

ORIGINAL
RECEIVED-FPSC
01 JUN 12 PM 4:08
RECORDS AND
REPORTING

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850.222.2300
850.222.8410 Fax
www.steelhector.com

Matthew M. Childs, P.A.

June 12, 2001

HAND DELIVERED

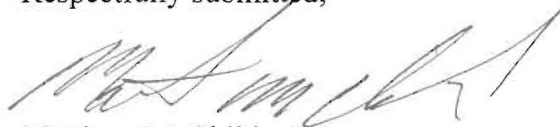
Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

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

Dear Ms. Bayó:

Enclosed for filing in the above referenced docket are the original and fifteen (15) copies of FPL's Petition to Determine the Prudence of Formation of and Participation in GridFlorida, LLC.

Respectfully submitted,

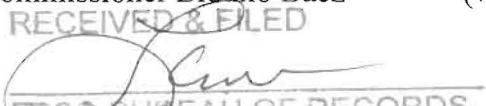


Matthew M. Childs, P.A.

- APP _____
- CAF _____
- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- LEG 1 _____
- OPC _____
- PAI _____
- RGO _____
- SEC 1 _____
- SER _____
- OTH _____

MMC:acw
Enclosures

cc: Chairman E. Leon Jacobs, Jr. (w/enc.)
Commissioner Braulio Baez (w/enc.)

RECEIVED & FILED

FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07308 JUN 12 00278

Ms. Blanca S. Bayó
June 12, 2001
Page Two

Commissioner J. Terry Deason	(w/enc.)
Commissioner Lila A. Jaber	(w/enc.)
Commissioner Michael A. Palecki	(w/enc.)
Mary Andrew Bane	(w/enc.)
Charles H. Hill	(w/enc.)
William D. Talbott	(w/enc.)
Robert L. Trapp	(w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
Filed: June 12, 2001

**PETITION TO DETERMINE THE PRUDENCE
OF FORMATION OF AND PARTICIPATION IN GRIDFLORIDA LLC**

Florida Power & Light Company ("FPL" or "the Company") hereby petitions this Commission for an order concluding that participation by FPL in an Regional Transmission Organization ("RTO") is the Company's most prudent course of action in light of the Federal Energy Regulatory Commission's ("FERC") Order No. 2000. The Company further requests that this Commission find that the GridFlorida proposal, advanced jointly by FPL, Florida Power Corporation ("FPC"), and Tampa Electric Company ("Tampa Electric"), is prudent, given the parameters established by the FERC in its Order No. 2000. Pending review of this matter by the Florida Public Service Commission ("FPSC" or "Commission"), FPL is not in a position to move forward with the formation and commercial operation of GridFlorida LLC ("GridFlorida"). Therefore, FPL respectfully requests that the Commission set this matter for hearing on an expedited basis, consistent with its decision made during the May 29, 2001 Agenda Conference.

1. The Petitioners' name, address, telephone number and facsimile number are:

William G. Walker
Florida Power & Light
215 S. Monroe Street, Suite 810
Tallahassee, FL 32301
(850) 224-7517
(850) 224-7197 (fax)

Matthew M. Childs
Steel Hector & Davis, LLP
215 S. Monroe Street, Suite 610
Tallahassee, FL 32301
(850) 222-2300
(850) 222-7510 (fax)

2. All pleadings, notices, staff recommendations, orders or other documents required to be served, filed by any party or issued by the Commission in this proceeding should be forwarded to the following persons:

William G. Walker
Florida Power & Light
215 S. Monroe Street, Suite 810
Tallahassee, FL 32301
(850) 224-7517
(850) 224-7197 (fax)

R. Wade Litchfield
Florida Power & Light
700 Universe Blvd
Juno Beach, FL 33408
(561) 691-7101
(561) 691- 7135 (fax)

Matthew M. Childs
Steel Hector & Davis, LLP
215 S. Monroe Street, Suite 610
Tallahassee, FL 32301
(850) 222-2300
(850) 222-7510 (fax)

3. FPL is an electric utility subject to the jurisdiction of this Commission. As a regulated electric utility, reasonable and prudent costs for providing retail electric service are recoverable through rates and charges, which have been approved by this Commission. FPL is also a public utility subject to the jurisdiction of the FERC with respect to provision of wholesale electric service. FPL, in response to the provisions of Rule 28-106.201, F.A.C., states that this Petition is filed consistent with the Commission's decision at the May 29, 2001 Agenda Conference. However, at this time FPL is not aware of disputed issues of material fact. The actions of the FERC and the steps taken to develop GridFlorida as herein alleged warrant granting the relief requested which is authorized pursuant to Sections 366.05, 366.06 and 366.076, Florida Statutes.

