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## Public Service Commission

November 10, 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 reply comments of the Florida Public Service Commission regarding the Notice of Proposed Rulemaking in the above-captioned proceeding.

Benjamin Crawford at (850) 413-6598 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 ) Docket No. RM10-23-000  
Public Utilities )

**REPLY COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION**

The Florida Public Service Commission (FPSC) appreciates the opportunity to reply to comments made by other stakeholders in this rulemaking process.<sup>1</sup> On September 24, 2010, the FPSC made its initial comments in response to FERC’s June 17, 2010 Notice of Proposed Rulemaking (NOPR) on Transmission Planning Processes and Cost Allocation. The FPSC’s comments primarily addressed three areas: transmission planning and interregional coordination, cost allocation, and merchant transmission.

After reading the comments of numerous other stakeholders, the FPSC has found several issues which merit a reply. The FPSC finds three areas merit the greatest concern: the preservation of state authority, a lack of clarity in the NOPR and in the process, and the status of Florida-based commenters. The following reply comments address each issue in turn.

Preservation of State Authority

The FPSC is in agreement with the Large Public Power Council (LPPC), the Ad Hoc Coalition of Southeastern Utilities (Ad Hoc Coalition), and Southern Company (Southern).<sup>2</sup>

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<sup>1</sup> Commissioner Nathan A. Skop will be filing separate reply comments in this docket.

<sup>2</sup> “Comments of the Large Public Power Council,” the LPPC represents numerous large non-Federal public power providers, including two Florida utilities: JEA (Jacksonville) and the Orlando Utilities Commission. “Comments of the Ad Hoc coalition of Southeastern Utilities,” The Ad Hoc coalition includes numerous Southeastern utilities, including Florida stakeholders Progress Energy Service Company, the parent company of Progress Energy Florida; Southern Company Services, parent company of Gulf Power Company; JEA (Jacksonville), and the Orlando Utilities Commission. “Comments of Southern Company Services, Inc.,” Southern Company is the parent company of Gulf Power, which operates in western Florida.

These commenters note that the issues that the NOPR attempts to address are primarily faced in the RTO and ISO regions, of which Florida is neither part of nor near. Florida's primary transmission challenge, unlike that of any other state subject to FERC jurisdiction, is hardening the grid for hurricane resistance, resolving intrastate transfer additions, and planning for long-term growth. Florida does not currently face the need to transmit large amounts of variable resources, and is not likely to in the future. Florida is not part of the current critical access corridors FERC has designated. Additionally, because Florida is a vertically integrated state, Florida does not have any competing transmission providers vying for contracts. Florida agrees strongly with the aforementioned commenters, and hopes that FERC will confine its attempts to reform the transmission planning and cost-allocation process to the specific challenges the NOPR was originally intended to address.

Numerous state utility regulatory bodies filed comments emphasizing the importance of the preservation of state authority. These commenters include (but are not limited to) the states of Alabama,<sup>3</sup> Arizona,<sup>4</sup> California,<sup>5</sup> Massachusetts,<sup>6</sup> Minnesota,<sup>7</sup> Nevada,<sup>8</sup> North Carolina,<sup>9</sup> Pennsylvania,<sup>10</sup> Virginia,<sup>11</sup> Wisconsin,<sup>12</sup> and (filing jointly) Connecticut and Rhode Island.<sup>13</sup>

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<sup>3</sup> "Comments of the Alabama Public Service Commission," p. 5.

<sup>4</sup> "Arizona Corporation Commission's Comments," p.5.

<sup>5</sup> "Notice of Intervention of the Public Utilities Commission of the State of California and Joint Comments of the Public Utilities Commission and the Energy Resources Conservation and Development Commission of the State of California," pp. 8-9.

<sup>6</sup> "Comments of the Massachusetts Department of Public Utilities and the Massachusetts Department of Energy Resources," pp. 9-12.

<sup>7</sup> "Notice of Intervention and Comments of the Minnesota Public Utilities Commission, Notice of Intervention and Comments of the Minnesota Office of Energy Security," pp. 6-7.

<sup>8</sup> "Comments of the Public Utility Commission of Nevada," p. 3.

