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# Public Service Commission

October 7, 2005

## VIA ELECTRONIC FILING

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Re:** Docket No. RM05-30-000, Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards

Dear Ms. Salas:

Forwarded herewith are comments of the Florida Public Service Commission in the above docket with regard to Electric Reliability Organizations.

Kathy Lewis at (850) 413-6594 and Cindy Miller at (850) 413-6082 are the primary contacts on these comments.

Sincerely,

/s/

Cindy B. Miller  
Senior Attorney

CBM:tf

cc: Charles Gray, NARUC

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

<b>Rules Concerning Certification of the Electric</b>	)	
<b>Reliability Organization; and Procedures</b>	)	
<b>for the Establishment, Approval, and</b>	)	<b>Docket No. RM05-30-000</b>
<b>Enforcement of Electric Reliability Standards</b>	)	
	)	

**COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION**

The Florida Public Service Commission (FPSC) hereby files to express concerns with certain aspects of the Notice of Proposed Rulemaking (the Rulemaking) issued September 1, 2005. Our comments focus primarily on Sections 38.7 and 38.12 of the proposed rule. We are concerned with FERC's interpretation regarding the ability of Regional Entities to adopt-reliability standards to reflect regional differences as expressed in Section 38.7. We also focus our comments on Section 38.12, which establishes a procedure whereby a party may contest and force a FERC review of a state action to ensure the safety, adequacy, and reliability of electric service within the state, based on a claim that the action is inconsistent with an approved reliability standard. We strongly urge that the FERC rulemaking make it clear that parties to a state action should be required to wait until final state action before FERC review is granted.

**State Law and Authority**

The FPSC's jurisdiction and authority in the area of bulk power system reliability is well-founded in Florida Statutes, expressed in our agency's rules, and carried out through agency action. State law provides:

In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:...(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes. **Section 366.04(2)(c), Florida Statutes**

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. **Section 366.04(5), Florida Statutes**

The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids. **Section 366.05(7), Florida Statutes**

Energy reserves of all utilities in the Florida energy grid shall be available at all times to ensure that grid reliability and integrity are maintained. The commission is authorized to take such action as is necessary to assure compliance. However, prior commitments as to energy use: (a) In interstate commerce, as approved by the Federal Energy Regulatory Commission; (b) Between one electric utility and another, which have been approved by the Federal Energy Regulatory Commission; 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 energy emergency as declared by the Governor and Cabinet. **Section 366.055(1), Florida Statutes**

To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any 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, subject to the provisions hereof. **Section 366.055(3), Florida Statutes**

While we are mindful of the federal role, both as it existed prior to and after the Electricity Modernization Act of 2005, Florida law continues to require oversight by the FPSC of individual utility transmission operating practices. Conformance with North American Electric Reliability Council (NERC) and Florida Reliability Coordinating Council (FRCC) transmission reliability standards has been accomplished with the oversight of the FPSC pursuant to our statutory authority and regulation of the individual utilities under our jurisdiction.

### **Background**

Florida's unique geography as a peninsula has caused the development of a two region approach for reliability purposes. The panhandle area, west of the Apalachicola River, is served by Gulf Power Company (a subsidiary of Southern Company) and the Alabama Electric Cooperative (a generation and transmission cooperative serving four member distribution rural electric cooperatives). Both are members of the Southeastern Electric Reliability Council (SERC).

Peninsular Florida, the area east of the Apalachicola River, operates as a separate electric supply region. Beginning with the Florida Operating Committee, a consortium of three investor-owned utilities formed in the late 1950's, electric reliability issues in peninsular Florida have been addressed by a succession of organizations. In 1972, the Florida Electric Power Coordinating Group established voluntary reliability standards, operating policies and procedures, identified transmission constraints, and eventually developed line loading relief procedures. In 1996, peninsular Florida utilities successfully petitioned the NERC to become the 10<sup>th</sup> Regional Reliability Council, the Florida Reliability Coordinating Council (FRCC).

