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Public Service Commission

August 22, 2011

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities, Docket No. RM10-23

Dear Ms. Bose:

Please accept for filing in the above-referenced matter an electronically filed Request for Rehearing of the Florida Public Service Commission of the July 21, 2011, Order of the Commission in the above-captioned case. Service has been made upon the service list as evidenced by the attached certificate of service

Thank you for your attention to this matter. The staff contacts on this filing are Benjamin Crawford at (850) 413-6598, Mark Futrell at (850) 413-6692, and Cynthia B. Miller at (850) 413-6082.

Sincerely,

/ s /

Cynthia B. Miller
Senior Attorney

CBM:tf

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of:)
)
Transmission Planning and Cost) **Docket No. RM10-23**
Allocation by Transmission Owning)
and Operating Utilities)

**FLORIDA PUBLIC SERVICE COMMISSION'S
REQUEST FOR REHEARING AND CLARIFICATION
OF FERC ORDER 1000**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure, the Florida Public Service Commission (Florida Commission) hereby moves for rehearing regarding the FERC's infringement on state jurisdiction in the areas of transmission planning and cost allocation pursuant to FERC Order 1000, issued on July 21, 2011. The Florida Commission also seeks clarification on a number of ambiguities in the Order.

I. STATEMENT OF ISSUES

1. In FERC Order 1000, the FERC erred by infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios.

2. In FERC Order 1000, the FERC erred by infringing on state jurisdiction in the cost allocation sections for regional and interregional scenarios.

3. The FERC should clarify the ambiguities and address the lack of clarity that remain in FERC Order 1000. The FERC should define benefits and clarify that benefits must be quantifiable pursuant to existing state and Federal law.

II. ARGUMENT

The Florida Commission acknowledges that improvements have been made in FERC Order 1000 from the earlier proposed rule. These areas of improvement include: (1) retaining existing planning regions; (2) taking into account regional differences; and (3) acknowledging state authority over transmission siting. Despite these improvements, the Florida Commission continues to believe that FERC Order 1000 infringes upon the transmission planning and cost allocation authority conferred to the Florida Commission by the Florida Legislature

1. In FERC Order 1000, the FERC erred by infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios.

The Florida Commission is concerned that, under FERC Order 1000, the FERC is infringing on state jurisdiction over transmission planning. Florida law provides the Florida Commission with authority over transmission planning, siting, and cost recovery.

Florida Commission Authority over the Transmission Grid

Pursuant to Section 366.04(2)(c), Florida Statutes, the Florida Commission has the authority to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes. Section 366.04(5), Florida Statutes, grants the Florida Commission jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida

and to avoid further uneconomic duplication of generation, transmission, and distribution facilities. Section 366.05(7), Florida Statutes, authorizes the Florida Commission to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

The Florida Commission has authority under Section 366.05(8), Florida Statutes, to hold proceedings if there is probable cause to believe that inadequacies exist with the grid. The Commission may require installation or repair of necessary generation or transmission facilities, whereby mutual benefits will accrue to the electric utilities involved. Furthermore, costs associated with infrastructure repairs or additions must be distributed in proportion to the benefits received.

Section 366.055(1), Florida Statutes, requires the Florida Commission to ensure that energy reserves of all utilities in the Florida grid are available at all times to maintain grid reliability and integrity. Pursuant to Section 366.055(3), Florida Statutes, the Florida Commission has the authority to require an electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, in order to assure the efficient and reliable operation of Florida's energy grid.

The Florida Statutes also recognize the FERC's role in bulk power reliability as well as the setting of wholesale electric rates. Section 366.055(1), Florida Statutes, requires that prior commitments as to energy use: (a) in interstate commerce, as approved by the FERC; (b) between one electric utility and another, which have been approved by the FERC; or (c) between an electric utility which is a part of the energy grid created herein and another energy grid shall not be abridged or altered except during an

emergency as declared by the Governor and Cabinet. Thus, Florida law provides explicit planning authority to the Florida Commission, yet acknowledges the FERC's role in bulk power reliability.