<sup>9</sup> "The Joint Comments of the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission," pp. 2-4.

<sup>10</sup> "Comments of the Pennsylvania Public Utilities Commission," pp. 10-11.

<sup>11</sup> "Comments of the Virginia State Corporation Commission," pp. 1-4.

<sup>12</sup> "Comments of the Public Service Commission of Wisconsin," p. 8.

<sup>13</sup> "Notice of Intervention and Comments of the Connecticut Department of Public Utility Control and the Rhode Island Public Utilities Commission Regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities," pp. 2-3.

The National Association of Regulatory Utility Commissioners (NARUC) filed comments that reiterate the same point.<sup>14</sup> These states and NARUC represent widely varying geographic locations and points of view. Additionally, these are states that both stand potentially to gain and to lose from this rulemaking process. FERC must consider the fact that these various states agree despite their widely varying interests in the outcome of the rulemaking process is significant in demonstrating the critical role that the state regulatory authorities play in the transmission planning process. The FPSC agrees with these commenters and others on the importance of preserving state regulatory authority, and strongly urges FERC to consider this in its rulemaking process.

In its comments, the Large Public Power Council (LPPC) notes that FERC has not demonstrated adequate cause for systemwide reform in the NOPR.<sup>15</sup> In particular, the LPPC notes that FERC has marshaled very little evidence of genuine congestion, and seems to be speculating on the possibility of abuses of the system in the future. The LPPC also speculates that FERC appears to be citing a press release indicating possible congestion in the PJM region as the only real-world evidence justifying national transmission planning reform.<sup>16</sup> The LPPC also disagrees with FERC that significant changes have taken place in the three years since the implementation of FERC Order No. 890. The FPSC agrees with the LPPC that FERC appears to lack sufficient justification to apply such a drastic rethinking of transmission planning.

Both the Alabama Public Service Commission and the Ad Hoc Coalition of Southeastern Utilities (Ad Hoc Coalition) note in their comments the inherently different treatment necessary

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<sup>14</sup> “Comments of the National Association of Regulatory Utility Commissioners.”

<sup>15</sup> “Comments of the Large Public Power Council,” pp. 5-12.

<sup>16</sup> “Comments of the Large Public Power Council,” p. 8.

for states with vertically integrated utilities.<sup>17</sup> The Ad Hoc Coalition notes that incumbent utilities in vertically integrated states have numerous obligations, including serving customers, filing tariffs, and, significantly, the integrated resource planning (IRP) process. During the IRP process, utilities under the supervision of state regulators weigh options to meet demand, which include load reduction and efficiency gains as well as additional generation. Non-incumbent transmission providers are not under the same obligations, and as a result the Ad Hoc Coalition argues that they are not facing the undue discrimination that FERC claims exists in these states. Additionally, because such entities would be largely unregulated in Florida, introducing non-incumbent providers into the state carries with it reliability and financial risk. The FPSC agrees with these commenters, and hopes that FERC weighs the differing needs, and lack of urgency for reform, in states with vertically integrated utilities.

For these reasons, the FPSC also agrees with Southern Company's approach to the treatment of non-incumbent transmission providers in states with vertically integrated utilities.<sup>18</sup> Southern Company proposes that non-incumbent transmission providers sign contracts with affected incumbent providers, and have these contracts subject to approval by state regulatory authorities. By doing so, FERC could ensure not only that state jurisdictional rights are respected, but also that undue costs are not passed on to ratepayers and the integrity of local plans are preserved. This process would also ensure that these projects would be subject to prudence review by state regulatory bodies.

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<sup>17</sup> "Comments of the Ad Hoc coalition of Southeastern Utilities," pp. 42-44. "Comments of the Alabama Public Service Commission," pp. 3-5.

<sup>18</sup> "Comments of Southern Company Services, Inc.," pp. 57-61.