4. Pursuant to its authority under the Energy Policy Act of 1992, the FERC issued Order No. 2000, 65 Fed. Reg. 809, on December 20, 1999, which established a national policy that it is in the public interest for all jurisdictional public utilities that own, operate or control

facilities for transmission of electric energy in interstate commerce to make certain filings with respect to the formation and participation in a RTO. Specifically the FERC directed all jurisdictional public utilities that owned, operated, or controlled interstate transmission facilities to file with the FERC by October 15, 2000 either:

a. A proposal to participate in a RTO that would be operational no later than December 15, 2001 or

b. An alternative filing describing efforts to participate in a RTO, obstacles to RTO participation, and any plans and time tables for future efforts to overcome such obstacles.

5. Order No. 2000 makes it clear that the formation of RTOs is an integral part of a nationwide federal initiative:

Our objective is for all transmission-owning entities in the Nation, including non-public utility entities, to place their transmission facilities under the control of appropriate RTOs in a timely manner.

Order No. 2000 also makes it clear that while FERC initially is taking a voluntary approach to RTO formation, FERC may order jurisdictional entities to join an RTO if they fail to do so in accordance with Order No. 2000:

Our adoption of a voluntary approach to RTO formation in this Final Rule does not in any way preclude the exercise of any of our authorities under the FPA to order remedies to address undue discrimination or the exercise of market power, including the remedy of requiring participation in an RTO, where supported by the record.

* * * * *

We conclude that the Commission possesses both general and specific authorities to advance voluntary RTO participation. We also conclude that the Commission possesses the authority to order RTO participation on a case-by-case basis, if necessary

FERC Order No. 2000 is incorporated herein by reference.

6. On October 16, 2000, and supplemented on December 15, 2000, pursuant to §§ 203 and 205 of the Federal Power Act and FERC Order No. 2000, FPL, Tampa Electric, and FPC (the “Joint Applicants”) submitted a joint response in compliance with Order No. 2000, requesting authorization from the FERC to create GridFlorida LLC, a for-profit RTO. As proposed, GridFlorida would be a limited liability company and would 1) own, operate and control transmission facilities divested to it by transmission owners in exchange for a non-voting membership interest and 2) operate transmission facilities of other transmission owners that transfer operational control to GridFlorida pursuant to a Participating Owners’ Management Agreement. If this proposal is implemented, FPL and Tampa Electric will transfer ownership and control of their respective transmission facilities of 69 kV and above to GridFlorida. FPC will transfer full operational control of its transmission facilities of 69 kV and above to GridFlorida while retaining ownership. Upon commencement of operations of GridFlorida, the Joint Applicants will obtain transmission service from GridFlorida.

7. The proposal contained in the Joint Applicant’s Order No. 2000 compliance filing was not created in a vacuum. To the contrary, the proposal for the formation of GridFlorida was the product of many months of intense and detailed collaborative discussions, as required under Order No. 2000, with a wide range of market participants, including municipal utilities, rural electric cooperatives, existing and potential operators of Florida non-utility generation and FERC Staff. The FPSC was invited to, attended and participated in many of these public meetings. In addition, a number of presentations were made to the FPSC in order to keep it fully apprised of the GridFlorida proposal as it evolved.

8. On March 28, 2001, the FERC issued its Order in Docket No. RTO1-67-000 provisionally granting RTO status to GridFlorida LLC. This FERC Order found that the October 16, 2000 compliance filing by the Joint Applicants, as modified on December 15, 2000, complied with the minimum characteristics and functions of an RTO as described in Order No. 2000. In its March 28th Order, FERC also accepted various portions of the Joint Applicants' Proposal, revised other portions of the Proposal and directed the applicants to make an additional compliance filing, reflecting ordered revisions, within sixty (60) days of March 28, 2001.