FERC Order 1000 Relegates the Florida Commission to Mere Stakeholders

In Par. 212 of FERC Order 1000, the FERC states “through this Final Rule, we are requiring public utility transmission providers to provide an opportunity to all stakeholders, including state regulatory authorities, to provide input on the transmission needs they believe are driven by Public Policy requirements.” This stakeholder role is contrary to the role set out by the Florida law. The Florida Commission should not be relegated to the role of mere stakeholders in a regional and interregional process, as this would contravene the role provided in state statutes as determiner of issues.

Pursuant to Section 201(a) of the Federal Power Act (FPA), the FERC's regulation of interstate transmission and wholesale power sales is limited to only those matters which are not subject to regulation by the states.¹ Section 215 of the FPA, 16 U.S.C. Sec. 824o, grants the FERC jurisdiction to approve and enforce compliance with bulk transmission reliability standards. However, nothing in Section 215 of the FPA preempts the authority of the Florida Commission to take action to ensure the safety, adequacy, or reliability of electric service within our state, as long as such action is not inconsistent with any bulk power reliability standard. While FERC Order 1000 cites Section 206 of the FPA as providing authority for this order, no evidence of discrimination is provided to substantiate the FERC preempting state authority over transmission planning.

¹ The FERC is provided limited backstop authority under the 2005 Energy Policy Act to site transmission when a National Interest Electric Transmission Corridor is established. No such corridor has been established in Florida.

The multi-state and interregional planning processes in FERC Order 1000 will not be accountable to the Florida Legislature, which establishes energy policy within the state, or the Florida Commission, which implements Legislative energy policy within the state. The FERC lacks statutory authority to determine what resources should be used by load-serving entities to meet the energy needs of end-use customers, much less unspecified and undefined public policy requirements alluded to in FERC Order 1000. Florida has vertically integrated utilities and is not a member of either a Regional Transmission Organization (RTO) or Independent System Operator (ISO). As a result, the Florida statutes provide authority over planning, siting, and cost recovery of new transmission resources to a range of Florida agencies including the Florida Commission.

The transmission planning requirements envisioned in FERC Order 1000 exceed those established under FERC Order 890. The incremental regional and interregional planning processes, as well as monitoring neighboring interregional agreements, would require additional state commission resources during this time of constrained state budgets. It is also unclear how this additional process overlay will interact and coexist with existing planning processes.

Transmission planning decisions should be based on meeting the policy requirements of state and Federal law. The FERC, in Par. 216 of FERC Order 1000, allows transmission providers to consider additional public policy objectives not specifically required by state or Federal laws or regulations. This provision should be stricken as it introduces the potential for transmission planning decisions that both exceed legal boundaries and introduce additional costs on transmission-owning utilities that would be ultimately borne by customers. Moreover, the new planning processes may

result in unintended consequences due to changes in public policies over time. If public policies change, planning decisions based on prior public policy requirements might become obsolete or outdated prior to or during the construction of a transmission project. It is unclear whether there will be sufficient flexibility to adjust planning decisions to respond to changes in public policy that are not codified in statute.

By diminishing the statutory role of states, such as Florida, in the transmission planning process while potentially imposing additional monitoring costs on state commissions, the FERC has overreached in this area. Planning decisions must be based on public policies codified in existing state and Federal law. As a result, the Florida Commission seeks rehearing on this issue.

2. In FERC Order 1000, the FERC erred by infringing on state jurisdiction in the cost allocation sections for regional and interregional scenarios.

The Florida Commission also seeks rehearing regarding FERC Order 1000's decision regarding cost allocation. While some states might have ceded some authority over cost allocation to the FERC due to the creation of RTOs/ISOs, the Florida Commission retains this authority. Florida remains a state with vertically integrated utilities, and no part of the state is a member of an RTO or ISO. Florida law provides the Florida Commission with authority to allocate costs of transmission additions in proportion to benefits received.

