

September 25, 2003

CLIENT/MATTER NUMBER
062012-0101

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 020233-EI, Joint FPSC/FERC GridFlorida
Technical Conference, Market Design Panel

Dear Ms. Bayo:

Enclosed please find an original and 15 copies of the written comments of Mr. Tim Woodbury presented on behalf of Seminole Electric Cooperative, Inc., at the September 15, 2003, Technical Conference held at the FPSC in Docket No. 020233-EI. The comments are submitted for filing in the above-referenced docket. Please also find the enclosed diskette containing an electronic version of the comments in Adobe® Acrobat® (.pdf) format.

Please acknowledge receipt of these documents by time/date stamping the enclosed additional copy of this filing.

Thank you for your cooperation in this matter

Sincerely,



N. Wes Strickland

Enclosures

cc: All parties of record in Docket 020233-EI

Remarks of Tim Woodbury
September 15, 2003 Technical Conference
Tallahassee, Florida

My name is Tim Woodbury, and I am Vice President of Strategic Services for Seminole Electric Cooperative, Inc. I appreciate the opportunity to speak today. I am here, not as a theoretician on market design, but as a senior management representative from a consumer-owned utility that supplies power to roughly 10% of Peninsular Florida's electric consumers. I come to you with almost 25 years of utility experience in Florida, during which time I have fought the good fight for comparable transmission access and have been heavily involved in power supply acquisition for my company. As a cooperative representative, I come to you with a consumer perspective. I realize that it is with the consumers' interests at heart that the FERC has been promoting market-based solutions to the problem of congestion management and the pricing of certain generation services. I applaud the motivation, but I am here to sound the warning that without a proper foundation, market-based solutions in Florida will likely do more harm than good, and consumers will suffer the consequences. Expressed differently, the implementation of market-based solutions in Florida without significant changes to the existing business environment will be tantamount to, if I may use a boxing analogy, leading with the consumer's chin.

My company is a transmission dependent utility. We are also an active participant in wholesale power supply acquisition, with roughly 50% of our members' capacity needs being

met with purchases from non-Seminole owned generating resources. We support wholesale competition and would welcome the development of a vibrant wholesale market in this state. Having said this, though, we all must understand that we have a long way to go before this dream can become a reality since there exist major obstacles to the establishment of such a market in this state. Pancaked transmission charges, balkanized transmission planning, lack of independence in transmission ownership, legislative barriers to entry, limited regional interface capability, high market concentration ratios for market-dominant suppliers, and an absence of price-responsive demand all serve to make this state a poor proving ground for experiments in market making. Wholesale competition will not come to this state with the touch of a regulatory wand. As we have seen elsewhere in the country, the wrong kind of touch can have dire consequences for consumers. We must take measured steps in moving towards a competitive wholesale market in this state. In short, we must think things through. We must crawl before we walk, walk before we run, and most importantly of all, as I said earlier, we must not lead with the consumers' chin by attempting to apply market mechanisms in an environment where reasoned judgment suggests that failure is a probable outcome.

Well, what then needs to be done? First, we need to change our thinking about a simultaneous (or close to simultaneous) commencement of RTO operations and market-based mechanisms for congestion management and generation services. We need to stop thinking in terms of a day 1, day 2 approach with day 2 to begin within one year of day 1, as the White Paper seems to anticipate (*see* White Paper Att. A, p. 6); rather we need to think in terms of a day 2 that

begins not on a date certain but when certain market conditions exist that indicate that wholesale markets will work to benefit consumers.

Regarding day 1, an RTO has been needed in Florida for some time now. An RTO will, through centralized, regional planning, provide a solid foundation for the development of a sound transmission infrastructure, a necessary prerequisite for greater reliance on market forces for pricing generation services. An RTO will also help ensure that all users of the system are treated comparably and will provide greater clarity concerning the rules of the road for new entrants and existing users of the transmission grid. By treating all transmission owners on a comparable basis with regard to transmission credits, an RTO will encourage participation by all transmission owners in the state. An RTO will also eliminate the pancaking of transmission charges, which results in generation-related inefficiencies and higher cost to consumers. All of these features of an RTO will help to create a business environment that will encourage (or at least not discourage, as does the existing system) new generation investment in the state.

Where do we stand with regard to an RTO in Florida? Well, several years ago I thought we were getting close. The FERC provisionally approved a GridFlorida filing on March 28, 2001 (94 FERC & 61,363). That order has been pending rehearing since April 2001. In the meantime, the FPSC reviewed the same GridFlorida filing approved by the FERC and, with some important modifications, approved it in an order issued December 20, 2001. The most significant FPSC modification, which Seminole supports, was to approve GridFlorida operating

as a not-for-profit ISO rather than a for-profit Transco. At present, we appear to have dueling RTOs before the state and federal agencies, neither going anywhere fast. Seminole believes that it is imperative at this juncture for the FERC and the FPSC to proceed cooperatively and with a sense of urgency to ensure that an RTO becomes operational in Florida without further delay.

