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October 12, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
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Re: Docket No.: 000824-EI, 001148-EI and 010577-EI


Dear Ms. Bayo:

On behalf of the Florida Industrial Power Users Group, enclosed for filing and distribution are the original and 15 copies of the following:

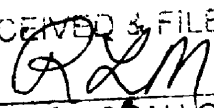
- ▶ The Florida Industrial Power Users Group's Post Hearing Statement of Issues and Positions and Post Hearing Brief.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,


Timothy J. Perry

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13025 OCT 12 01

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

Docket No. 000824-EI

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates.

Docket No. 001148-EI

In re: Review of Tampa Electric Company and the impact of its participation in GridFlorida, a Florida Transmission Company, on TECO's retail ratepayers.

Docket No. 010577-EI

Filed: October 12, 2001

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
POST HEARING STATEMENT OF ISSUES AND POSITIONS
AND POST HEARING BRIEF**

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FPSC-COMMISSION CLERK

PRELIMINARY STATEMENT

Pursuant to rule 28-106.215, Florida Administrative Code, the Florida Industrial Power Users Group files this Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.¹

INTRODUCTION

Participation by the Florida IOUs in an independent RTO is critical if Florida is to have a robust competitive wholesale market. How competitive the wholesale market becomes, and thus ultimately the magnitude of benefits realized from that market, will depend in large measure upon the structure of the RTO itself. In FIPUG's view, an independent, regional RTO will be superior to GridFlorida because it will broaden the available market as well as the participants in that market. Therefore, Florida utilities should be encouraged to participate in a truly independent southeastern regional transmission organization that will enable all power suppliers to operate freely with incumbent electric companies in a competitive wholesale market. Such an RTO *should* increase reliability and provide lower prices for retail consumers.

Of primary concern to FIPUG is that the Commission remain mindful of the fact that this docket has been organized into two *distinct* phases. The first phase, for which the hearing has just been concluded, deals only with the *prudence* of the utilities' actions in participating in formation of an RTO. Phase II, which involves MFR filings by both FPL and FPC, will address the rate impact of the RTO on retail consumers as well as investigate the overearnings postures of FPL and FPC. This Commission must take great care to ensure that no action is taken in Phase I which will

¹The following abbreviations are used in this brief. The Florida Industrial Power Users Group is called FIPUG. The Florida Public Service Commission is referred to as the Commission. Florida Power & Light Company is designated FPL. Florida Power Corporation is called FPC. Tampa Electric Company is referred to as TECo.

preempt the Commission from protecting retail consumers' interests in Phase II. Only after the Commission has reviewed *all* the expenses and revenues of FPL and FPC can it make any judgment as to whether any *additional* recovery is needed for RTO expenditures. No such information was available in Phase I because the Commission wisely left those deliberations for the rate case portion of this case which is just beginning.

The melding of the two phases, however, appeared to occur somewhat in the testimony of FPL's Ms. Dubin.² Ms. Dubin advocated a recovery methodology for RTO expenditures in her testimony³ and FPL insisted that such methodology must be approved or FPL could not go forward with an RTO. FIPUG suggests that consideration of any recovery methodology, *at this time*, puts the cart before the horse. If no additional recovery is needed because the utility has more than sufficient base rates to cover the expenditures, discussion of a methodology will be unnecessary. Such an assessment cannot be made until Phase II. So, at best, conjecture over a recovery methodology is premature at this time. Once the Commission determines, in Phase II, the status of the utilities' earnings, it can then consider, if necessary, any sort of recovery methodology which might be appropriate. Such consideration is not appropriate, nor was it contemplated, in Phase I of this docket.

ARGUMENT

ISSUE 1

IS PARTICIPATION IN A REGIONAL TRANSMISSION ORGANIZATION

²The Commission also engaged in extended discussion with FPL counsel, Mr. Childs, over recovery issues.

³"FPL proposes to include the GridFlorida transmission charges in the Capacity Cost Recovery Factor." (Tr. 712)

(RTO) PURSUANT TO FERC ORDER NO. 2000 VOLUNTARY?

FIPUG's Position: *Yes, participation is voluntary but FERC may be able to use its regulatory power in other areas to mandate participation.*

The Federal Energy and Regulatory Commission's (FERC) rendition of Order 2000 was yet another step towards fostering an open, efficient, and competitive energy market. As part of the effort to make this policy a reality, FERC has made clear its desire to see *all* transmission owning entities — including non-public utilities — place their facilities under the control of an RTO in a timely manner. (Tr. 252). However, for policy reasons, ordering an outright mandate to join RTOs was an undesirable option for FERC. (Tr. 255). By implementing RTO formation via “voluntary” participation, FERC has sought to efficiently accomplish its task while avoiding the hassle of unnecessary or counter-productive legal challenges to its authority. (Tr. 255).

