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## Public Service Commission

July 19, 2013

### VIA ELECTRONIC FILING

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

**Re: Docket No. ER13-80-000, Tampa Electric Company**  
**Docket No. ER13-86-000, Duke Energy Carolinas, LLC**  
**Docket No. ER13-104-000, Florida Power & Light Company**

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 June 20, 2013, Order on Compliance Filings in the above-captioned cases. 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**

Tampa Electric Company	)	Docket No. ER13-80-000
	)	
Duke Energy Carolinas, LLC	)	Docket No. ER13-86-000
	)	
Florida Power & Light Company	)	Docket No. ER13-104-000

**FLORIDA PUBLIC SERVICE COMMISSION'S  
REQUEST FOR REHEARING OF ORDER ON COMPLIANCE FILINGS**

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 the Florida Commission's jurisdiction on transmission planning and reliability authority by the FERC Order on Compliance Filings (Compliance Order), issued on June 20, 2013.

**I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS**

**1. The FERC erred by exceeding the requirements of FERC Order No. 1000 and its authority under the Federal Power Act and by infringing on Florida's ten-year planning process when it required a separate top-down regional plan rather than allowing one derived from individual utility plans.**

**2. The FERC erred by applying an overarching framework for the compliance filing that infringes on the Florida Commission's authority over transmission planning and reliability.**

**3. The FERC erred by imposing requirements that push the utilities to form a Regional Transmission Organization (RTO)-like framework, contrary to Florida**

**Commission Order No. PSC-06-0388-FOF-EI, In re: Review of Grid Florida Regional Transmission Organization Proposal.**

**II. ARGUMENT**

The Florida Commission continues to be concerned that the FERC appears to seek an approach to transmission planning and cost allocation which would infringe upon state authority, would impose additional costs on Florida consumers without corresponding benefits, and would establish a duplicative transmission planning structure. The State of 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. As a peninsula, Florida is unique in its exposure to hurricanes, limited cost-effective generation in nearby regions, and preference for siting generation close to load centers.

In Order No. 1000, the FERC offered assurances that public utility transmission providers would be allowed flexibility in developing regional transmission planning processes. Despite FERC's assurances, however, the Compliance Order requires that the Florida Reliability Coordinating Council (FRCC) region conform to a narrow framework that fails to account for the unique characteristics of the electric industry in Florida. Also, Order No. 1000 was replete with statements that the FERC would allow regional differences and that the FERC would not interfere with state jurisdictional authority or state integrated resource planning processes.<sup>1</sup> These commitments have not been fulfilled in the Compliance Order. The Florida Commission seeks rehearing on three issues where the FERC erred in the Compliance Order.

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<sup>1</sup> Order No. 1000 at Paragraphs 61, 154, 156, 604, 624, 754.

**1. The FERC erred by exceeding the requirements of FERC Order No. 1000 and its authority under the Federal Power Act and by infringing on Florida’s transmission planning process when it required an independently created top-down regional plan.**

In paragraph 54 of the Compliance Order, FERC states that it is not sufficient for a transmission planning region to merely “roll-up” local transmission plans without analyzing whether the region’s transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution. In paragraph 56 of the Compliance Order, FERC requires the Florida Parties to develop a single transmission plan for the FRCC region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meets the region’s transmission needs. The regional transmission plan reflected in the filing of the FRCC utilities represents “bottom-up” planning, wherein a regional plan is developed by analyzing and consolidating the plans of individual utilities, as well as any proposed transmission resource by a third party. This approach was contemplated, and apparently endorsed, in Order No. 1000. The requirement to establish a “top-down” plan appears to exceed the requirements of Order No. 1000 and FERC’s authority under the Federal Power Act, and infringes on Florida’s transmission planning process.<sup>2</sup>

*FERC Order No. 1000 Requirements*

FERC Order No. 1000 allowed for a “bottom-up” individual utility transmission plan approach. Paragraph 158 of Order No. 1000 states: “[W]e note that a public utility transmission provider’s regional transmission planning process may utilize a “top down” approach, a “bottom up” approach or some other approach so long as the public utility transmission provider complies with the requirements of this Final Rule.” Paragraph 321 of Order No. 1000 also contemplated

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<sup>2</sup> *Motor Vehicle Mfrs. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43-44 (1983) (finding it arbitrary and capricious for an agency not to “articulate a satisfactory explanation for its action.”)

the “roll up” of transmission plans. Thus, the requirement in paragraph 56 of the Compliance Order for a top-down plan appears to be contrary to Order No. 1000, which recognized that “bottom-up” planning is acceptable.

*Florida Commission’s Authority Over the Transmission Grid*

The requirement in paragraph 56 of the Compliance Order for a “top-down” regional plan also infringes on the Florida Commission’s express statutory 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 ensure an adequate and reliable source of energy for operational and emergency purposes in Florida, and to avoid 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 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. 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 ensure the efficient and reliable operation of Florida's energy grid. The requirement for a "top-down" regional plan hampers the Florida Commission's ability to evaluate the sufficiency of each individual utility's plan for transmission.

