

ORIGINAL



Florida Municipal Power Agency

Jody Lamar Finklea  
Associate General Counsel

**BY HAND DELIVERY**

March 11, 2004

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 10  
Tallahassee, Florida 32399-0850

RECEIVED - FPSC  
MAR 11 AM 8:48  
COMMISSION  
CLERK

Re: PSC Docket No. ~~020333-ET~~ 020233-ET (18)

Dear Ms. Bayo:

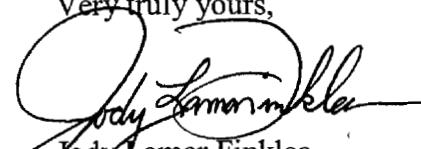
Please find enclosed for filing in the above-referenced matter one (1) original and fifteen (15) copies of FMPA's Response Comments to Applicants' Draft Positions for the Pricing Issue Workshop scheduled for March 17-18, 2004. Copies of FMPA's Response Comments will be distributed on March 11, 2004 to all stakeholders who signed up to be on the GridFlorida E-mail Exploder List.

Also enclosed is a copy of this transmittal letter. On that copy, please acknowledge receipt in the space indicated and return the acknowledged copy to my office.

If you have any questions or need clarification, please do not hesitate to contact me.

RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS

Very truly yours,  
  
Jody Lamar Finklea  
Associate General Counsel

cc: Parties of Record

MUS \_\_\_\_\_  
DAF \_\_\_\_\_  
DMP \_\_\_\_\_  
DOM \_\_\_\_\_  
DTR \_\_\_\_\_  
ECR \_\_\_\_\_  
SCL \_\_\_\_\_  
DPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC \_\_\_\_\_  
DTH \_\_\_\_\_

DOCUMENT NUMBER-DATE  
03380 MAR 11 04  
FPSC-COMMISSION CLERK

**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

FMPA notes preliminarily that these comments respond to the Applicants' positions as set forth in their Draft Comments. FMPA has follow-up questions related to certain of the Applicants' positions, and may not have fully understood all of what Applicants are proposing. FMPA therefore looks forward to a clarifying discussion at the Pricing Issues Workshop, and reserves the right to amend its positions accordingly.

**Issue No. 1: Regional State Committee (RSC)**

The Applicants propose that the FPSC act as the RSC for GridFlorida and that the FERC give "substantial deference" to the initial decisions of the FPSC regarding GridFlorida. While FMPA generally supports the creation of an RSC constituted to represent the interests of all Florida consumers, it has concerns about Applicants' proposal.

As FERC explained in its April 28, 2003 White Paper regarding a Wholesale Power Market Platform, the RSC "provide[s] a forum for the participation of state representatives in [the RTO's or ISO's] decision making process."<sup>1</sup> Additionally, recent separately-concurring opinions by FERC Chairman Wood and Commissioner Kelliher recognized the importance of RSCs. Chairman Wood noted that he "strongly support[s] the RSC concept," and Commissioner Kelliher emphasized that he has "great respect for the role of the States, and fully expect[s] that the views and advice of a Regional State Committee will be given deference by a Regional Transmission Organization."<sup>2</sup>

The RSC role envisioned by FERC, however, is quite different from the one proposed by Applicants, in which FERC would delegate its decisional authority to the FPSC except where there is a "clear abuse of discretion or clearly erroneous application of law." As contemplated by FERC, the RSC would direct filings to be made by the RTO on certain subjects, but would not usurp the role of FERC in determining whether the filed proposal comports with the Federal Power Act and FERC policy. Furthermore, because FERC would fully review proposals directed by the RSC, the RSC's activities did not have to await state court review (*e.g.*, by state Supreme Courts) before the resulting filings came to FERC. While FERC decisions (with respect to the Midwest

<sup>1</sup> See Appendix A at 16. [http://www.ferc.gov/press-room/pr-archives/2003/2003-2/White\\_Paper\\_Appendix\\_A.pdf](http://www.ferc.gov/press-room/pr-archives/2003/2003-2/White_Paper_Appendix_A.pdf).

<sup>2</sup> Order Granting RTO Status Subject to Fulfillment of Requirements, *Southwest Power Pool, Inc.*, 106 F.E.R.C. ¶ 61,110, 2004 FERC LEXIS 226 (February 10, 2004) (Chairman Wood and Commissioner Kelliher, concurring).

ISO, for example) show due respect to the views of the RSC as reflected in filed RSC comments in FERC proceedings, that additional advisory role is one very different from what Applicants have proposed. Because the Applicants' proposal regarding the role of the RSC appears to contradict FERC precedent and to encroach upon FERC jurisdiction, and also raises implementation problems related to Florida court review of RSC actions, FMPA cannot support it.

