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Public Service Commission

April 26, 2001

VIA AIRBORNE EXPRESS

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

RE: Docket No. RT01-67-000, GridFlorida, LLC, Florida Power & Light
Company, Florida Power Corporation, Tampa Electric Company

Dear Mr. Boergers:

Enclosed are an original and fifteen copies of the Request for Clarification and Expedited Rehearing of the Florida Public Service Commission in the above-captioned proceeding.

Please date-stamp and return one copy in the enclosed, postage-paid envelope.

Sincerely,

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Robert V. Elias, Esquire
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CBM:RVE:tf
Enclosures

cc: Charles D. Gray, National Association of Regulatory Utility Commissioners

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

GridFlorida LLC)	
Florida Power & Light Company)	
Florida Power Corporation)	Docket No. RT01-67-000
Tampa Electric Company)	
_____)	

**Florida Public Service Commission's
Request for Clarification and Expedited Rehearing**

Pursuant to 18 CFR § 385.713 (2000), the Florida Public Service Commission (FPSC) hereby files this request for clarification and expedited rehearing of FERC's Order Provisionally Granting RTO Status (94 FERC ¶ 61,363) issued March 28, 2001, in this docket. The FPSC seeks rehearing/clarification concerning: (1) the decision not to hold an FERC-FPSC joint technical conference; (2) the FPSC's role concerning reserves; (3) the FPSC's role in market monitoring; (4) the FPSC's role in the planning and expansion of transmission facilities; and (5) the absence of "consultation with state officials" discussed in the Federal Power Act and Order 2000. Further, the FPSC believes expedited treatment of this request concerning the technical conference is appropriate to help assure the timely and efficient implementation of the GridFlorida RTO.

I. STATEMENT OF ERRORS

18 CFR § 385.713(c)(1) requires that the rehearing request "(s)tate concisely the alleged error in the final decision or final order." In this instance, the FERC failed to engage in reasoned decision making when it denied the FPSC's request for a joint technical conference on the basis that the collaborative process is working "reasonably well" and should be completed. As more fully explained in this motion, the collaborative process did not, and will not, adequately address the

matters which the FPSC believes should be the subjects of the requested technical conference. The FPSC seeks a technical conference to discuss the respective roles of the FERC and the FPSC in regulating the planned GridFlorida Regional Transmission Organization. Further, the FERC's order overlooks and fails to consider the FPSC's statutory responsibilities concerning the adequacy of reserves, market monitoring, and transmission planning. These matters are critical to the operation of the RTO and need to be addressed in this docket.

II. REQUEST FOR TECHNICAL CONFERENCE

The FERC stated, in the Order at page 3, that

[T]here are practical problems in attempting to arrange such meetings with all interested state commissions concerning the various RTOs that have been proposed, and we believe that the collaborative process we have established for processing Applicants' RTO filings is working reasonably well and should be completed.

A. **This statement is in error because it incorrectly presumes that the subject matter of the proposed technical conference is being addressed by the collaborative process.**

Section 366.02(2), Florida Statutes, defines "Electric utility" as "...any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." As an investor-owned electric utility which will own, operate, and maintain a transmission system within the state, GridFlorida will be subject to state regulation, to the extent not pre-empted by Federal law. The FPSC is charged by law with "...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..." Section 366.04(5), Florida Statutes. The FPSC intends to exercise this jurisdiction to protect the economic well-being of the people of this state.

Structural inadequacies, such as those that exist in California, are not acceptable for Florida. The coordination of state and federal jurisdiction in this area is a matter which should be discussed and decided by state and federal regulators, not potential market participants and transmission providers. Thus, the collaborative process has not addressed this area of critical concern.

B. This statement is in error because GridFlorida is contained within one state--the State of Florida.

GridFlorida is contained within the Florida Regional Coordinating Council (FRCC) region and within the State of Florida. This does put Florida in a different posture. It would not entail multiple states being involved in a meeting with the FERC. Instead, it involves one state and one currently-existing reliability region.

