

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 the retail rates of Florida Power & Light Company.

DOCKET NO. 001148-EI

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

DOCKET NO. 010577-EI
ORDER NO. PSC-02-0350-FOF-EI
ISSUED: March 14, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DENYING MOTION FOR RECONSIDERATION AND
GRANTING, IN PART, CROSS MOTION FOR CLARIFICATION

BY THE COMMISSION:

On June 12, 2001, Florida Power Corporation ("FPC"), Florida Power & Light Company ("FPL"), and Tampa Electric Company ("TECO") (collectively, the "GridFlorida Companies") filed separate petitions in these dockets asking this Commission to determine the prudence of the formation of and their participation in GridFlorida, a regional transmission organization ("RTO"). By Order No. PSC-01-1485-PCO-EI, issued July 16, 2001, and Order No. PSC-01-1641-PCO-EI, issued August 10, 2001, the issues to be addressed in our review of GridFlorida were established. A full,

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evidentiary hearing was held October 3-5, 2001, to address those issues. By Order No. PSC-01-2489-FOF-EI, issued December 20, 2001, ("GridFlorida Order") this Commission found the GridFlorida Companies were prudent in proactively forming the GridFlorida RTO but required the GridFlorida Companies to modify GridFlorida to use an independent system operator ("ISO") structure that would not require a transfer of assets.

On January 4, 2002, Reliant Energy Power Generation, Inc. ("Reliant"), Mirant Americas Development, Inc. ("Mirant"), Duke Energy North America ("Duke"), and Calpine Corporation ("Calpine") (collectively, "Joint Movants") filed a joint motion for reconsideration of the GridFlorida Order and joint request for oral argument on the motion. No party filed a response to the Joint Motion. On January 15, 2002, TECO filed a cross motion for clarification of the GridFlorida Order. No party filed a response to TECO's cross motion. At our February 19, 2002, Agenda Conference, we granted the Joint Movants' request for oral argument and heard oral argument from the Joint Movants concerning the joint motion for reconsideration.

This Order addresses the joint motion for reconsideration and TECO's cross motion for clarification. We have jurisdiction over this subject matter through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

Joint Motion for Reconsideration

A. Standard of Review

The applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision-maker in rendering its order. Diamond Cab Co. V. King, 146 So. 2d 889 (Fla. 1962). The mere fact that a party disagrees with the order is not a valid basis for reconsideration. Id. Further, reweighing of the evidence is not a sufficient basis for reconsideration. State v. Green, 104 So. 2d 817 (Fla. 1st DCA 1958).

B. Arguments of the Parties

By Order No. PSC-01-2489-FOF-EI, this Commission required the GridFlorida Companies to file a modified RTO proposal that conforms the GridFlorida proposal to the findings of the Order and uses an ISO structure in which each utility maintains ownership of its transmission facilities. In that Order, we required, among other things, that GridFlorida's provisions for physical transmission rights (PTRs) and balanced schedules remain fixed until such time as GridFlorida petitions this Commission and justifies a different approach. We further stated we will not relitigate the issues addressed in the GridFlorida Order when we review the modified GridFlorida proposal.

The Joint Movants argue that this Commission, by requiring the GridFlorida Companies to incorporate PTRs and balanced schedules in the modified GridFlorida proposal and precluding litigation on those matters, failed to consider that it was exceeding the scope of its GridFlorida review proceedings, as defined by the GridFlorida Companies' petitions for relief filed June 12, 2001, and by the issues approved in Order No. PSC-01-1959-PHO-EI. The Joint Movants argue that we thus made a mistake of law that denied them "the fundamental elements of due process: notice and an opportunity to present evidence and argument on matters and issues that affect their substantial interests." The Joint Movants further argue that this mistake of law caused us to enter findings without the benefit of adequate evidentiary support.

The Joint Movants assert that a party is entitled to notice that an agency may take a particular action and an opportunity to present evidence and argument on all issues involved. The Joint Movants assert that in this case, notice that this Commission might consider and mandate details such as PTRs and balanced schedules was not provided in any of the proceedings that led to the hearing, including the GridFlorida Companies' petitions and the prehearing activities in which we identified the issues on which we would act. The Joint Movants contend that none of the issues identified prior to hearing served to apprise the parties that this Commission would consider making determinations regarding the relative merits of PTRs versus financial transmission rights or the relative merits of balanced schedule requirements versus unbalanced schedules. The Joint Movants assert that for this reason they presented no

testimony on either topic, although they have strong views on the merits of each subject.

The Joint Movants argue that this mistake of law led this Commission to enter findings and rulings based on a record that is inadequate for the purpose of formulating informed positions on the relative merits of these subjects. The Joint Movants assert that the testimony presented on the subjects of PTRs and balanced schedules was limited to a superficial treatment of these subjects and was necessarily one-sided because the Joint Movants lacked the opportunity to address these subjects. In their motion, the Joint Movants assert that, given the procedural opportunity, they could have offered testimony to support their position that the different models of financial transmission rights-based congestion management and allowing unbalanced schedules with market-based balancing would better serve the objective of a competitive market while assuring reliability to ratepayers.