While FERC has chosen a “voluntary” approach, it may use its regulatory authority to make non-compliance with Order 2000 a wholly undesirable alternative. However, FERC's use of incentives or disincentives to persuade utilities to join an RTO does not make compliance with Order 2000 any less voluntary. In spite of FERC's overtones, compliance with Order 2000 remains on a voluntary basis.

ISSUE 2⁴

WHAT ARE THE BENEFITS TO PENINSULAR FLORIDA ASSOCIATED WITH THE UTILITY'S (FPC, FPL, OR TECO) PARTICIPATION IN GRIDFLORIDA?

FIPUG'S Position: *A truly independent regional RTO will enable all power suppliers to operate freely with incumbent electric companies in a competitive wholesale market resulting in lower prices and greater reliability for consumers.*

⁴Issues 2 and 3 are being addressed together in one answer.

ISSUE 3

WHAT ARE THE BENEFITS TO THE UTILITY'S RATEPAYERS OF ITS PARTICIPATION IN GRIDFLORIDA?

FIPUG's Position: *A truly independent regional RTO will enable all power suppliers to operate freely with incumbent electric companies in a competitive wholesale market resulting in lower prices and greater reliability for consumers.*

It is clear from Order 2000, that FERC intends to use RTOs as a tool for fostering a healthy competitive energy marketplace. Through RTO participation, the opportunity exists to enhance wholesale competition by expanding the market and increasing the economic viability of transactions. (Tr. 261). Through increased supply options in the market, consumers will enjoy lower rates and sustained reliability at the bulk power level. (Tr. 261).

The utilities and their ratepayers have much to gain from the implementation of an RTO. By providing a unified grid under the control of an independent entity, a number of benefits can be realized. Under the current system, transmission customers are forced to pay additional transmission rates for each system the transmission crosses — commonly referred to as “pancake” rates. By unifying the grid and implementing a single transmission fee, “pancake” rates are eliminated and regional transmission transactions become less costly and much more viable. (Tr. 105). Lower transmission rates make competitive wholesale transactions more likely and increase options to purchase power. More supply equals increased competition in the wholesale market, and lower prices for the utilities and the ratepayer to pay for purchased power. GridFlorida would advance competition throughout the peninsular market. However, a southeastern RTO would foster competition on a much larger scale. By encouraging competition throughout the states in the southeastern region, the utilities and ratepayers of the peninsula could avail themselves of the lowest

cost power from a larger supply pool. FIPUG asserts that consumers will benefit from GridFlorida, but not to the same extent as if they participated in a southeastern RTO.

Currently, the utilities — in coordination with FRCC — provide their own planning of their respective transmission facilities and maintain for the most part independent control centers.. While this process may provide for a reliable or efficient transmission system within a utility's own area, the planning decisions are carried out with little or no regard for developments or constraints on other systems. (Tr. 262). An RTO could integrate the planning of the transmission grid to the control of a single entity. If it does, the redundancy of the current system could be avoided and planning as a whole could be less costly and more efficient. (Tr. 262). A more efficient system results in lower transmission costs — costs that are ordinarily passed through to the ratepayer. GridFlorida could result in more efficient planning and development of transmission throughout peninsular Florida, but a larger RTO could incorporate the panhandle as well as other southern states. A larger RTO could lead to access to hydroelectric and other lower cost power, deflating the potential cost of power supply and transmission costs which are flowed to consumers.

The implementation of an RTO may improve system reliability. An RTO has the exclusive authority for receiving, confirming, and implementing all interchange schedules on the system. The RTO can redispatch any generator for reliability purposes. It may also approve or disapprove scheduled outages on the system it operates. Short-term reliability is enhanced by the RTO's ability to move transmission anywhere on the system with greater efficiency and at a lower cost. Consequently, an RTO could be better positioned to provide energy to areas experiencing an energy deficit. (Tr. 263). While GridFlorida would allow energy deficits to be filled from generators throughout the peninsula, a southeastern RTO would expand a utility's supply options over a greater

region and thus lower the cost of providing replacement power.