Because GridFlorida is contained within a single state, it should be relatively easy for FERC and the FPSC to delineate the respective jurisdiction and responsibilities . A technical conference would be valuable to FERC because it would avoid potential future conflicts and assure efficient, timely, and final answers to the issues associated with this new entity that will require regulatory decisions. A technical conference would clarify the state's primary role over reliability and resolve joint oversight over common areas of jurisdiction, such as operations and grid security.

This will assure that FERC and FPSC resources will be used most efficiently and establish the essential elements of coordination between the Federal and state regulatory agencies. A cooperative Federal-state relationship is critical at this juncture.

C. The statement is in error because the collaborative process is not working "reasonably well."

The collaborative process is not working "reasonably well." We have found it to be significantly lacking in the following critical ways.

(1) **There have been meetings which exclude the state commission staff.**

The Applicants have acknowledged that there have been meetings which exclude the state Commission staff and other participants at which significant decisions have been made.

(2) **Ex parte requirements have prevented the FPSC staff from having “collaborative” discussions with FERC staff.**

The FPSC staff attempted to meet with FERC staff to develop a Memorandum of Understanding concerning the respective FERC-FPSC jurisdictions. Due to the FERC’s ex parte requirements, such meetings were not possible. This imposes a quasi-judicial standard on a policymaking process. As is true in this case, the imposition of strict procedural requirements in a policy-oriented approval process will result in a sub-optimal decision. The FERC staff suggested that if the FPSC were not a party, there could be free discussion. However, the FPSC must be a party to the proceeding to protect the interests of 15 million Floridians who have not been part of the “collaborative process.”

(3) **The FPSC did not “participate” in the RTO collaborative discussions.**

While FPSC staff monitored the RTO meetings in Florida, the FPSC did not “participate” in a full sense. While several Commissioners individually attended meetings of the stakeholder working groups, the FPSC, as a collegial body, did not attend, did not debate the proposal, and did not provide input at the stakeholder meetings. If the FPSC had done so, Florida’s Sunshine Law would have required more extensive noticing requirements and open discussion. The FPSC has not, as a body, had the opportunity to hold any evidentiary review of the piecemeal proposal. Even now, there is no cost information on the proposal and only sketchy details on market design. These are areas of critical importance to the people of the state of Florida.

(4) **The FERC would benefit from a collaborative effort with the FPSC.**

The FPSC believes a joint technical conference of the FERC and the FPSC is the best way to address numerous jurisdictional issues. Federal-State jurisdictional questions have been raised in other RTO filings, underscoring the importance of the timely consideration of these issues. The FPSC believes that local oversight and coordination of the respective jurisdictions is the best way to assure that GridFlorida operates to further the national policy goal of developing a fully competitive wholesale market for electricity. The FPSC recognizes that FERC has limited resources to fully monitor nationwide the developments on RTOs. The FPSC has the resources, the expertise, and the statutory responsibility to serve in this way in Florida. This is a matter of prime importance to the State of Florida.

At a juncture in history when competitive provision of utility service is viewed as the preferred model, the GridFlorida RTO has been approved by FERC as a monopoly provider, with no competition. No market forces will check the power of this entity. This is an area that always has been and should continue to be effectively regulated. The failure to do so increases the likelihood of sub-optimal results, as have been experienced in California. The delineation now of the respective responsibilities of the FERC and the FPSC in regulating this new monopoly is an opportunity to avoid potential problems. This opportunity should be pursued.

(5) **Congress envisioned a FERC-State collaborative process in the Federal Power Act (FPA)**

The Federal Power Act is replete with provisions reflecting Congressional intent for collaboration between the FERC and the States. In particular, see Section 209 of the FPA on "Use

of Joint Boards; Cooperation with State Commissions.” Also See 18 CFR Section 385.1301 on Cooperative Procedure with State Commissions.

Section 209 provides that the FERC “may refer any matter arising in the administration of this Part [of the FPA] to a board to be composed of a member or members, as determined by the [FERC], from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings.”

In addition, Section 209 provides that the FERC “may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the [FERC].” The FERC is “authorized to hold joint hearings with any State commission in connection with any matter with respect to which the [FERC] is authorized to act. The [FERC] is authorized in the administration of [the FPA] to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.”