Numerous parties emphasize in their comments the importance of “bottom-up” planning that begins with the states, including the IRP and Request for Proposals (RFP) processes.<sup>19</sup> These commenters, which include Florida stakeholders Progress Energy, Southern Company, JEA, and OUC, note that the current process that protects the interests of all stakeholders and ensures the reliability of the electric grid. These commenters also note that much of the revamped transmission planning process foreseen by FERC’s NOPR seems to envision a replacement of this “bottom-up” process with a “top-down” command and control approach that is less suited to meeting the needs of consumers. As a result, the FPSC agrees with these commenters that the current IRP and RFP processes are serving the generation, transmission, and reliability needs of Florida consumers and should be preserved in any future transmission planning process. FERC’s role in transmission planning should remain no greater than its traditional authority, only stepping in to mediate interstate disputes and acting when states refuse to approve or deny a project.

As many commenters note, the existing planning processes in Florida and the rest of the Southeastern region are working well.<sup>20</sup> As such, FERC should ensure the preservation of the current transmission planning processes. The process in Florida primarily involves the Florida Reliability Coordinating Council (FRCC, which covers peninsular Florida) and Southeastern Electric Reliability Corporation (SERC, which covers Northwest Florida and much of the rest of the Southeast region). The FPSC agrees that these processes work well to represent the differing needs of peninsular Florida, which faces unique challenges to its power supply that other regions

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<sup>19</sup> Such comments include the “Comments of the Ad Hoc Coalition of Southeastern Utilities,” “Comments of Southern Company Services, Inc.,” and “Comments of the Coalition for Fair Transmission Policy.” The Coalition for Fair Transmission Policy is a group of ten investor-owned utilities that includes Florida Stakeholders Progress Energy and Southern Company.

<sup>20</sup> Commenters include the “Comments of the Ad Hoc Coalition of Southeastern Utilities” and “Comments of Southern Company Services, Inc.”

of the country do not face. The FPSC also agrees with the Edison Electric Institute (EEI) that these existing regional entities, including FRCC and SERC, should continue to play the role that they have in the past in transmission planning and reliability assurance.<sup>21</sup> The FPSC would also support clarifying the definition of regions so that they respect the current borders of the FRCC and SERC.

#### Lack of Clarity in the NOPR and Process

The Edison Electric Institute (EEI) argues in its comments that FERC's proposal may exceed its jurisdiction over transmission planning principles.<sup>22</sup> EEI notes that the Federal Power Act establishes that FERC does not have authority over matters subject to state regulation. Furthermore, Congress has been hesitant to significantly extend this authority. FERC's role over transmission planning matters has generally been limited under the Federal Power Act. Were Congress to decide to extend FERC's jurisdiction over transmission planning, it should pass legislation to that effect. The FPSC agrees that FERC's legal jurisdiction does not override state regulatory authority in transmission siting matters. Additionally, given the lack of any clear Congressional intent for the extension of Federal power represented in the NOPR, the FPSC believes that FERC should limit the reach of its actions when they conflict with state authority absent explicit Congressional intent.

Numerous commenters note ambiguities and seeming contradictions in the NOPR. The Kansas Corporation Commission characterizes cost allocation methodologies for transmission facilities as "amorphous and unclear" in the NOPR.<sup>23</sup> North Carolina characterizes the NOPR

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<sup>21</sup> "Comments of Edison Electric Institute," p.5. Edison Electric Institute notes that FERC should clarify that the regions it refers to in the NOPR means the regions defined in Order No. 890.

<sup>22</sup> "Comments of Edison Electric Institute," pp. 12-16.

<sup>23</sup> "Comments of the Kansas Corporation Commission," p. 9.

as, “ambiguous and complex.”<sup>24</sup> In its comments, the Coalition for Fair Transmission Policy notes contradictions between FERC’s assurance that costs will not be assigned involuntarily and the possible allocation of costs to ratepayers.<sup>25</sup> Similarly, the Ad Hoc Coalition argues that FERC leaves unclear whether it seeks oversight of major transmission decisions.<sup>26</sup> Southern Company notes one of the NOPR’s key ambiguities: FERC states both that it will respect state autonomy and pursue policies that would seem to undermine that autonomy.<sup>27</sup> Finally, the LPPC notes that the NOPR lacks clarity in several key areas, and that this lack of clarity may have violated the Administrative Procedure Act.<sup>28</sup> Numerous commenters also note that the NOPR fails to clearly define numerous key terms, especially the term “regions” for regional transmission planning. This ambiguity has limited stakeholders’ ability to respond meaningfully to the NOPR, as FERC might be giving an impression of planning to take action it has no intention of taking.