DOCKET NO. 020233-E1

FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS

PRICING ISSUE WORKSHOP, MARCH 17-18, 2004

Issue No. 2: Jurisdictional Responsibilities (Pricing)

FMPA has concerns about the Applicants' proposed division of jurisdiction between the FPSC and the FERC, and requests further clarification as to the allocation of Section 205 filing rights.

To begin with, FMPA maintains an overarching position that GridFlorida stakeholders cannot legally confer responsibilities or jurisdiction upon the FPSC simply by agreeing to it. Only legislative grants of authority can achieve such effects. In areas such as planning and siting, Applicants are of course correct with regard to the FPSC's role. However, as discussed in connection with Issue No. 1, FMPA has concerns with Applicants' proposal to delegate FERC jurisdiction to the FPSC.

In addition, FMPA has concerns about Applicants' proposal to submit the revenue requirements and rates of entities over which the FPSC does not have rate jurisdiction to the FPSC for approval, with FERC obliged to give deference. Indeed, the FPSC's September 3, 2002 Order<sup>3</sup> expressly recognizes that "[t]he timing of the recovery of these TDU costs is currently a subject of litigation at FERC."<sup>4</sup> For purposes of any effort to reach consensus at the workshop, however, FMPA reiterates its position that all TOs, including TDUs, should receive full Day 1 recovery of the revenue requirement of facilities subject to RTO control. In that regard, we note a recent opinion by FERC Chairman Wood strongly suggesting that when it returns to the issue, FERC is likely to require crediting of TDU costs immediately upon operation of GridFlorida. In a separate concurrence in *Florida Power & Light Co.*, 105 F.E.R.C. ¶ 61,287 (Dec. 16, 2003), Chairman Wood explained that the dispute in that proceeding "would have been resolved long ago," if there had been an RTO in place in Florida, in part because "[a]ll facilities within the RTO, whether owned by FP&L or by FMPA, would have been treated comparably and the rates would have reflected such treatment."<sup>5</sup> According to Chairman Wood, "FP&L's facilities would have been treated no differently and no better or worse than FMPA's facilities."<sup>6</sup>

---

<sup>3</sup> See Order Determining GridFlorida's Compliance with Order No. PSC-01-2489-FOF-EI and Requiring Evidentiary Hearing and Notice of Proposed Agency Action Order Regarding Specific Changes to the GridFlorida Compliance Filing, PSC-02-1199-PAA-EI, Order No. PSC-02-1199-PAA-EI.

<sup>4</sup> *Id.* at 60.

<sup>5</sup> Chairman Wood's statement accompanying the December 16, 2003, Order (December 22, 2003).

<sup>6</sup> *Id.*

As for Section 205 filing rights, FMPA looks forward to discussing Applicants' proposal, which requires further explication. Applicants state: "the TOs collectively shall have the exclusive, unilateral rights to make filings under Section 205 of the FPA with regard to the rate design for their revenue requirements under the GridFlorida tariff, provided that the TOs are in agreement with any proposed rate design change." This statement leads to questions: How do the TOs act "collectively"? What constitutes "agreement" among the TOs? Rather than having TOs collectively initiate rate design for GridFlorida's recovery of their collective revenue requirement, wouldn't it be more straightforward, and more protective of TO rights and FPSC jurisdiction, to have each TO's charges to GridFlorida for the use of its facilities be broken out from the GridFlorida Participating Owners Management Agreement ("POMA," filed at the FPSC on March 20, 2002) as a separate rate schedule, and specify that each TO would have the right to initiate (subject to collective agreements, and to filing under Section 205 as applicable) the rates and rate design for that rate schedule?

Further, while we assume — especially given Applicants positive statement that "all [participating] TOs will be considered co-applicants in the filing before FERC" — that FMPA would be a "TO" for this purpose, we need a better understanding of how Applicants expect this mechanism to work. FMPA is troubled by the Applicants' statement that "GridFlorida shall have no such Section 205 rights with regard to TO facilities and costs." This position seems contrary to the POMA, which, consistent with the manner in which non-jurisdictional revenue requirements have been handled by in other RTOs, provided that on request of a non-jurisdictional TO, GridFlorida "shall...file [non-jurisdictionals'] revenue requirements with the Commission [FERC] for its approval." (Section 8.2.2). We presume that it was not Applicants' intention to remove GridFlorida's authority to make such filings, but require clarification.

Finally, FMPA notes that it has pending before FERC its objection to a number of aspects of Applicants' pricing protocol, including Applicants' stated 5-year amortization of start-up costs. While we assume that start-up costs encompass those of all participating TOs, FMPA supports a longer amortization period and believes that a final determination of the amortization period should be withheld until the Applicants' start-up costs are known, as discussed in its Request for Rehearing, dated April 27, 2001.