Here, in the GridFlorida proceeding, we have an ideal opportunity for this type of referral and collaborative effort. The FPSC is ready, willing and able to undertake such an effort to assure that GridFlorida is regulated in the public interest, consistent with the national policy goal of establishing a competitive wholesale electric market. This is precisely what the authors of the FPA envisioned.

- (6) **Provisions in Order 2000 support a Federal-State Collaborative Process on RTOs**

Several provisions of Order 2000 speak to a collaborative process. On page 4 of the Order, FERC states it is establishing a “collaborative process by which public utilities and nonpublic utilities that own, operate or control interstate transmission facilities, in consultation with state officials as appropriate, will consider and develop RTOs. On page 231, the Order provides, “State involvement is important for several reasons, especially where RTOs are a critical element of the retail choice programs of many states. State commissions are in a unique position to assess whether a particular RTO design will help or hinder their efforts to promote retail competition.” On page 618, there is a discussion about the States’ role with regard to RTOs. Starting at page 626, the FERC reiterates that “States have important roles to play in RTO matters.” “Regional interests forming an RTO should consult with the States about what state roles best fit the agencies’ authorities and preferences and the organizational form of the RTO.” (p. 627) It is entirely consistent with these statements in Order 2000, and in the public interest, for the FPSC and the FERC to collaborate in an open, noticed public meeting to assure that the regulation of GridFlorida is accomplished in the most effective manner.

III. THE FERC SHOULD CLARIFY IN ITS ORDER TO ACKNOWLEDGE THE STATUTORY ROLE OF THE FPSC ON RESERVES.

It is unclear from a review of the FERC order, whether the FERC recognizes the FPSC role in maintaining adequate generation. The FPSC’s role is not that of a market participant. The FPSC has the responsibility to assure that Florida utilities have adequate facilities to meet their obligations to serve their customers. See Sections 366.05(1), (7), and (8), Florida Statutes.

For example, on page 35 of the Order, there is discussion about the interplay of GridFlorida authority versus FRCC responsibility as the Security Coordinator. The Order states:

We agree with Orlando Utilities Commission that GridFlorida has no authority over the FRCC and cannot assign tasks to the FRCC or dictate how the FRCC performs its functions and responsibilities. It is not clear whether GridFlorida has established an understanding with FRCC as to the necessary functions and the timetable for their completion. Therefore, GridFlorida is directed to submit a statement of whether it has reached agreement or entered into a memorandum of understanding . . . with FRCC and to file such statement within 60 days of the date of this Order.

This discussion in the Order lacks any reference to the FPSC role in assuring adequate reserves.

Similarly, the discussion in the Order regarding the Installed Capacity and Energy (ICE) proposal is less than clear. It states at page 80:

[A]s Applicants concede, many important provisions concerning this service need to be specified, and to develop them and address the issues that have been raised, much additional consultation and negotiation is necessary among Applicants, market participants, the Florida Commission and the FRCC. [Emphasis supplied]

“Consultation” and “negotiation” are far different than “state regulation.” The FPSC has authority in this area and will continue to fulfill our statutory responsibility to assure adequate reserves.

IV. THE MARKET MONITORING PROVISIONS IN THE ORDER SHOULD BE CLARIFIED TO RECOGNIZE A STATE COMMISSION’S UNIQUE ROLE AMONG THE STAKEHOLDERS.

Both FERC Order 2000 and the GridFlorida order recognize the critical importance of the market monitor function. With respect to the rates paid by Florida’s consumers, the FPSC is, and will continue to be, the “market monitor.” The state Commission has a unique and preeminent responsibility in this area. The entire reason for a market monitor is to assure that the market is not “gamed” or that a participant does not exercise undue influence or control prices to obtain excess profits. The result of such conduct is that consumers will pay prices higher than are appropriate. For virtually every action subject to scrutiny by a market monitor, there is a higher-than-appropriate cost potentially borne by Florida consumers. As to public utilities, market abuses raise issues of

prudence and cost recovery. It is imperative that the FERC recognize that many issues concerning market power abuses and retail rates are inexorably linked. More often than not, such issues involve common facts. The FPSC will continue to take actions to assure that only prudent costs are borne by retail customers. The timely, efficient, and perhaps, simultaneous, adjudication of these issues involving common facts is in the public interest. It is a much more efficient use of public funds to address the issues of jurisdiction now, rather than through after-the-fact appellate litigation. This is particularly the case for Florida, in which the FERC has approved an RTO within a single state.