#### *Florida's Transmission Planning Process*

Section 186.801, Florida Statutes, establishes a ten-year site plan process in Florida. 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 to submit to the Florida Commission a plan for approval. In the ten-year site plan, each electric utility 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 classify 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 Siting Act (TLSA) in Chapter 403, Florida Statutes, this plan will be considered in determining the need for the line. When the Florida Commission receives an individual utility project filing for a certification of need for a project, pursuant to Section 403.537, Florida Statutes, parties may challenge the project as not being the most cost-effective solution. The Florida Commission then approves or denies that project.

The FRCC compiles and analyzes the individual utility plans, including any proposed transmission projects by third parties, and ultimately establishes a regional transmission plan.

By foreclosing a primary use of the “roll-up” of local transmission plans without additional steps, the FERC Compliance Order appears to impede the ability of the companies and the Commission to comply with the requirements of Florida law. The FERC would also appear to impose a duplicative transmission planning process which would result in additional costs to consumers in the FRCC region without corresponding benefits.

*FERC’s Jurisdiction Under the Federal Power Act*

The requirements of the Compliance Order are at odds with what the FERC claimed it would do in Order No. 1000, which is to grant flexibility to regions, as noted in paragraphs 61, 604, 624 and 745 in Order No. 1000. 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.<sup>3</sup> The Courts have emphasized this limited authority.<sup>4</sup> 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. Section 217 of the FPA allows FERC to “facilitate” planning, not to direct it. As illustrated above, Florida has well-established processes and state authority that are being disregarded.

**2. The FERC erred by applying an overarching framework for the compliance filing that infringes on the Florida Commission’s authority over transmission planning and reliability.**

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<sup>3</sup> 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.

<sup>4</sup> *Conn. Light & Power v. FPC*, 324 U.S. 515, 529-530 (1945).

While some states may have ceded some authority to the FERC due to the creation of RTOs/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 the selection of a transmission developer and a transmission project.

Because of its geography, Florida is unique. The bulk transmission grid in the FRCC region has interconnections only to the north with the Southern Company along the State's northern border with Georgia. The 3,600 MW transmission import limit represents only about 7.3% of total peak demand in peninsular Florida. The current integrated resource planning process indicates that the majority of additional resources in the FRCC region will come from the construction of additional generation and the associated fuel delivery infrastructure, and not through the transmission of purchased power from other regions.

In spite of our statutory authority over transmission planning, the Florida Commission is relegated to a mere stakeholder role in the Compliance Order. For example, paragraph 197 of the Compliance Order states:

While we encourage state entities or regional state committees to consult, collaborate, inform, and even recommend a developer that is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation or a transmission project, the public utility transmission providers in a transmission planning region must make the selection decision with respect to the transmission developer and transmission project.

The Compliance Order goes beyond the requirements of Order No. 1000. While Paragraph 688 of Order No. 1000, as well as Paragraphs 290 and 337 of Order No. 1000-A, encouraged transmission providers to find a role for state authorities, the Compliance Order greatly diminishes the Florida Commission's role.



Order No. 1000 also stated that the FERC will not intrude on state authority over transmission siting. However, in a number of ways, the Compliance Order appears to be in conflict with Order No. 1000 in this regard. By undermining the Florida Commission's role over the ten-year site planning process, as set out in Section 186.801, Florida Statutes, the FERC infringes on Florida authority over siting. As discussed above, the ten-year site plan process identifies transmission line projects which would ultimately be subject to the Florida Commission's siting authority under Section 403.537, Florida Statutes.<sup>5</sup>

Paragraphs 41-43 of the Compliance Order also appear to eliminate or at least dilute the FRCC dispute resolution provision, which allows inter-utilities complaints to go to the FRCC and then to the Florida Commission. Instead this order substitutes a dispute resolution process via a FERC Section 206 complaint process. Order No. 1000, in paragraph 750, had indicated that all of the regions' dispute resolution processes were in compliance with the Order No. 1000. The FERC should allow the FRCC dispute resolution process to continue.

In paragraph 65 of the Compliance Order, the FERC requires that the utilities remove the reference to the TLSA from the section on minimum thresholds for projects. FERC states that it is unclear if the TLSA criteria could exclude from evaluation transmission facilities that provide benefits to the region and requires the utilities to provide additional justification. However, these are statutory criteria in Florida and should not be superseded by a FERC-mandated set of criteria. Furthermore, Paragraph 287 of Order No. 1000 noted, "Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of

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<sup>5</sup> FERC may not regulate transmission planning or siting indirectly. *See generally, Northern Gas Co., v. Kansas Comm'n*, 372 U.S. 84, 91-93 (1963) (holding that an agency is prohibited from regulating a subject matter indirectly when it lacks direct authority over the same subject); *Towns of Concord, Norwood, and Wellesley, Mass. v. FERC*, 955 F. 2d 66, 71 N.2 (D.C. Cir. 1992) (FERC is prohibited from doing indirectly what it cannot do directly: (quoting AGD, 898 F 2d at 810 (per curiam) (Williams, J., concurring))).

transmission facilities.” Thus, the FERC should withdraw the requirement that the utilities remove the reference to TLSA criteria.