9. On August 15, 2000, this Commission opened Docket No. 001148-EI, captioned "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."

10. On May 3, 2001, the Staff of this Commission filed recommendations in Docket No. 001148-EI with respect to FPL and Docket No. 000824-EI with respect to FPC which directly challenged the prudence of FPL's and FPC's [and, by implication, Tampa Electric's] decisions to join an RTO, in general, and to form and participate in GridFlorida, in particular. The Staff concluded that the GridFlorida proposal was beyond the development stage and well into the implementation stage. However, this conclusion is incorrect. This Commission's determination that FPL's planned involvement in the GridFlorida RTO is prudent is a necessary prerequisite to FPL's continued participation in the formation of GridFlorida.

11. On May 15, 2001, this Commission approved Staff's Recommendations in both the FPL and FPC dockets squarely raising issues that challenge the prudence of the formation of and participation in GridFlorida. The Commission's action in these dockets has had the effect of

arresting each company's participation in GridFlorida given the possibility of future disallowance of each company's GridFlorida-related costs on grounds of imprudence.

12. On May 29, 2001, FPL, Tampa Electric, and FPC made the compliance filing required by the FERC in its March 28th Order. In light of this Commission's decision to adopt the Staff's recommendations, as they pertained to the prudence of participation in GridFlorida, FPL, Tampa Electric, and FPC advised the FERC in their compliance filing as follows:

Shortly before the date of this filing, the Florida Public Service Commission ("FPSC") initiated separate formal prudence investigations into the Applicants' participation in GridFlorida. The important and complex issues raised by the FPSC proceedings create uncertainty on several fronts, including the recovery of investments made by the Applicants to comply with Order No. 2000. The Applicants are concerned that they will be caught in a situation where the FPSC and this Commission will reach different conclusions as to whether the Applicants should participate in GridFlorida. Because resolution of these jurisdictional issues is too critical to the continued viability of GridFlorida, the Applicants have suspended their RTO development activities until the potential jurisdictional conflicts are resolved. Furthermore, the stakeholder Board Selection Committee has decided to suspend the process whereby members of the independent Board of Directors are being selected. The Board Selection Committee determined that it would not be appropriate at this time to interview and attempt to select Board members. The uncertainty regarding GridFlorida's situation would necessarily affect the Board Selection Committee's ability to attract qualified candidates. In addition, Accenture has been contracted by GridFlorida as a Project Manager to develop the Phase I Blueprint stage. The Blueprint stage, which will be completed in the near future, involves developing a time line and a start-up and operating budget for GridFlorida. The Applicants have decided not to go forward at this time with a Project Manager for the next phase of the project, which involves designing the organization and selecting solution providers to perform the tasks identified in Phase I.

Each of the Applicants remains prepared to implement GridFlorida, depending upon the resolution of the jurisdictional issues. The Applicants are committed to working with the FPSC and stakeholders to resolve the RTO issues as quickly as possible. However, the Applicants do not know how long it will take for the

FPSC to conclude its investigation or exactly what the impact of that proceeding ultimately will be on GridFlorida development. Once the Applicants know more, they will file a report with the Commission and, depending on how the jurisdictional conflicts are resolved, the Applicants will submit a revised implementation schedule, including a proposed date for the commencement of GridFlorida operations.

13. Also on May 29, 2001, this Commission granted, in part, and denied, in part, the Joint Motion of FPL, Tampa Electric, and FPC to establish a separate generic docket to determine on an expedited basis, the prudence of the formation of and participation by FPL, Tampa Electric, and FPC in GridFlorida. The Commission denied the portion of the motion requesting the opening of a separate generic docket but granted the portion of the motion requesting an expedited review of the prudence of participation in GridFlorida by FPL, Tampa Electric, and FPC. The Joint Applicants were each directed to file, within their respective Dockets, a petition specifying the relief requested, within 30 days following the May 29th FPSC Agenda Conference and supporting testimony and exhibits within 60 days following the May 29th FPSC Agenda Conference. The Commission stated that it would render its decision within 90 days following the filing of testimony and exhibits. The Commission then directed its Staff to review the petitions filed to determine how many of the issues could be consolidated for hearing on the prudence of the formation of and participation in GridFlorida.