**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

Issue No. 3: Participant Funding Concept for GridFlorida

FMPA generally supports the Applicants' three proposed parameters for cost recovery of new generation-related transmission facilities within GridFlorida.<sup>7</sup> However, many contentious issues may arise as the exact details are developed. For example, Applicants' mention of "commensurate transmission rights" as a foundational principle is an aspect that FMPA needs to understand more clearly. Accordingly, FMPA does not waive the opportunity to raise relevant concerns at the workshop or future proceedings.

In addition, the treatment of load growth, as opposed to generation-related transmission upgrades, needs to be clarified. Consistent with the planning protocol, such costs should be rolled-in, unless they constitute "enhanced facilities."

---

<sup>7</sup> FMPA notes, however, that its general support of the Applicant's proposed parameters, which reference "installed capacity requirements," should not be considered an endorsement of Applicants' ICE proposal.

**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

Issue No. 4: Cost Recovery Concept for Grid Florida

FMPA is interpreting this issue to relate only to the Applicants' retail rate recovery, and, if that is the case, FMPA will take no position, other than to reiterate its support for the establishment of a cost recovery clause.

**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

Issue No. 5: Demarcation Dates for Existing Transmission Agreements and Facilities

FMPA supports the demarcation dates for new facilities and existing transmission agreements proposed by Progress Energy, namely December 31, 2000, for new facilities and December 15, 2000, for existing transmission agreements. *See* FMPA's Motion for Clarification or Reconsideration, dated September 18, 2002 (in which FMPA sought clarification of the Commission's understanding of the new facility demarcation date and argued for the pre-revision new facilities demarcation date proposed by Applicants, which was December 31, 2000). Facility investments and transactional commitments made since those dates have been entered into with the expectation that GridFlorida would begin operations early in the life of those investments and transactions. Resetting the start-up "clock" would frustrate those investment-backed expectations.

FMPA notes that the Applicants have seemingly mischaracterized the FPSC's position on the demarcation date for new facilities. The Applicants indicate that the demarcation dates for both new facilities and existing transmission agreements were issued as proposed agency actions and reconsideration of both is currently pending. In fact, there is no pending reconsideration of any Commission action. The FPSC, in its Order Denying and Granting Motions for Reconsideration and Clarifying Order No. PSC-02-1199-PAA-EI, (Order No. PSC-03-1006-FOF-EI, September 8, 2003), *granted* FMPA's motion, which sought to clarify the Commission's position on the demarcation date for new facilities. At the end of its analysis, the Commission states:

We hereby clarify that the new facilities demarcation date was intended to be issued as proposed agency action in order No. PSC-02-1199-PAA-EI, so that the date could be more fully discussed and examined at the administrative hearing to be scheduled in this docket.

Order No. PSC-03-1006-FOF-EI, at 23. Thus, the Commission labeled the issue of the new facilities date as proposed agency action. (The issue of the existing contracts date had already been designated proposed agency action in the September 3, 2002 Order, and reconsideration of that designation was denied in the September 8, 2002 Order.) Therefore, what is "pending" is the exact demarcation dates, and not consideration of any motion before the Commission.



**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

Issue No. 6: Mitigation of Short-Term Revenues Concept for GridFlorida

FMPA generally supports the Applicants' approach to mitigating the loss of short-term revenues as a result of the implementation of GridFlorida, but is willing to discuss alternative approaches.

**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

Issue No. 7: Review of Current Regulatory/Legislative Environment

FMPA will be prepared to discuss the current regulatory/legislative environment as it relates to the development of GridFlorida at the pricing issues workshop.

**DOCKET NO. 020233-E1**

**FLORIDA MUNICIPAL POWER AGENCY RESPONSE COMMENTS TO  
APPLICANTS' DRAFT POSITIONS**

**PRICING ISSUE WORKSHOP, MARCH 17-18, 2004**

Issue No. 8: Continued Review of RTO Costs and Benefits

FMPA will be prepared to discuss the appropriate steps to be taken to address the review of costs and benefits at the pricing issues workshop. FMPA also supports exploring the costs and benefits of a “back to basics” RTO—one that would provide the significant benefits of a independent operation, planning, and expansion of a unified GridFlorida grid, but would not institute LMP markets. In this regard, it is useful to remember what FERC Chairman Wood said at the Technical Conference held on September 15, 2003, at the FPSC (Tr. 129):

[T]he sequencing needs to happen differently here [in Florida] ... let's worry about the transmission infrastructure business. The energy markets[] half of standard market design will come when it's ready to come but you're right, don't make it worse by sticking it on an organization that's not ready for it .... That [reference to a hard-and-fast schedule for market start-up] is overridden by our d[e]ference to the RSC about what the schedule, the cost benefit of when certain terms are implemented .... [O]ne of the changes we wanted to make based on the comments we heard from Florida and from others, was the need to step these in according not to an arbitrary timeline, but to, well, as we say in 271 on the phone si[d]e, step it on according to what you see in the marketplace. So we are committed to that and I know I can speak for our third colleague on that issue too.