Regarding day 2, the question is what needs to be done before we seek to establish competitive markets for generation services and congestion management. First and foremost, market power in Florida must be addressed. The state is now dominated by two giant sellers of power, controlling over 60% of the generation in Peninsular Florida. I realize that the remedy for this situation poses complicated legal issues, but the bottom line is that I see no way for markets to function efficiently until this concentration of power is removed or substantially mitigated. Second, the evolution of competitive wholesale markets will continue to be hampered by Florida's Power Plant Siting Act's effective prohibition of highly efficient merchant generation. Elimination of this barrier to entry is another prerequisite for the implementation of market-based pricing mechanisms in the state. Third, the existing transmission infrastructure in the state, including the almost non-existent import capability into the state, must be examined by an independent RTO, and improved to permit competitive markets to operate efficiently without creating undue congestion on the transmission grid. Finally, price responsive demand mechanisms need to be established so that consumers are not forced to be price takers in the market. Without these fundamental changes, markets simply will not work in Florida.

A related concern goes to the effectiveness of behavioral rules to prevent the use and abuse of market power. Consumers must be protected against abuses of market power and other anti-competitive behavior. We cannot afford any more “Death Star,” “Get Shorty,” “Ricochet,” or other creatively named schemes designed to game markets and ultimately defraud consumers. In recent comments to FERC, we hear certain large sellers contending that all will be well if we just provide greater clarity and specificity regarding the applicable behavioral rules. If we have learned anything from experiences elsewhere in the country, it is that some market participants see it as their fiduciary responsibility to their owners to exploit any and every crack in the applicable rules in order to enhance their bottom lines. More detail will just mean they have to work harder at finding the cracks, but find them they will. The simple fact of the matter is that competitive markets are very complex creatures, and we are simply not smart enough to think of all the behavioral rules that would be required to ensure that firms with market power behave as if they did not have such power. That is why we need a functional competitive market to discipline behavior; and while behavioral rules may be a necessary supplement, they cannot replace having a large number of sellers in a market, each with no ability to profitably set prices by economic or any other form of withholding.

The Federal Trade Commission in comments submitted on August 28, 2003, in FERC Docket No. EL01-118 made essentially this same point, as follows: “We recognize that the misconduct of some suppliers in the western energy markets in 2000 and 2001 may motivate FERC to impose additional behavioral rules on these and other electric power marketers.

Nonetheless, we urge FERC not to lose sight of the goal of developing structurally competitive markets. Long experience has taught antitrust enforcers that competitive markets that exhibit ease of entry are more likely than behavioral rules imposed on market participants to protect consumers and result in efficient pricing, output, and investment." (pp. 1-2)

In brief, while Florida is ready for an RTO, it is far from ready for the kinds of markets being promoted in standard market design, and we implore the Commissions not to impose any sort of market-oriented approach to resolving congestion or establishing market clearing prices for generation services until the serious structural problems noted earlier have been adequately addressed. The FERC correctly observed at the outset of its April 28, 2003 White Paper that its "core mission under the Federal Power Act is to achieve wholesale electricity markets that produce just and reasonable prices and work for consumers." Clearly Florida is not ready for reliance on markets if just and reasonable power rates are the desired (and I might add, the required) outcome.

Standard market design, as most recently discussed in the FERC's White Paper, while it may work in other areas of the country, will not work in Florida until circumstances have changed dramatically. And market power mitigation, frequently mentioned in the White Paper as an important aspect of market design, will not suffice in Florida. As long as Florida remains an electrical island with two dominant generation sellers and a legislative prohibition of merchant plant competition, the problem is way beyond market power mitigation; the problem is that

without legislative change permitting competitive merchant plants to be built, without an independent examination of the needs for new infrastructure that might, among other things, permit greater reliance on imports from the North , without price-responsive demand - in other words, without the rudiments of a competitive market - market power mitigation is a meaningless term. The FERC's White Paper (p. 4) recognizes the "unique needs of the Pacific Northwest." I implore you to recognize also the unique needs of the State of Florida.

However, having said that, I want to reiterate Seminole's long-term support for the FERC's RTO initiative and simply remind it that RTOs can be of great value, even if implemented prior to the implementation of wholesale markets. Don't throw the baby out with the bath water - the fact that Florida is not ready for reliance on wholesale markets on day 1 to produce just and reasonable rates does not mean that it is not past-ready for RTO implementation to accomplish many of the goals set forth in Order 2000 and the White Paper.

Thank you.