Together, these ambiguities combine to form a policy statement that is both ambiguous and contradictory. While the FPSC applauds FERC for its assurance that state authority will be respected as part of the ongoing process, many of the goals it espouses in the NOPR are either limited in scope or could potentially subvert state authority if applied. As numerous commenters note, the NOPR presents a vague and indistinct model for a process instead of a clear set of policies to react to. Before any reform of the interconnect-wide transmission planning process can continue, FERC needs to address and clarify these ambiguities and contradictions. When Florida and other states are presented with a clear set of policy proposals, at that point can

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<sup>24</sup> “The Joint Comments of the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission,” p. 2.

<sup>25</sup> “Comments of the Coalition for Fair Transmission Policy,” pp. 21-22.

<sup>26</sup> “Comments of the Ad Hoc Coalition of Southeastern Utilities,” pp. 27-29.

<sup>27</sup> “Comments of Southern Company Services, Inc.,” pp. 76-77.

<sup>28</sup> “Comments of the Large Public Power Council,” pp. 16-21, 23-29, 43-47, 53-54.



FERC's policy proposals face a full and comprehensive evaluation. The lack of focus in the current document leaves unclear whether states are facing the possibility of unfair rate impacts to their consumers, the potential for compromised transmission reliability, or simply a new voice in the process.

#### Florida-based Commenters

It is important to note in considering the comments of the Florida-based stakeholders that no set of comments other than those of the FPSC represents a solely Florida-specific viewpoint. While numerous Florida-based stakeholders filed comments, those comments were either as a segment of a parent company with broader interests (as in the case of NextEra and Southern Company) or as part of a coalition with stakeholders outside Florida (as NextEra, Progress Energy, Southern, JEA, OUC, Seminole, FMPA, and FIPUG all did). As a result, the concerns of the Florida stakeholders may have been diluted among those of a broader regional or other type of concern, as in the case of most coalitions. The FPSC hopes that FERC considers this fact when weighing the concerns of Florida's many ratepayers.

The comments of NextEra Energy, Inc. (NextEra) initially concerned the FPSC because they appeared to stand in stark contrast to those of the other Florida utilities.<sup>29</sup> Upon review of a publicly posted draft of the FPSC's reply comments, however, NextEra clarified its initial comments, easing some of the FPSC's concerns.<sup>30</sup> The FPSC has attached a copy of NextEra's letter for reference. The FPSC's concerns stem in part from uncertainty as to whether NextEra's regulated or unregulated affiliates were driving the company's comments. While NextEra owns and operates Florida Power and Light Company (FPL), Florida's largest investor-owned electric

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<sup>29</sup> "Comments of NextEra Energy, Inc."

<sup>30</sup> Letter of Joseph T. Kelliher, NextEra Energy Inc., November 5, 2010.

utility, the interests of NextEra's extensive renewable energy holdings outside Florida seem to be foremost in the company's position in its comments.

The FPSC was initially troubled by NextEra's argument that "reliability requirements and known resource procurement" have "artificially constrained" transmission planning.<sup>31</sup> The FPSC believes it is vitally important that utilities continue to weigh the necessity of transmission projects given their implications for grid reliability and cost allocation. Otherwise, Florida ratepayers risk exposure to costs for these projects with either unclear, indirect, or hypothetical benefits. In its clarifying letter, NextEra assures the FPSC of its commitment to the importance of reliability in transmission planning.<sup>32</sup>

Additionally, as the FPSC has noted, the NOPR is very ambiguous over how it would define "region," a point with which NextEra is in full agreement.<sup>33</sup> In its initial comments, NextEra offered to FERC a set of suggestions on how to define region,<sup>34</sup> which it clarified in its reply letter would "preserve Florida as a region separate from the rest of the Eastern Interconnection."<sup>35</sup> The FPSC fully agrees with and supports NextEra's proposal in this regard.

