

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

Alabama Power Company)	Docket Nos. ER13-908-001
)	ER13-908-002
)	

**FLORIDA PUBLIC SERVICE COMMISSION'S
REQUEST FOR REHEARING**

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 FERC's infringement on the Florida Commission's jurisdiction over transmission planning, siting, and reliability in its Order on Rehearing and Compliance (Second Compliance Order), issued on June 19, 2014.

I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

The Florida Commission seeks rehearing of the Second Compliance Order on the following issues:

1. FERC erred by exceeding its authority under the Federal Power Act and infringing on the Florida Commission's role in transmission planning, siting, and reliability. Sections 201(a) and 217(b)(4), Federal Power Act, 16 U.S.C. § 824; FERC Order 1000; *Electric Power Supply Association v. Federal Energy Regulatory Commission*, 2014 U.S. App. LEXIS 9585 (D.C. Cir. 2014).

2. FERC erred by creating an overarching framework that pushes the utilities to form a duplicative and inefficient Regional Transmission Organization (RTO)-like transmission planning process, without authority to do so. Section 201(a), Federal Power Act, 16 U.S.C. § 824; *Electric Power Supply Association v. Federal Energy Regulatory Commission*, 2014 U.S. App. LEXIS 9585 (D.C. Cir. 2014).

II. ARGUMENT

Florida retains a vertically integrated, state regulated approach to the electric industry, whereby the Florida Commission holds substantial authority to ensure an adequate and reliable bulk power grid. The Florida Commission's oversight of transmission planning in Florida serves to protect ratepayers in Gulf Power Company's territory and to ensure that local planning regions are not unfairly or unreasonably burdened by transmission plans that result in allocated costs to ratepayers for which they receive little benefit. The Florida Commission continues to be concerned that FERC's approach to transmission planning and cost allocation would infringe on state authority and establish a duplicative and inefficient transmission planning process that imposes additional costs on Florida consumers without corresponding benefits.

1. **FERC erred by exceeding its authority under the Federal Power Act and infringing on the Florida Commission's role in transmission planning, siting, and reliability.**

While it was unclear in the First Compliance Order, issued July 18, 2013, the process FERC would impose to implement FERC Order 1000, FERC now states in paragraphs 85 and 452 of the Second Compliance Order that it intends to allow for a state level transmission planning process and a separate federal level process. If FERC were to make a decision based on the federal process that overrules and conflicts with a decision made by the Florida Commission in its transmission planning process, this would infringe upon and effectively undermine the Florida Commission's transmission planning process authority in contravention of the Federal Power Act, 16 U.S.C. § 824.

The United States Court of Appeals for the District of Columbia Circuit's recent decision in *Electric Power Supply Association v. Federal Energy Regulatory Commission*, 2014 U.S.

App. LEXIS 9585 (D.C. Cir. 2014), supports the Florida Commission's position that FERC has erred in the Second Compliance Order. In *Electric Power Supply Association*, the Court stated:

The limits of §§ 205 and 206 [of the Federal Power Act] are best determined in the context of the overall statutory scheme. Congressional intent is clearly articulated in § 201's text: FERC's reach "extend[s] only to those matters which are not subject to regulation by the States." States retain exclusive authority to regulate the retail market. Absent a "clear and specific grant of jurisdiction" elsewhere, the agency cannot regulate areas left to the states.

Id. at *11 (internal citation omitted). The Court concluded in *Electric Power Supply Association* that FERC cannot regulate the retail market because FERC's authority under §§ 205 and 206 is limited. *Id.* at *11-*12. The Court's rationale in *Electric Power Supply Association* applies to the matter at hand and prevents FERC from mandating the transmission planning arrangement set forth in the Second Compliance Order.

States have explicit transmission planning authority. Section 186.801, Florida Statutes, establishes a ten-year site plan process in Florida. These ten-year site plans, which address integrated resource planning, are submitted by utilities in the state. The statute sets out a "bottom-up" process for each utility in Florida to submit to the Florida Commission a plan for approval. In the ten-year site plan, each electric utility, including Gulf Power, must submit to the Florida Commission its estimated power-generating needs and the general location of its proposed power plant sites, including needed transmission additions, over the next ten years. These plans address reliability, economic and public policy considerations. The Florida Commission then must deem each plan as "suitable" or "unsuitable" and may suggest alternatives to the plan. Then, when a transmission line siting application is filed pursuant to the Florida Transmission Line Siting Act in Chapter 403, Florida Statutes, the ten-year site plan will be considered in determining the need for the line. When the Florida Commission receives a petition for determination of need for a transmission line, pursuant to Section 403.537, Florida

Statutes, substantially affected parties may challenge the project. The Florida Commission then approves or denies that project.

