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STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

September 24, 2010

VIA ELECTRONIC FILING

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

**Re: Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission
Owning and Operating Public Utilities**

Dear Ms. Bose:

Forwarded herewith are comments of the Florida Public Service Commission regarding the Notice of Proposed Rulemaking in the above-captioned proceeding.

Mark Futrell at (850) 413-6692 is the lead staff contact.

Sincerely,

/ s /

Cynthia B. Miller
Senior Attorney

CBM:tf

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Transmission Planning and Cost Allocation)
by Transmission Owning and operating)
Public Utilities)

Docket No. RM10-23-000

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) appreciates the opportunity to comment on this rulemaking. In general, the FPSC commends the Federal Energy Regulatory Commission (FERC) for recognizing state jurisdiction in transmission planning, regional differences that have resulted in varying transmission planning structures, and traditional cost allocation principles that recognize that the cost causer should pay infrastructure additions. However, we are concerned that FERC may be introducing revisions to transmission planning and cost allocation principles that could conflict with and therefore preempt state jurisdiction resulting in ratepayers funding transmission without direct benefits. The NOPR introduces revisions that may be more relevant in areas of the country administered by Regional Transmission Organizations or Independent System Operators. FERC should consider whether rules applicable to deregulated states with these transmission structures should be established, separate and apart from rules for states that retain authority over traditional vertically integrated utilities. Our concerns are in the following areas:

1. Transmission planning and interregional coordination – The establishment of common planning criteria and the requirement that each public utility file with FERC its process for the evaluation of proposed transmission lines into the transmission plan would infringe upon state

jurisdiction of the planning process. Also, the requirement for utilities to develop a regional transmission plan and to file with FERC interregional transmission planning agreements would infringe upon state authority to ensure adequate planning and operation of the grid.

2. Cost allocation - Movement away from the principle that the cost causer pays for infrastructure additions raises questions whether ratepayers would be required to pay for unclear benefits.

3. Merchant transmission – Efforts to incentivize merchant transmission should recognize state laws whereby vertically integrated utilities retain the obligation to serve end-use customers. Entities seeking to construct merchant transmission should be fairly evaluated in a transparent planning process. However, these entities should not receive advantages which could hamper the planning process and result in increased cost to retail ratepayers.

Background

The FPSC has authority under Florida Statutes to ensure that inadequacies in the grid are addressed with costs spread to all affected utilities on a pro rata basis of the benefits received. This authority extends to investor owned electric utilities, municipalities and cooperatives. The Florida Reliability Coordinating Council (FRCC) acts to facilitate transmission planning in the state. Its membership is open to those entities doing business in Florida including all utilities, independent power producers, and transmission providers. FRCC also coordinates interregional planning with the Southeastern Reliability Coordinating Council. The FPSC closely monitors transmission planning activities to ensure areas of concern are identified and adequately addressed on a timely basis.

During the past decade, the FPSC examined the establishment of the GridFlorida Regional Transmission Organization (RTO). The FPSC determined that it was not prudent to

continue the development of GridFlorida because the costs of establishing the RTO would outweigh any benefits.¹ However, the FPSC found that Florida would benefit by making modifications to the market structure where efficiencies may be gained in a cost-effective manner. The FRCC transmission planning process resulted from the effort to evaluate such modifications. The objective of the transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning process within the FRCC Region, and provide a better transmission expansion plan from a statewide perspective. This process utilizes the reliability standards and criteria established by the North American Electric Reliability Council (NERC) and the FRCC, and the specific design, operating and planning criteria used by Peninsular Florida transmission owners. This enhanced process was approved by the FRCC Board of Directors in the first quarter of 2005.

The FRCC transmission planning process begins with the consolidation of the long-term transmission plans of all of the transmission owners in the FRCC Region. This includes plans for all transmission facilities 69 kV and above. Detailed evaluation and analysis of these independently developed plans is conducted by the FRCC. This process provides the basis for possible recommended changes to individual system plans that, if implemented, would result in a better overall transmission expansion plan for the FRCC Region. This planning process is intended to meet the existing and future needs of all firm users of the transmission system (e.g., utility generation, network generation, network loads, merchant generation, independent power producers, and load serving entities) requiring Network Integration Transmission Service, firm Point-to-Point Transmission Service, and Generator Interconnection Service.

¹ Order No. PSC-06-0388-FOF-EI, issued May 9, 2006, Docket No. 020233-EI, In re: Review of GridFlorida Regional Transmission (RTO) Proposal.