If FERC adopts a definition of region that does not preserve Florida as a distinct region, however, a NextEra jurisdictional proposal raises concerns. NextEra's initial comments only envision a role for state regulatory authorities in the regional transmission process when the regional entity is wholly contained to a single state.<sup>36</sup> Thus, any region which involves multiple states would need to file its transmission plans only with FERC. If Florida were part of a multi-state region, in opposition to the positions of the FPSC and NextEra, it is unclear what role this

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<sup>31</sup> "Comments of NextEra Energy, Inc.," p. 13.

<sup>32</sup> Letter of Joseph T. Kelliher, p. 2.

<sup>33</sup> "Comments of NextEra Energy, Inc.," p. 10; Letter of Joseph T. Kelliher, pp. 1-2.

<sup>34</sup> "Comments of NextEra Energy, Inc.," pp. 10-12.

<sup>35</sup> Letter of Joseph T. Kelliher, p. 1.

<sup>36</sup> "Comments of NextEra Energy, Inc.," pp. 9-10.

proposed policy concerning multi-state regions would allow the FPSC over the transmission planning and cost allocation process in Florida. While NextEra's letter assures the FPSC that it does not envision a reduced role for state regulatory authorities, their assumption appears to be based on a more confident reading of the NOPR than that of the FPSC.<sup>37</sup>

Finally, the FPSC is concerned with NextEra's proposals regarding the role of public policy in cost allocation of benefits for transmission projects. In its initial comments, NextEra argues that FERC should interpret the term "no benefits" very narrowly, allowing "benefits" to encompass economic, reliability, or public policy concerns over a "reasonable" time period.<sup>38</sup> NextEra also advocates that public policy objectives include those not explicitly required by existing law or regulation, including potential climate change regulation and the risk of having to retire currently operating units.<sup>39</sup> The FPSC believes, however, that benefits eligible for cost allocation must be quantifiable and based on existing state or Federal law. While NextEra states both in its comments and its letter that it supports the idea that anyone receiving cost allocation for a project must receive benefit for it,<sup>40</sup> NextEra and the FPSC interpret the term "benefits" differently. NextEra's definition could allow a transmission project to receive cost allocation based on a projection of the effects of hypothetical legislation.

### Conclusion

In summary, the FPSC agrees with the numerous commenters who express concerns that FERC is attempting to exert a reach beyond its authority legally determined by the Federal Power Act. The FPSC would also like to reinforce commenters who were concerned with some of the contradictions and ambiguities present in the FERC NOPR. Additionally, the FPSC

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<sup>37</sup> Letter of Joseph T. Kelliher, p. 2.

<sup>38</sup> "Comments of NextEra Energy, Inc.," p. 29.

<sup>39</sup> "Comments of NextEra Energy, Inc.," p. 14.

<sup>40</sup> "Comments of NextEra Energy, Inc.," pp. 28-29; Letter of Joseph T. Kelliher, p. 2.

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reminds FERC that no set of comments other than those of the FPSC represents a solely Florida-specific viewpoint. Finally, the FPSC advocates that FERC's final rule define "region" in such a way as to preserve the regions defined by the existing planning processes in the Florida Reliability Coordinating Council and Southeastern Regional Transmission Planning areas.

Respectfully submitted,

/ s /

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Office of the General Counsel

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Appendix: November 5, 2010 letter of Joseph Kelliher  
DATED: November 10, 2010

**Joseph T. Kelliher**  
Executive Vice President  
Federal Regulatory Affairs



November 5, 2010

The Honorable Art Graham, Chairman  
The Honorable Lisa Polak Edgar, Commissioner  
The Honorable Nathan A. Skop, Commissioner  
The Honorable Ronald A. Brise, Commissioner  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Chairman Graham and Commissioners:

I am writing in response to the draft reply comments on the Federal Energy Regulatory Commission (FERC) proposed rule on transmission planning and cost allocation (FERC Docket No. RM10-23) to be considered by the Florida Public Service Commission (FPSC) at the November 9, 2010 Internal Affairs meeting. I would like to take the opportunity to correct certain inaccuracies regarding the position of NextEra Energy, Inc. (NEE) on the proposed rule reflected in the draft reply comments.