Moreover, 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 the avoidance of 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 ensure the development of adequate and reliable energy grids.

The Florida Commission also 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 Florida Commission may require installation or repair of necessary generation or transmission facilities, whereby mutual benefits will accrue to the electric utilities involved. *Id.* Furthermore, costs associated with infrastructure repairs or additions must be distributed in proportion to the benefits received. *Id.*

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 ensure the efficient and reliable operation of Florida’s energy grid.

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 16 U.S.C. § 824. Section 215 of the Federal Power Act, 16 U.S.C. §824o, grants the FERC jurisdiction to approve and enforce compliance with bulk transmission reliability standards. However, nothing in Section 215 of the Federal Power Act 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. Section 217 of the Federal Power Act allows FERC to "facilitate" planning, not to direct it.

FERC's ability to ultimately make a decision based on the regional planning process established by the Second Compliance Order that could conflict with a decision made by the Florida Commission shows that FERC's Second Compliance Order exceeds the authority granted to it under the Federal Power Act. *See* 16 U.S.C. § 824. As *Electric Power Supply Association*, 2014 U.S. App. LEXIS at 9585, makes clear, FERC cannot directly regulate that which the Federal Power Act has left to state regulation.

2. FERC erred by creating an overarching framework that pushes the utilities to form a duplicative and inefficient Regional Transmission Organization (RTO)-like transmission planning process, without authority to do so.

While some states have ceded some authority to FERC due to the creation of Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), the Florida Commission has retained 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 express authority to make decisions with respect to determining the need for transmission projects and for the recovery of costs through retail rates. The parallel state and

¹ 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.

federal transmission planning processes set forth in paragraphs 85 and 452 of the Second Compliance Order appear to create an overarching framework that pushes the SERTP utilities to form a duplicative and inefficient RTO-like transmission planning process.

FERC's directives also diverge from the Florida Commission's own experience. On May 9, 2006, the Florida Commission issued Order No. PSC-06-0388-F0F-EI, *In re: Review of Grid Florida Regional Transmission Organization (RTO) Proposal*, 2006 Fla. PUC LEXIS 243 (2006), in which the Commission declined to create an RTO in Florida. That order stated that "continued development of GridFlorida does not appear to be cost-effective, and that it would not be prudent or in the public interest to continue the development of GridFlorida." *Id.* at *32.

From 2001 to 2006, the Florida Commission extensively studied this issue in response to FERC Order No. 2000. Following numerous workshops, technical conferences, and related hearings, the Florida Utilities involved in the GridFlorida proposal, which are the same FERC-jurisdictional utilities that make up the FRCC region, hired ICF Consulting to conduct an analysis of the costs and benefits of an RTO in Florida. ICF Consulting characterized the prospects of such a structure as "bleak," finding that one proposal would have costs exceeding benefits by more than \$700 million dollars over the first 13 years of operation, while a "more advanced" proposal would have costs exceeding benefits by \$285 million over the same period. After the release of that study, the Florida Commission accepted the withdrawal of the GridFlorida proposal, finding that it did not appear to be in the best interests of the people of the State of Florida.

The states included in the Southeastern Regional Transmission Planning (SERTP) footprint include Alabama, Georgia, Indiana, Iowa, Kentucky, Mississippi, Missouri, Ohio, Oklahoma, Tennessee, and Virginia, as well as Florida. Florida is not directly interconnected

with many of the states. As part of Southern Company, Gulf Power Company connects with most of Georgia and Alabama and much of Mississippi, but has very limited ability to transmit or receive power from elsewhere in the SERTP. Thus, this increases the Florida Commission's concern that, as a result of the imposition of the inefficient and duplicative RTO-like transmission planning process set forth in the Second Compliance Order, Florida ratepayers may be asked to incur additional wholesale costs without commensurate benefits from such a process.

III. CONCLUSION

Wherefore, the Florida Commission respectfully urges FERC to grant rehearing on the issues identified above and honor state statutory authority over transmission planning, siting, and reliability.

Respectfully submitted,

/s/ Samantha M. Cibula

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DATED: July 21, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties identified on the Commission's official service list compiled by the Secretary in this proceeding.

Dated at Tallahassee, Florida, this 21st day of July 2014.

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