**3. The FERC erred by imposing requirements that push the utilities to form an RTO-like framework, contrary to Florida Commission Order No. PSC-06-0388-FOF-EI, In re: Review of Grid Florida Regional Transmission Organization Proposal.**

Paragraph 56 of the Compliance Order states:

Our review of Florida Parties’ compliance filings indicates that as protestors suggest, the proposed regional transmission planning process does not go beyond Order No. 890’s regional transmission planning requirements, as it does not require that the transmission providers in the FRCC region develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meet the region’s transmission needs. In order to comply with Order 1000’s requirements, Florida Parties along with other transmission providers in the transmission planning region, must conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider. In conducting the regional analysis, Florida Parties may not rely exclusively on proposals from interested parties as the region’s means to identify more efficient or cost-effective regional transmission solutions. To satisfy the requirements of Order No. 1000, we require Tampa Electric, Florida Power, and Florida Power & Light to submit OATT revisions that describe the process they will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods. Order No. 1000’s affirmative obligation to identify more efficient or cost-effective transmission solutions applies to transmission needs driven by economic considerations just as it applies to transmission needs driven by public policy requirements or reliability considerations. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light, within 120 days of the date of issuance of this order, to revise their OATTs to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements. [Emphasis added].

FERC’s challenge in paragraph 56 to Florida’s statutory-based transmission planning construct raises the specter of an RTO-like framework in order to meet FERC’s expectation. The

duplicative Federal process appears inefficient. This in itself appears contrary to Florida statutes that require the efficient operation of the Florida energy grid, pursuant to Section 366.055(3), Florida Statutes.

Florida is a non-RTO state, with vertically-integrated utilities. 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. 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.

The Compliance Order’s evaluation criteria go beyond Order No. 1000’s requirements. Order No. 1000 contained no mandate that regions act to “identify and evaluate transmission solutions other than those proposed by qualified transmission developers” as required by paragraph 195 of the Compliance Order. Paragraph 328 of Order No. 1000 only established a mandate for regions to evaluate proposals that may either be superior to existing plans, or may provide economic or public-policy benefits beyond existing plans.

FERC’s Compliance Order thus assumes a mandate exists that is not actually present in Order No. 1000: that regions are required to solicit or develop additional proposals beyond those in the regional transmission plan. As a result, FERC has not provided a justification either for rejecting the Florida Parties’ evaluation proposal or for requiring the inclusion of additional requirements that go far beyond those required in Order No. 1000 or its later clarifying orders.

Like Commissioner Clark in his concurrence, we also question whether the bureaucracy imposed by Order No. 1000 outweighs any benefits that may be gained. As Commissioner Clark states:

FERC jurisdictional utilities that serve Florida are vertically-integrated, monopoly utilities whose planning and operations are comprehensively regulated by the State of Florida. Integrated resource planning and facility siting, as approved by the state, ensures generation and transmission decisions are viewed and approved holistically. The Florida utilities' integration with the rest of the greater southeastern region is limited physically due to Florida's unique geography. There is no central dispatching entity and no LMPs to reflect local congestion. Florida utilities have exercised their right to retain control of their transmission by not choosing to join an RTO/ISO. The Florida Parties state that there are no identified public policy requirements driving regional transmission needs. Thus, in large part, the rationale for Order No. 1000 is lacking in Florida.

We also share Commissioner Clark's concern that "by shoehorning Order No. 1000 into a region with existing and extensive state-led planning," there is a risk of "the creation of an expensive, potentially litigious, and time-consuming additional layer of unnecessary bureaucracy." In fact, 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 exceed benefits by more than \$700 million dollars over the first 13 years of operation, while a "more advanced" proposal would have costs exceed 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. At present, the Florida Commission is greatly concerned that the requirements of the Compliance Order, many of which reach much further than Orders No. 1000 or 1000-A, will result in the confirmation of the concerns expressed by FERC Commissioner Clark. As a result of the imposition of a duplicative RTO-like structure, Florida ratepayers may be asked to

incur additional wholesale costs without commensurate benefits from such a structure. Thus, we ask the FERC to temper the imposition of its overarching Order No. 1000 framework on the FRCC region.

### **III. CONCLUSION**

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

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire  
Office of the General Counsel

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DATED: July 19, 2013

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

Tampa Electric Company	)	Docket No. ER13-80-000
	)	
Duke Energy Carolinas, LLC	)	Docket No. ER13-86-000
	)	
Florida Power & Light Company	)	Docket No. ER13-104-000

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Florida Public Service Commission's Request for Rehearing of Order on Compliance Filings will be served today upon each person listed on the official service maintained by the Secretary of the Commission for the above captioned proceedings.

/ s /

Cynthia B. Miller, Esquire  
Office of the General Counsel

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2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

DATED: July 19, 2013