Receipt
CITY MOUNT DORA	24	1289	FPCM	DEF PPA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
CITY MOUNT DORA Total	24											
CITY OF CHATTAHOOCHEE	6	1290	FPCM	DEF PPA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
CITY OF CHATTAHOOCHEE	2	1290	FPCM	SEPA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
CITY OF CHATTAHOOCHEE Total	8											
CITY OF WILLISTON	8	1293	FPCM	DEF PPA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
CITY OF WILLISTON Total	8											
DUKE ENERGY FLORIDA Total	12234											
REEDY CREEK IMPROVEMENT DISTRICT	8	1274	FPLM	SEPA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
REEDY CREEK IMPROVEMENT DISTRICT	81	1332	RC	DUKE RCF	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
REEDY CREEK IMPROVEMENT DISTRICT Total	89											
SEMINOLE ELECTRIC COOPERATIVE	53	1332	RC	DUKE RCH	ON_SYSTEM	EXECUTED_PPA						FPC
SEMINOLE ELECTRIC COOPERATIVE	600	1303	SECM	DEF_SEASONAL_PEAKING	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
SEMINOLE ELECTRIC COOPERATIVE	0	1303	SECM	DEF_SUMMER_SEASONAL	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
SEMINOLE ELECTRIC COOPERATIVE	500	1303	SECM	DEF_SYSTEM_CC	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
SEMINOLE ELECTRIC COOPERATIVE	150	1303	SECM	DEF_SYSTEM_INTM_PPA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPC
SEMINOLE ELECTRIC COOPERATIVE	18	1303	SECM	FPCS	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				FPCS
SEMINOLE ELECTRIC COOPERATIVE	15	1303	SECM	TELOGIA	ON_SYSTEM	EXECUTED_PPA	FPC	FPC				TMBR
SEMINOLE ELECTRIC COOPERATIVE Total	1336											
Grand Total	13699											

Customer	Source	Start Time	Stop Time	Provider	Affiliate	Current On System?	Start Date	Stop Date
CITY MOUNT DORA	FPC	2019-01-01 00:00:00 ES	2022-01-01 00:00:00 ES	FPC	YES	1	Tuesday, January 01, 2019	Saturday, January 01, 2022
CITY MOUNT DORA Total								
CITY OF CHATTAHOOCHEE	FPC	2019-01-01 00:00:00 ES	2021-03-01 00:00:00 ES	FPC	YES	1	Tuesday, January 01, 2019	Monday, March 01, 2021
CITY OF CHATTAHOOCHEE	FPC	2019-01-01 00:00:00 ES	3000-01-01 00:00:00 ES	FPC	YES	1	Tuesday, January 01, 2019	Wednesday, January 01, 3000
CITY OF CHATTAHOOCHEE Total								
CITY OF WILLISTON	FPC	2019-01-01 00:00:00 ES	2021-01-01 00:00:00 ES	FPC	YES	1	Tuesday, January 01, 2019	Friday, January 01, 2021
CITY OF WILLISTON Total								
DUKE ENERGY FLORIDA Total								
REEDY CREEK IMPROVEMENT DISTRICT	WOODRUFF	2019-01-01 00:00:00 ES	3000-01-01 00:00:00 ES	FPC	NO	1	Tuesday, January 01, 2019	Wednesday, January 01, 3000
REEDY CREEK IMPROVEMENT DISTRICT	FPC	2019-01-01 00:00:00 ES	2019-02-01 00:00:00 ES	FPC	NO	1	Tuesday, January 01, 2019	Friday, February 01, 2019
REEDY CREEK IMPROVEMENT DISTRICT Total								
SEMINOLE ELECTRIC COOPERATIVE	FPC	2019-01-01 00:00:00 ES	2019-06-01 00:00:00 ED	FPC	NO	1	Tuesday, January 01, 2019	Saturday, June 01, 2019
SEMINOLE ELECTRIC COOPERATIVE	FPC	2019-01-01 00:00:00 ES	2019-04-01 00:00:00 ED	FPC	NO	1	Tuesday, January 01, 2019	Monday, April 01, 2019
SEMINOLE ELECTRIC COOPERATIVE	FPC	2019-01-01 00:00:00 ES	2019-06-01 00:00:00 ED	FPC	NO	1	Tuesday, January 01, 2019	Saturday, June 01, 2019
SEMINOLE ELECTRIC COOPERATIVE	FPC	2019-01-01 00:00:00 ES	2025-01-01 00:00:00 ES	FPC	NO	1	Tuesday, January 01, 2019	Wednesday, January 01, 2025
SEMINOLE ELECTRIC COOPERATIVE	FPC	2019-01-01 00:00:00 ES	2021-01-01 00:00:00 ES	FPC	NO	1	Tuesday, January 01, 2019	Friday, January 01, 2021
SEMINOLE ELECTRIC COOPERATIVE	FPCS	2019-01-01 00:00:00 ES	2021-01-01 00:00:00 ES	FPC	NO	1	Tuesday, January 01, 2019	Friday, January 01, 2021
SEMINOLE ELECTRIC COOPERATIVE	TMBR	2019-01-01 00:00:00 ES	2023-12-01 00:00:00 ES	FPC	NO	1	Tuesday, January 01, 2019	Friday, December 01, 2023
SEMINOLE ELECTRIC COOPERATIVE Total								
Grand Total								

EXHIBIT FMP-09

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Municipal Power Agency

Complainant,

v.

Duke Energy Florida, LLC

Respondent.

Docket No. EL19-____-000

**COMPLAINT REQUESTING
FAST TRACK PROCESSING**

NOTICE OF COMPLAINT

()

Take notice that on January 30, 2019, the Florida Municipal Power Agency (“Complainant”) filed a complaint against Duke Energy Florida, LLC (“Respondent”) pursuant to Sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. §§ 824e, 825e, 825h, and Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206. Complainant alleges that Respondent has violated its Open Access Transmission Tariff by rejecting four requests for transmission service submitted by Complainant on behalf of its All-Requirements Project and certain of its members for deliveries from the Poinsett Solar Facility, which is the subject of a pending request for Network Resource Interconnection Service. Because of the wrongful rejection, the transmission service requests submitted by Complainant lost their queue positions. The relief requested by Complainant includes acceptance of the four transmission service requests and restoration of their queue positions.

Florida Municipal Power Agency certifies that a copy of the complaint was served on Duke Energy Florida, LLC’s corporate representative designated on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on _____, 2019.

Kimberly D. Bose,
Secretary.

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of January, 2019 caused the foregoing document to be served upon the following officials designated on the Commission's "Corporate Officials" webpage for Respondent, Duke Energy Florida, LLC:

Molly Suda
Associate General Counsel
DUKE ENERGY CORPORATION
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