14. FPL finds itself in a potential jurisdictional dispute between two governmental agencies that may have conflicting views on the formation, operation and value of an RTO. FPL has complied with the directives and policy determinations of the FERC in forming GridFlorida. However, the possibility of disallowance of transmission costs has caused each of the Joint Applicants to suspend their respective activities in connection with GridFlorida. It is imperative

that FPL receive definitive guidance from this Commission before further progress can be made on the formation of the RTO.

15. It is important to identify the issues in this proceeding in order to enable the Commission to reach a decision that gives FPL timely and definitive guidance on the prudence of its participation in GridFlorida. FPL believes that the appropriate issues for the Commission's review of prudence are as follows:

a. Is FPL's decision to participate in a RTO the most prudent alternative in light of FERC's Order No. 2000?

b. Is the GridFlorida Proposal advanced by FPL, FPC and Tampa Electric prudent, given the parameters established by FERC in its Order No. 2000?

c. What are the benefits to the State of Florida associated with the GridFlorida Proposal advanced by FPL, Tampa Electric, and FPC for the formation and operation of a RTO?

d. What are the estimated costs to FPL's retail customers for its participation in GridFlorida, and how should these costs be recovered?

e. What factors support FPL's decision to transfer ownership and control of its transmission facilities of 69 kV and above to GridFlorida?

16. In order to provide full and complete testimony within the expedited schedule that the Commission has approved, FPL requests that a Prehearing Conference be held as soon as possible so that the statement of issues in this case can be finalized.

WHEREFORE, FPL respectfully requests that this Commission:

1. Convene a Prehearing Conference as soon as possible to establish the issues to be addressed;
2. Establish a schedule for the completion of the requested prudence review;
3. Determine that the formation and participation by FPL in GridFlorida is reasonable and prudent; and
4. Provide such other relief as is herein requested.

DATED this 12th day of June, 2001.

Respectfully Submitted,



MATTHEW M. CHILDS, P.A.
Steel Hector & Davis, LLP
215 S. Monroe Street, Suite 610
Tallahassee, Florida 32301
(850) 222-2300

and

R. WADE LITCHFIELD
Senior Attorney
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
(561) 691-7101

ATTORNEYS FOR FLORIDA POWER & LIGHT COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Petition to Determine the Prudence of Formation of and Participation in GridFlorida, LLC has been served by hand delivery (*) or U.S. Mail on the 12th day of June, 2001 to the following:

Robert V. Elias, Esquire*
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Room 370
Tallahassee, Florida 32399-0850

J. Roger Howe, Esquire
Office of Public Counsel
c/o Florida Legislature
111 W. Madison Street
Room No. 812
Tallahassee, Florida 32399-1400

John McWhirter, Jr, Esquire
Attorney for FIPUG
McWhirter Reeves
400 North Tampa Street, Suite 2450
Tampa, Florida 33601-3350

Michael B. Twomey, Esquire
Attorney for
Thomas P. Twomey, Intervenor,
Genevieve E. Twomey, Intervenor
P.O. Box 5256
Tallahassee, Florida 32314-5256

Thomas A. Cloud, Esquire
Attorney for Dynege, Inc.
Gray, Harris & Robinson, P.A.
201 East Pine Street, Suite 1200
Orlando, Florida 32802-3068

David L. Cruthirds, Esquire
Attorney for Dynege Inc.
1000 Louisiana Street
Suite 5800
Houston, TX 77002-5050


Joseph McGlothlin, Esquire
Vicki Kaufman, Esquire
Attorneys for FIPUG
McWhirter Reeves
117 S. Gadsden Street
Tallahassee, Florida 32301

Mark Sundback, Esquire
Kenneth Wiseman, Esquire
Attorneys for South Florida Hospital
and Healthcare Association,
Intervenor
Andrews & Kurth Law Firm
1701 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20006

Docket No. 001148-EI
Page Two

Jon C. Moyle, Esquire
Cathy M. Sellers, Esquire
Attorneys for CPV Atlantic, Intervenor
118 North Gadsden Street
Tallahassee, Florida 32301

Joseph McGlothlin, Esquire
Attorney for Reliant Energy
Power Generation, Inc., Intervenor
McWhirter Reeves
117 S. Gadsden Street
Tallahassee, Florida 32301

By: 
Matthew M. Childs, P.A.