The incorrect portrayal of the NEE comments in the draft reply comments is striking. Most important – and most inaccurate – is the allegation that our comments would expose FPL ratepayers to costs for transmission that do not benefit them. That allegation is incorrect, as a careful review of our comments would conclude. I will focus my comments on the most important inaccuracies in the draft FPSC reply comments.

First, in a number of places, the draft reply comments bemoan the lack of a clear definition of “region” in the FERC proposed rule, but offer no solution.<sup>1</sup> This term is very important in the proposed rule, since it would govern the footprint of expanded planning and cost allocation. The NEE comments clearly demonstrate that we have the same concern as the FPSC with the lack of a clear definition of “region” and we offered a solution that would preserve Florida as a region separate from the rest of the Eastern Interconnection.<sup>2</sup> NEE tailored its definition

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<sup>1</sup> FPSC Draft Reply Comments at 2, 8, 9, 11.

<sup>2</sup> NEE Comments at 10-11.

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of “region” based on factors such as the level of interconnections between utilities, power flows between utilities, boundaries of existing NERC Regional Entities, and historical practices regarding coordination specifically to preserve Florida as a separate region. With respect, our proposed definition of “region” would effectively protect Florida from cost allocation for transmission built in remote regions and I respectfully suggest that the FPSC consider adopting our proposed definition.

Second, the allegation that NEE advocates allocating costs to utilities that receive no benefit from transmission expansion<sup>3</sup> is contradicted by the plain words of the NEE comments. In its comments, NEE expressed support for adopting a cost allocation principle that those that receive no benefit from transmission facilities should not be allocated costs of such facilities.<sup>4</sup> In our view, this position is fully consistent with the interests of FPL’s customers. The FPSC’s argument on cost allocation in its initial comments suggest that you agree with us on this point.<sup>5</sup>

Third, the allegation that NEE “advocat[es] the expansion of transmission projects without regard for their necessity or their implications for grid reliability”<sup>6</sup> also is belied by the plain words of the NEE comments. Our comments specifically stated that transmission planning should be directed at reliability needs, economic benefits, and consideration of public policy needs driven by state and federal policies.<sup>7</sup> I would hope that the FPSC would agree that transmission planning should focus on reliability needs, economic benefits, and consistency with state and federal policy. If so, this is another area where we are in agreement.

Fourth, the FPSC draft reply comments also suggest that NEE envisions a reduced role for state regulatory authorities in transmission planning and siting.<sup>8</sup> That is not the case. State commissions play a large role in transmission planning in multi-state regions, and we would expect that role to continue. Nothing in the FERC proposed rule would affect state authority over transmission siting.

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<sup>3</sup> FPSC Draft Reply Comments at 10-11.

<sup>4</sup> NEE Comments at 29.

<sup>5</sup> FPSC Initial Comments at 5-6.

<sup>6</sup> FPSC Draft Reply Comments at 10.

<sup>7</sup> NEE Comments at 12-15.

<sup>8</sup> FPSC Draft Reply Comments at 11.

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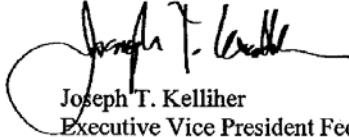
We do not propose that the FPSC authority over Florida utilities should be changed and believe the FPSC relationship to the Florida Reliability Coordinating Council will remain unchanged, if our definition of "region" were adopted by FERC.

The FPSC draft reply comments also include unfounded speculation that is not worth discussing, given that the premise of the speculation is the fundamental misapprehension of the NEE comments discussed above.

I attach a copy of our initial comments for your review.

I appreciate your consideration of my views on the draft FPSC reply comments.

Sincerely,



Joseph T. Kelliher  
Executive Vice President Federal Regulatory Affairs  
NextEra Energy

Attachment

cc: Timothy J. Devlin, Executive Director  
S. Curtis Kiser, General Counsel  
Cindy Miller, Esq., Office of General Counsel  
Mr. Benjamin Crawford, Division of Regulatory Analysis