RTOs enhance reliability in other ways as well. While exercising control over the entire system, an RTO can minimize the effects of parallel path flows. (Tr. 264.) Also, RTOs are better equipped to handle emergency situations because transmission system planning and operations are incorporated in one independent entity. Through independent, intelligent and efficient planning, RTOs can more effectively eliminate potential outages. In addition, RTOs could be better situated to transfer power to areas experiencing outages. (Tr. 263-264) While GridFlorida is prepared to provide this service to the peninsula, a southeastern RTO contributes the added benefit of increased competition and potentially lower prices than GridFlorida.

The structure of an RTO is such that the participating utilities and the ratepayers will share in the benefits. Whether through increased reliability or lower rates, the implementation of an RTO will advance an increased benefit to the utilities and the consumer over the current system. While the benefits discussed are applicable to GridFlorida, they are simply benefits identified by FERC as support for Order 2000 and apply to RTOs generally. (Tr. at 249). While GridFlorida promises increased competition and lower costs, a southeastern RTO would allow peninsular Floridians to enjoy those same benefits but on a larger scale. For the same reasons FERC advocates a southeastern RTO, FIPUG advocates a larger regional RTO so that utilities and ratepayers may experience the expanded benefits of a southeastern RTO above and beyond what GridFlorida can offer.

ISSUE 4

WHAT ARE THE ESTIMATED COSTS TO THE UTILITY'S RATEPAYERS OF ITS PARTICIPATION IN GRIDFLORIDA?

FIPUG's Position: * FIPUG has no independent basis upon which to assess the costs to utility ratepayers of GridFlorida at this time.*

FIPUG supports the Commission's decision to analyze the costs of participation in GridFlorida and the allocation of these costs upon the ratepayers. FIPUG has not independently analyzed the cost estimates the utilities have proffered. But any costs for which the utilities seek recovery must be reviewed in the context of the utility's entire earnings situation. Further, any start-up costs should be amortized over the remaining life of the transmission system. No costs should be allocated to retail customers until transmission costs are evaluated. In its study of transmission costs the Commission typically views transmission costs in a cost of service study independently of other costs. To avoid the concern that the unbundling of transmission rates would cause the Commission to lose jurisdiction over these important costs the Commission should not unbundle transmission rates in its ultimate rate design. Base rates will need to be adjusted in proportion to the charges GridFlorida will impose for assets now in utility rate base.

The proper time for determining what GridFlorida costs should be passed onto the ratepayer is in Phase II of this proceeding. That determination can only be made following a thorough review of the utilities' revenues and expenses. Prior to Phase II, any prognostication about costs to be passed onto the ratepayer, or the proper methodologies for determining such costs, is premature.

In recent years, the greater utilization of cost recovery clauses to recover utility expenses from consumers has resulted in guaranteed full recovery of some costs. At the same time there were no general rate cases to review base rates. When utilities found that they could get guaranteed cost

recovery of some costs, more costs were allocated to cost recovery proceedings. In the view of IOUs the need for general rate cases was obviated unless the Commission determined to initiate base rate examination. The Commission has refrained from initiating rate cases and has allowed utility earnings from base rates to expand up to and above the authorized return ceilings. In some instances, the Commission allowed earnings to appear to be within the range of reasonableness by authorizing accelerated depreciation of some assets. At the time, this device seemed to be reasonable because it would enable investor owned utilities to avoid stranded costs when a deregulated market would provide competition from less expensive supply sources.

The Florida Supreme Court short-circuited the Commission's transition plan toward a competitive supply market by extending government protection of investor owned utilities. The court determined that merchant plants could not compete in the state unless they entered through the IOU gateway.

Phase two of this proceeding is needed so that the Commission will have the opportunity to examine base rates and to reevaluate the relationship between base rates and cost recovery clauses. At this stage of the proceedings, it is premature to conclude that base rates are currently inadequate to recover the transmission costs associated with GridFlorida. To do so would further exacerbate the base rate-cost recovery dichotomy.

ISSUE 5

IS TECO'S/FPL'S DECISION TO TRANSFER OWNERSHIP AND CONTROL OF ITS TRANSMISSION FACILITIES OF 69 KV AND ABOVE TO GRIDFLORIDA APPROPRIATE?

AND

IS FPC'S DECISION TO TRANSFER OPERATIONAL CONTROL OF ITS

TRANSMISSION FACILITIES OF 69 KV AND ABOVE TO GRIDFLORIDA WHILE RETAINING OWNERSHIP APPROPRIATE?

FIPUG's Position: *FIPUG believes independent control of the transmission system is beneficial to consumers. The retail rate impact issues resulting from ownership transfer will be addressed in Phase II of this docket.*

ISSUE 6

IS THE UTILITY'S DECISION TO PARTICIPATE IN GRIDFLORIDA PRUDENT?