The Joint Movants ask that we reconsider our findings concerning PTRs and balanced schedules and provide the opportunity for a full evidentiary hearing on these matters. Alternatively, the Joint Movants ask that we reconsider our GridFlorida Order and rephrase it to express a preliminary preference for PTRs and balanced schedules subject to further review, analysis, and determination within our review of the modified GridFlorida proposal.

C. Analysis and Findings

In Order No. PSC-01-1372-PCO-EI, issued June 27, 2001, in which this Commission established a proceeding to review the GridFlorida Companies' formation of and participation in GridFlorida, we stated at page 3:

Having chosen the form and function of GridFlorida through the collaborative process, each regulated utility must now demonstrate that its decision to participate in GridFlorida is in the best interests of its retail customers.

By Order No. PSC-01-1485-PHO-EI, issued July 16, 2001, as modified by Order No. PSC-01-1641-PHO-EI, issued August 10, 2001,

the issues to be addressed in this proceeding were established. Among the eleven issues identified were the following:

ISSUE 6: Is the utility's decision to participate in GridFlorida prudent?

ISSUE 7: What policy position should the Commission adopt regarding the formation of GridFlorida?

Issue 7 was not among the preliminary issues identified by our staff or the GridFlorida Companies. The Joint Movants and CPV Atlantic, Inc., requested that this issue be included for resolution. In its Comments on Proposed Issues, filed July 12, 2001, Reliant noted that this issue was not included in the proposed issue list and argued for its inclusion:

Reliant respectfully submits that the issue of the appropriate policy position relative to GridFlorida should be restored to the issue list. During the agenda conference of May 29, 2001, [the] Commission emphasized that one purpose of this proceeding is to develop the Commission's ability to provide guidance to the 2020 Energy Policy Committee with respect to GridFlorida, as well as to provide input to the Florida Legislature on the subject. . . . Clearly, the Commission intends to fashion a policy position based on its evaluation of the record formed and the arguments advanced during these proceedings. . . . To omit the issue that addresses the policy position that the Commission intends to develop would be to deny Reliant Energy's due process rights in this regard.

The entire GridFlorida proposal was filed as an exhibit to the prefiled testimony of the GridFlorida Companies in this proceeding. The GridFlorida proposal is a comprehensive RTO proposal that includes provisions, among many others, concerning market design. In addressing market design, the GridFlorida proposal included provisions for PTRs and balanced schedules. Given the comprehensive nature of the GridFlorida proposal and its potential effects on retail ratepayers in terms of rates and reliability, this Commission conducted a comprehensive review of GridFlorida necessary to determine whether each utility's decision to

participate in GridFlorida was in the best interests of its retail ratepayers. In evaluating the GridFlorida proposal and rendering the Order, we reviewed and took policy positions on several aspects of the proposal, including the provisions for PTRs and balanced schedules.

In essence, the Joint Movants' argument is that this Commission exceeded the scope of this proceeding because specific issues were not identified related to the PTR and balanced schedule provisions of GridFlorida. The Joint Movants assert that this constitutes a mistake of law that requires us to reconsider our GridFlorida Order. We disagree.

In addressing Issue 7 and determining what policy position to take concerning GridFlorida, it was entirely reasonable for this Commission to evaluate all aspects of the GridFlorida proposal, including specific provisions that could impact Florida's retail ratepayers. Under the standard proposed by the Joint Movants, this Commission, to avoid making a mistake of law requiring reconsideration, could have done little more than make a generic policy statement either supporting or not supporting the formation of GridFlorida. Such a review would have provided little guidance to the 2020 Energy Policy or the Florida Legislature concerning the subject of GridFlorida. Further, such a generic statement could not adequately capture a policy position concerning a detailed, comprehensive RTO proposal. Indeed, accepting the Joint Movants' argument, this Commission could not have ruled upon the merits of an ISO structure versus the proposed transco structure, the central component of our GridFlorida Order, because such details were not listed as separate issues.

Issue 7, which the Joint Movants themselves requested be included for consideration in this proceeding, asked this Commission to provide a policy position on a detailed, complex RTO proposal. The entire GridFlorida proposal was offered as an exhibit to prefiled testimony in this proceeding. Included in that proposal, among other things, were provisions for PTRs and balanced schedules. We undertook an exhaustive evaluation of the proposal on an expedited basis in order to address the issues set forth for resolution. Every party to the proceeding had the opportunity to do the same and to present whatever evidence it deemed appropriate to support a particular policy position. The Joint Movants each

took positions supporting the formation of GridFlorida generally, but did not challenge any specific components of GridFlorida, including PTRs or balanced schedules.

As stated above, the Joint Movants argue that the evidence presented concerning PTRs and balanced schedules was only superficial and was one-sided because they lacked the opportunity to address these subjects. The Joint Movants assert that this led us to enter findings and rulings based on a record inadequate for the purpose of formulating informed positions on the relative merits of these subjects. The Joint Movants argue that this Commission failed to consider several facts that would support financial transmission rights over PTRs and unbalanced scheduling over balanced schedules.