Prior to the Electricity Modernization Act of 2005, the electric utility industry in Florida used a system of voluntary self-regulation to perform reliability coordination functions through the regional reliability councils and the North American Electric Reliability Council. The FPSC works closely with the reliability councils, providing input into the specific standards. Where agreement cannot be reached, the FPSC has ultimate authority to resolve disputes and establish standards through rulemaking on its own motion. Pursuant to Rule 25-6.0183, Florida Administrative Code (F.A.C.), the FPSC has adopted the FRCC's Generating Capacity Shortage Plan, dated August 2002, as the Commission's plan to address generating capacity shortage emergencies within Florida. Rule 25-6.0185, F.A.C., requires each generating electric utility in Florida to have on file with the FPSC a

long-term energy emergency plan to establish a systematic and effective means of anticipating, assessing, and responding to a long-term emergency caused by a fuel supply shortage. These plans are concurrently filed with the FRCC which coordinates the emergency actions taken by electric utilities within peninsular Florida. Most recently, the FRCC has filed a rulemaking petition with the FPSC to establish a procedure in Florida governing state review of regional bulk power system reliability standards established as a result of the FERC's implementation of the Electricity Modernization Act of 2005.

### **Areas of Concern**

The FPSC has supported mandatory national reliability standards with the caveat that State statutes continue to be met. The FPSC is concerned the proposed rule could diminish Florida's ability to assure safe, adequate, reliable and efficient operation of the energy grid in Florida. As stated above, Florida Statutes grant the FPSC significant authority in this area. If reliability problems arise, the FPSC is required to take action, as needed, to resolve them.

### **Delegation of certain Electric Reliability Organization (ERO) authority to Regional Entities - Section 38.7**

FERC's interpretation of delegated authority appears to be more restrictive than contemplated by the Electricity Modernization Act of 2005. Section 215(e) of the Act states that the Commission (FERC) "may assign the ERO's authority to enforce reliability standards under paragraph (1) directly (emphasis supplied) to a Regional Entity ...." At paragraph 80 of the proposed rulemaking, the FERC states its interpretation of Subtitle A as meaning "the only delegated authority a Regional Entity would possess would be the authority to enforce Reliability Standards approved by the Commission in a specific region." FERC's interpretation appears to mean that Reliability Standards by a Regional

Entity which address regional differences will not have the same weight as national ERO Reliability Standards. As stated in paragraph 80, Reliability Standards proposed by a Regional Entity to the ERO, if ultimately approved by FERC, become “regional variances” and could only supplement ERO Reliability Standards, not substitute for them. ***The FPSC urges the FERC to make it clear that regional standards and criteria adopted by a Regional Entity with appropriate State review and approval be treated as and given the same weight within the region as ERO Reliability Standards.***

#### **Review of State Action - Section 38.12**

Section 38.12 of the proposed rule specifies that states are not preempted from taking action to ensure the safety, adequacy, and reliability of electric service within the state, so long as such action is not inconsistent with a FERC approved reliability standard. Section 38.12 also establishes a procedure whereby a party may contest a “state action,” resulting in a FERC review. As stated previously, Florida’s authority to take action to ensure the safety, adequacy, and reliability of electric service within the state is well founded in Florida Statutes. The practical application of the FPSC’s authority has resulted in a high degree of reliability for our state. We ask the FERC to give deference to the states. FERC rulemaking should clarify that a state action should be final, through the issuance of a state commission order, prior to FERC initiating a consistency review of such “state action” pursuant to a request from the ERO, a Regional Entity, or other party. **The proposed rule should not allow parties to cause a “state action” to be prematurely stayed.**

#### **Conclusion**

The FPSC supports the Electricity Modernization Act’s requirement for mandatory reliability standards and applauds the FERC’s alacrity in proposing rules to implement the Act. However, the

FERC rules should not adopt a one-size-fits-all approach to standards setting. Rather, the FERC rules should allow flexibility to recognize legitimate regional variations for states such as Florida.

Respectfully submitted

/ s /

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