The FRCC transmission planning process provides for the transparent evaluation of merchant transmission projects. Section 186.801, Florida Statutes, requires the major generating electric utilities to conduct and submit to the FPSC 10-year site plans. These plans include forecasts of load and the resources needed to maintain reliability, including generation and transmission additions. As discussed above, the FRCC relies on the 10-year site plans in its transmission planning process. Entities not required to submit a 10-year site plan to the FPSC must submit a plan to the FRCC for consideration in its transmission planning process. This includes entities seeking to construct merchant transmission. The existing process thus provides for the review of both utility and non-utility infrastructure additions.

Areas of Concern

1. Transmission planning and interregional coordination

State authority over transmission plans and the ability of regions to develop planning processes and decisions should not be usurped by FERC. While the NOPR recognizes that transmission providers would retain planning responsibility and would not direct investments found to be needed in a plan, the FPSC is concerned that FERC may be seeking additional authority to regulate transmission planning. These concerns are manifested in statements in the NOPR where FERC would require the establishment of planning criteria. Also, FERC would require each public utility to submit to FERC the process used to evaluate whether to include a proposed transmission line into the transmission plan. Finally, FERC would require the development of a regional transmission plan and that regions enter into interregional planning agreements that would be submitted to FERC. The FPSC is concerned that these proposals would have the effect of ceding authority to FERC to directly regulate transmission planning.

As stated above, the FPSC has authority to ensure that Florida's electric utilities adequately plan and operate the grid.² The FRCC has established transmission planning processes that are open and transparent to both utility and non-utility stakeholders. These processes ensure that Florida's electric grid is adequate and reliable, and that transmission additions are needed to maintain reliability and are cost-effective to ratepayers. The FRCC also coordinates with the Southeastern Reliability Coordinating Council to address any interregional planning concerns. In summary, FERC should continue to defer to states that have authority over transmission planning, and the adequacy and operation of the transmission grid.

2. Cost allocation

The cost of transmission should be assigned to those who benefit from it, using a "cost causer pays" allocation model. The costs for new transmission facilities not needed for bulk system reliability should be borne by the entity requesting it. The FPSC commends FERC for affording regions flexibility to establish cost allocation methodologies and for recognizing the need to allocate transmission costs commensurate with the benefits from such costs.

The FPSC is concerned, however, that FERC may seek to nullify the cost causation principle by proposing to allocate transmission costs to customers of utilities that do not incur the costs. The NOPR would require public utilities to develop cost allocation methodologies through which beneficiaries would be allocated costs for transmission facilities commensurate with the benefits received. It is unclear how these benefits would be determined and allocated. Also, if a cost allocation methodology cannot be achieved within a region, FERC states it would

² Section 366.04(5), F.S., states: "The Commission shall further have 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 the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities."

have authority to establish a methodology based upon record evidence. This appears to contravene state authority.

FERC should continue to recognize the cost causer principle which ensures costs are allocated directly to those who benefit. Any attempt to modify this principle through the introduction of an unclear proposal based on a potentially broad definition of benefits, introduces risk of significant transfer of risks to retail ratepayers.

3. Merchant Transmission

Florida's vertically integrated electric utilities operate under a statutorily mandated obligation to serve customers.³ These utilities must plan and operate their respective systems to ensure customers receive adequate, reliable service in a cost-effective manner. While FERC states that it does not propose to change or seek to preempt any state law, the FPSC is concerned that proposals in the NOPR relating to merchant transmission may challenge the ability of utilities to meet the obligation to serve. Specifically, FERC appears to propose that the right of first refusal on transmission access for incumbent transmission owners be removed and opened to non-regulated merchant transmission providers. These parties, however, are not under the statutory obligation to serve. Therefore adequate performance assurances must be given to ensure merchant transmission projects identified through the FRCC transmission process will be constructed. Failure to bring such projects as planned, could negatively impact the reliability of Florida's bulk transmission system and cost to customers.

The FPSC is also concerned that FERC's proposal may circumvent FPSC authority over the establishment of rates for transmission infrastructure that serve retail load. The NOPR appears to allow entities seeking to construct merchant transmission to recover project cost from Florida ratepayers through a FERC-approved cost allocation process. Merchant transmission

³ Section 366.03, Florida Statutes.

projects identified for review in a regional plan would be entitled to cost recovery. The rates for merchant transmission projects would appear to be regulated by FERC and not by the FPSC.

4. Conclusion

FERC should carefully consider the impact its decisions in this rulemaking could have upon states with jurisdiction over vertically integrated utilities. Despite statements to the contrary, it appears that FERC's efforts would undermine the FPSC's jurisdiction over the adequacy and reliability of Florida's bulk transmission system. Also, this could lead to increased cost to retail ratepayers, and uncertainties and delays in existing open and transparent transmission planning processes.

Respectfully submitted,

/ s /

Cynthia B. Miller
Office of the General Counsel

FLORIDA PUBLIC SERVICE
COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6199
cmiller@psc.state.fl.us