As we have stated above, all parties had an opportunity to address the subjects of PTRs and balanced schedules in this proceeding. The Joint Movants did not address those subjects and cannot argue now, as a basis for reconsideration, that this Commission made a mistake of fact by failing to consider facts that the parties failed to put into evidence.

It appears likely that the record on the subjects of PTRs and balanced schedules could have been more fully developed through evidence that the Joint Movants suggest they would have offered had they believed these subjects to be within the scope of this proceeding. Regardless, we find that we did not make a mistake of law or fact in reaching a policy position based on the evidence presented on these subjects because these subjects were raised in the testimony and exhibits of the GridFlorida Companies and thus were subject to rebuttal by the Joint Movants. Therefore, the joint motion for reconsideration is denied.

In addressing the joint motion, we see the need and the opportunity to clarify our GridFlorida Order. In the GridFlorida Order, we stated that relitigation of the issues addressed in the GridFlorida Order would not be permitted during our review of the modified GridFlorida proposal. We also indicated that the GridFlorida provisions for PTRs and balanced schedules should remain fixed until such time as GridFlorida seeks approval for and justifies a different approach. In making these statements, our intent was not to preclude any party, including the Joint Movants,

from addressing the merits of such particular provisions as PTRs and balanced schedules during our review of the modified GridFlorida filing. Rather, our intent was to preclude relitigation on the issues of whether the GridFlorida Companies' formation of and participation in GridFlorida was prudent. Therefore, the Joint Movants may address the merits of PTRs and balanced schedules as part of our review of the modified GridFlorida proposal that is currently due to be filed March 20, 2002.

Cross Motion for Clarification

In its cross motion for clarification, TECO asks this Commission to clarify two matters addressed in the GridFlorida Order. First, TECO asks us to clarify that we did not vote on Issue 10 identified in the Prehearing Order. Second, TECO asks us to correct a clerical error in the GridFlorida Order.

Concerning the first matter, Issue 10 asked us to determine whether our authorization is required before a utility can sell or transfer operational control of its retail transmission assets. As reflected in our vote sheet from the November 7, 2001, Agenda Conference, we chose not to vote on Issue 10. TECO points to two excerpts from the GridFlorida Order that it asserts create "sufficient ambiguity to create the impression that the Commission has decided Issue No. 10 in the affirmative. . ." as follows:

. . . we believe that certain aspects of GridFlorida are not in the best interests of Florida's retail ratepayers at this time, most particularly the transfer of ownership of transmission assets that would take place under GridFlorida. (p.4, GridFlorida Order)

. . . we believe that it would premature to allow divestiture of existing transmission assets in this state. (P.13, GridFlorida Order)

We believe that these excerpts simply reflect our decision, based on the evidence adduced at hearing, that the transfer of assets proposed under GridFlorida is not in the best interests of Florida's retail ratepayers at this time. Clearly, as evidenced by our vote sheet, we did not vote on Issue 10, and, therefore, the

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GridFlorida Order should not be interpreted as rendering a decision on that issue.

Concerning the second matter, TECO identifies a clerical error in the GridFlorida Order. On page 11, the date "May 1, 2001" should read "May 31, 2001." We recognized this error, and it was corrected through Amendatory Order No. PSC-01-2489A-FOF-EI, issued February 7, 2002. Thus, this portion of TECO's cross motion is moot.

As a procedural matter, we are concerned that TECO's cross motion for clarification may not be appropriate. Rule 25-22.060(3), Florida Administrative Code, allows for cross motions for reconsideration to be filed following a motion for reconsideration, but does not provide for cross motions for clarification following a motion for reconsideration. However, because we have the discretion to clarify our orders on our own motion and wish to clarify the GridFlorida Order, we have addressed TECO's cross motion for clarification on the merits.

Based on the foregoing, it is

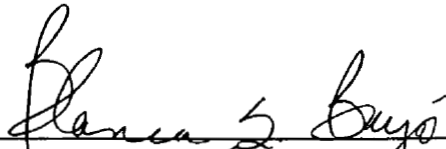
ORDERED by the Florida Public Service Commission that the joint motion of Reliant Energy Power Generation, Inc., Mirant Americas Development, Inc., Duke Energy North America, and Calpine Corporation for reconsideration of Order No. PSC-01-2489-FOF-EI is denied as set forth in the body of this Order. It is further

ORDERED that Tampa Electric Company's cross motion for clarification of Order No. PSC-01-2489-FOF-EI is hereby granted in part, as set forth in the body of this Order, to clarify that this Commission, in rendering Order No. PSC-01-2489-FOF-EI, did not render a decision on Issue 10 identified in the Prehearing Order for this proceeding. It is further

ORDERED that Docket No. 000824-EI and Docket No. 001148-EI shall remain open to permit the Commission to complete its pending rate reviews in those dockets for Florida Power Corporation and Florida Power & Light Company, respectively, and Docket No. 010577-EI shall be closed.

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By ORDER of the Florida Public Service Commission this 14th
day of March, 2002.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.