Florida Commission Statutory Authority

As stated earlier, the Florida Commission has authority under Section 366.05(8), Florida Statutes, to hold proceedings if there is probable cause to believe that inadequacies exist with the grid and to require installation or repair of necessary generation or transmission facilities. This finding requires that mutual benefits will accrue to the electric utilities involved. Furthermore, costs associated with infrastructure repair or additions must be distributed in proportion to the benefits received.

Section 366.055(2), Florida Statutes, states that when energy produced by one electric utility is transferred to another or others through the Florida energy grid as a result of an action by the Florida Commission, the Florida Commission shall direct the appropriate recipient utility or utilities to reimburse the producing utility in accordance with the latest wholesale electric rates approved for the producing utility by the FERC for such purposes. Thus, Florida law provides authority to the Florida Commission to require needed transmission additions including the assignment of costs, while recognizing the role of the FERC in approving wholesale transmission rates.

FERC Order 1000 Encroaches on State Authority over Transmission Cost Recovery

Par. 607 of FERC Order 1000 states that, if regions cannot reach an agreement on a cost allocation method, the FERC will use the record in the proceeding to make a determination. While this may sound like a fair solution, it is an incremental encroachment of Federal jurisdiction on state jurisdictional matters. The FERC does not have authority to assign cost recovery to retail customers.

FERC Order 1000 also leaves unclear the link between Federal cost allocation and state cost recovery. Because planning decisions under the new processes will affect

wholesale rates, which will ultimately flow to retail customers, regions might find themselves paying higher retail rates due to benefits only realized in neighboring regions. The FERC does not have authority to assign cost recovery to retail rates for benefits not defined as such in the retail customers' region. Thus, the Florida Commission seeks rehearing due to this potential FERC intrusion over state authority over retail rates.

3. The FERC should clarify the ambiguities and address the lack of clarity that remain in FERC Order 1000. The FERC should define benefits and clarify that benefits must be quantifiable pursuant to existing state and Federal law.

Numerous key definitions remain ambiguous in FERC Order 1000. These ambiguities include the definition of benefits and the extent to which public policies in other states must be considered. These ambiguities violate the Due Process Clause "fair notice" requirement, which mandates that a Federal agency has to make clear to the regulated entity the scope of its legal obligations.² Neither the state utility commissions, the regions, or the stakeholders within the region will be able to comport with the nebulous definition of benefits, unless the FERC provides clarification.

Par. 620 of FERC Order 1000 leaves open the definition of benefits for later proceedings. The FERC should clarify that benefits must be quantifiable and based on the public policy requirements of applicable state and Federal law. Also, the FERC argues in Par. 625 of FERC Order 1000 that it reserves the right to redefine benefits if benefits are defined too narrowly or too broadly. FERC Order 1000's failure to define what constitutes too narrow or too broad creates a subjective determination. This ambiguity over the definition of benefits leaves open the possibility that regions will adopt a definition of benefits that does not meet the undefined standard. While FERC

² *Trinity Broadcasting of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000).

Order 1000 states that regions are free to determine their own definitions of benefits, Par. 625 of FERC Order 1000 limits regional autonomy in an undefined way. The Florida Commission requests that the FERC clarify this point.

Moreover, the FERC does not explicitly state what state and Federal policies will be considered in the cost allocation arena. Par. 216 of FERC Order 1000 foresees planners potentially considering public policy objectives not specifically required by state and Federal laws. Transmission planning regions are likely to differ on which potential public policy objectives to include in a transmission plan. This introduces significant subjectivity and uncertainty into the planning process. The FERC should clarify that benefits must be quantifiable and based on existing policies codified in state and Federal law.

III. CONCLUSION

Wherefore, the Florida Commission respectfully urges the FERC to grant rehearing on the first two issues and clarify the third issue.

Respectfully submitted
/ s /
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CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Florida Public Service Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Tallahassee, Florida, this 22nd day of August, 2011.

Respectfully submitted

/ s /

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