FIPUG's Position: *Yes, however, it would be more prudent for the utilities to participate in a larger more comprehensive RTO and they should be directed to do so.*

Argument on Issue 6

As discussed above, the participation in an RTO promises the possibility of many improvements over the current system, including: increased competition, lower rates, enhanced system reliability, more efficient planning, improved emergency response, and more. (Tr. 246, 248-250). However, these benefits are not only applicable to GridFlorida, but to a southeastern RTO as well. In addition, a larger RTO would allow for a larger pool of competitors than the smaller GridFlorida proposal. Further, FERC currently advocates utilities joining larger regional RTOs and would like to have an RTO for the southeast region. (Tr. 254). The Commission should be mindful that if GridFlorida joins a larger RTO in the future, there will likely be duplicative costs that the utilities could seek to recover from the ratepayers. (Tr. 207) While the GridFlorida proposal may realize the benefits intended to be inherent in RTOs established under Order 2000, a southeast RTO has the potential to accomplish the same and more than GridFlorida.

ISSUE 7

WHAT POLICY POSITION SHOULD THE COMMISSION ADOPT REGARDING THE FORMATION OF GRIDFLORIDA?

FIPUG's Position: * The Commission's policy should be to endorse a larger and more comprehensive southeastern RTO.*

For the benefit of consumers, the Commission policy should be to endorse a larger and more comprehensive southeastern regional independent transmission organization. In general, FERC has taken the view that larger regional RTO's are preferable to smaller RTOs. (Tr. 254). Larger RTOs have the potential of increased benefits over smaller RTOs by allowing for a larger pool of competitors in the marketplace. The increased competition inevitably leads to lower prices paid by the utilities for power — and thus lower costs passed through to the ratepayer. Because transmission over an RTO grid is potentially less expensive and more efficient than transmission under the current system, existing generation can more readily be disposed of in the open marketplace. Further, a large RTO allows set-up costs to be allocated over a greater number of users or transactions. Thus, the Commission should recognize that GridFlorida is inferior to the larger regional system.

The Commission may approve the prudence of GridFlorida, however, it should condition that approval by *strongly* encouraging the GridFlorida companies to participate in the southeast RTO as a more prudent alternative. (Tr. 194). FIPUG believes that a southeastern RTO holds greater potential for benefits to utilities and ratepayers and therefore it should be the preferred choice of the utilities.

Further, the Commission should take steps to ensure that the Commission retains its jurisdiction. The Commission's involvement is vital to guarantee that retail rates are not adversely affected by any asset transfer by the GridFlorida Companies.

ISSUE 8

IS COMMISSION AUTHORIZATION REQUIRED BEFORE THE UTILITY CAN UNBUNDLE ITS RETAIL SERVICE?

FIPUG's Position: *No, but the Commission should mandate it as a matter of policy.*

As stated above the unbundling should be done as part of a cost of service study, but the Commission should refrain from approving rate design changes that will cause it to lose jurisdiction over any charges that are to be recovered from retail customers.

ISSUE 9⁵

IS COMMISSION AUTHORIZATION REQUIRED BEFORE THE UTILITY CAN STOP PROVIDING RETAIL TRANSMISSION SERVICE?

FIPUG's Position: *Yes, the Commission has the obligation to assure the reliable delivery of electricity. The Commission should determine whether GridFlorida will provide such reliability. To protect retail consumers, the Commission should state that any authorization it provides in this phase is conditioned upon its ability to protect consumers in Phase II.*

ISSUE 10

IS COMMISSION AUTHORIZATION REQUIRED BEFORE FPC CAN TRANSFER OPERATIONAL CONTROL OF ITS RETAIL TRANSMISSION ASSETS?

AND

IS COMMISSION AUTHORIZATION REQUIRED BEFORE FPL/TECO CAN SELL ITS RETAIL TRANSMISSION ASSETS?