V. THE FERC ERRED IN FAILING TO CONSIDER THE FPSC'S RESPONSIBILITIES CONCERNING PLANNING AND EXPANSION.

The FERC Order refers, at page 90, to the FPSC's concern that the provision for FERC-approved dispute resolution is inconsistent with the FPSC's statutory responsibility to take action if there are inadequacies in GridFlorida's expansion plan. The order gives this concern short-shrift.

It states:

We expect that GridFlorida's expansion plan will include the construction necessary to meet the reliability requirements imposed on Florida utilities by the Florida Commission and by the FRCC. If the Florida Commission believes that a specific plan does not, it should bring the matter to the Commission's attention. Until then, the Florida Commission's concern is premature.

As with the conclusions with respect to FRCC's role as security coordinator, this appears to place the FPSC in a supplicant role to the FRCC rather than in an independent regulatory role authorized by state law. Yet, Florida Statutes provide for the FPSC to oversee a coordinated grid and to determine the need for new transmission (Sections 186.801, 366.04, 366.055, and 403.537, Florida Statutes.) Should it appear that GridFlorida's plans are not consistent with the needs of the state, the FPSC will exercise its statutory authority.

VI. FERC'S GRIDFLORIDA ORDER DOES NOT REFLECT THE GUIDANCE IN FERC ORDER 2000 REGARDING "CONSULTATION WITH STATE OFFICIALS."

FERC Order 2000, at page 4, provides for "consultation with state officials, as appropriate." Yet, the FERC's refusal to hold a joint technical conference, and the imposition of a judicial *ex parte* prohibition in a non-evidentiary, non-ALJ proceeding have resulted in essentially no "consultation with" the state commission. While the FERC did hold a meeting in Atlanta prior to the GridFlorida filing, this was a meeting held in a vacuum without any proposal for review.

In FERC Order 2000, at page 626, the FERC notes:

We continue to believe that states have important roles to play in RTO matters. For example, most states must approve a utility joining an RTO Also, states must approve the siting of transmission facilities that are called for in an RTO expansion plan. We believe, however, that it is not appropriate to try to set out a full set of states' roles in this rule.

VII. THERE IS A NEED FOR AN EXPEDITED DECISION ON THIS PETITION FOR REHEARING.

When petitions for rehearing were filed on Order 888, the FERC took nine months to issue a rehearing Order. The FPSC believes that this matter must not wait. If GridFlorida proceeds with its planned December, 2001, implementation date, these issues of jurisdictional concern must not be delayed. Well-considered, well-planned, coordinated federal-state oversight of this RTO is crucial. The requested technical conference is a vital first step in this process. The timing of this conference must be consistent with the requirements of state law concerning notice of public meetings. Accordingly, the FPSC requests that a conference be scheduled in Tallahassee, Florida, a minimum of three weeks after the issuance of the Order granting the request.

VIII. CONCLUSION

In conclusion, the FERC should grant, on an expedited basis, the FPSC's request for a technical conference to be scheduled at least three weeks after the issuance of the Order on Rehearing. Further, FERC should clarify its Order Provisionally Granting RTO Status to recognize the FPSC's role concerning reserves; market monitoring; and the planning and expansion of transmission facilities.

Respectfully submitted,

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DATED: April 26, 2001

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

GridFlorida LLC)
Florida Power & Light Company)
Florida Power Corporation) Docket No. RT01-67-000
Tampa Electric Company)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Request for Clarification and Expedited Rehearing of the Florida Public Service Commission is being sent today by U.S. Mail to all parties on the attached service list.

Cynthia B. Miller, Esquire
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