FIPUG's Position: *Yes.*

The Commission has the statutory obligation to assure reliable delivery of electricity at the actual cost of service. *See Chapter 366, Florida Statutes.* By way of the Grid Bill, the Commission

⁵Issues 9 and 10 are being addressed together in a single answer.

is vested with the authority to ensure the reliability and integrity of Florida's transmission system. Pursuant to § 366.04(2)(c), the Commission has jurisdiction over utilities to require electric power conservation and reliability within a grid. Under § 366.04(5), the Commission is empowered with jurisdiction over the planning, development, and maintenance of a grid to assure adequate and reliable energy supplies. In addition, the Commission has the power to set rates and issue service rules and regulations to be observed by each utility under § 366.05(1). In addition, § 366.05(1) grants the Commission authority to order a utility to make repairs, improvements or additions to the utility's facilities to promote the convenience and welfare of the public. Further, § 366.05(8) grants the Commission the authority to order utilities to require the installation or repair of transmission facilities to correct inadequacies in the energy grid. In sum, the Grid Bill grants the Commission widespread authority over the reliability of the utilities' transmission facilities. The Grid Bill assures that the Commission has the authority to require its authorization prior to any company's transfer of transmission assets to an RTO. In fact, such authorization is necessary to ensure the reliability and integrity of Florida's grid — the very thrust for granting the Commission its powers under the Grid Bill.

To protect retail consumers, the Commission should make it clear that any authorization it provides in this phase is conditioned upon its ability to protect consumers in Phase II. In Phase II, FIPUG may recommend that the Commission spacing adjust retail base rates in proportion to the costs attributable to the assets transferred. At that time, the Commission should set the appropriate guidelines to ensure that charges for continuing service provided by these assets do not exceed the costs attributable to the assets when they were in the retail rate base.

ISSUE 11

IS A REGIONAL TRANSMISSION ORGANIZATION FOR THE SOUTHEAST REGION OF THE UNITED STATES A BETTER ALTERNATIVE FOR FLORIDA THAN GRIDFLORIDA RTO?

FIPUG's Position: *Yes. Florida's regulated utilities should be encouraged to join the more robust southeastern RTO, advocated by FERC, rather than the weaker GridFlorida.*

Florida's regulated utilities should be strongly encouraged to move to the larger, more robust southeastern RTO, advocated by FERC, rather than the weaker GridFlorida, which incorporates only part of Florida. A larger RTO has several advantages over GridFlorida. First, FERC has taken the position that larger RTOs are preferable to smaller ones and appears poised to order Peninsula Florida's three IOUs to join a regional RTO sometime in the future. Second, a larger RTO allows for less seam problems when moving power from one area to another. (Naeve at 198). Third, a larger regional RTO could allow for a more open and competitive market throughout the region. Nevertheless, the GridFlorida proposal promises improvement in transmission reliability and cost over the current system. Granting approval to GridFlorida is better than taking no action at all — provided that appropriate safeguards for retail customers are adopted in Phase II.

ISSUE 12⁶

DOES FERC HAVE JURISDICTION TO MANDATE AN RTO?

FIPUG's Position: *No position.*

ISSUE 13

DOES THE FLORIDA COMMISSION HAVE JURISDICTION OVER GRIDFLORIDA?

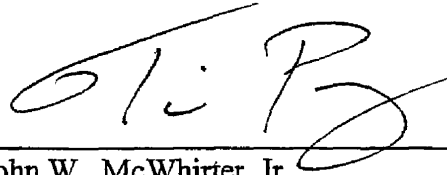
⁶The Commission at hearing requested briefing on the last two issues.

FIPUG's Position: *Yes.*

As discussed above, the Commission is given broad powers to ensure the reliability and integrity of Florida's grid under the Grid Bill. Upon implementation of GridFlorida, the Commission would continue to retain such jurisdiction to ensure the reliability of Florida's grid system. The GridFlorida witnesses also testified to the fact that during the GridFlorida development process, a specific objective was to maintain the Commission's jurisdiction over planning and reliability at a level on par with the Commission's present jurisdiction. (Panel at 545). As a part of the Commission's statutory authority over the reliability of Florida's transmission grid, the Commission would retain the power to order GridFlorida to build transmission facilities in order to insure the reliability of the system. (Panel at 367-69)

CONCLUSION

FIPUG supports the adoption of a larger, regional RTO in congruence with FERC's current policy. FIPUG believes that the implementation of an RTO will benefit the ratepayers of Florida to the tune of lower rates and enhanced reliability. For the sake of the ratepayers, this Commission should be mindful of the fact that Phase I was intended to determine the prudence of GridFlorida; therefore, any determinations as to costs to be recovered, or methodologies for determining such a recovery, should properly be postponed until Phase II of this proceeding. Phase II is an integral part of the GridFlorida review process as its purpose is to avoid burdening retail consumers from a double recovery of the same costs.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing the Florida Industrial Power Users Group's Post Hearing Statement of Issues and Positions and Post-hearing Brief has been furnished by (*) hand delivery, or U.S. Mail this 12th day of October, 2001, to the following:

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