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June 15, 2001

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 000824-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies each of Public Counsel's Response in Opposition to Florida Power Corporation's Petition to Determine the Prudence of Formation of and Participation in GridFlorida, LLC for filing in the above referenced docket.

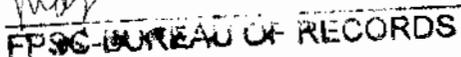
Also enclosed is a 3.5 inch diskette containing Public Counsel's Response in Opposition to Florida Power Corporation's Petition to Determine the Prudence of Formation of and Participation in GridFlorida, LLC in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,


John Roger Howe
Deputy Public Counsel

JRH/dsb
Enclosures

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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.)
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Docket No. 000824-EI
Filed: June 15, 2001

**PUBLIC COUNSEL'S RESPONSE IN OPPOSITION TO
FLORIDA POWER CORPORATION'S PETITION TO DETERMINE THE
PRUDENCE OF FORMATION OF AND PARTICIPATION IN GRIDFLORIDA, LLC**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Section 350.0611, Florida Statutes (2000), and Rule 28-106.203, Florida Administrative Code, respond in opposition to Florida Power Corporation's petition for the following reasons:

1. Florida Power's petition asks for a determination of prudence but offers no basis upon which the Commission could reach such a conclusion. At its core, the company's petition asks the Commission to agree that the utility had no choice but to construe FERC's voluntary approach to Regional Transmission Organization (RTO) formation as a veiled mandate. But if FERC had the authority to mandate formation of GridFlorida and Florida Power had no option but to comply, it would not be a matter for this Commission to resolve. The real issue is whether Florida Power should be allowed to saddle its customers with higher costs resulting from its voluntary participation in the RTO. Yet this issue is not even offered by the company as one deserving of resolution. It is the Citizens' position that the Commission should first consider whether it has the authority to disapprove the transfer of control of Florida Power's retail transmission assets to GridFlorida and that, in any event, no higher costs or increased rates should be passed on to the utility's customers.

2. There can be little doubt that the Commission's statutory authority allows it to require utilities under its jurisdiction to build, to own, and to operate the assets necessary for the provision of reliable retail electric service. The legislative intent of Chapter 366, Florida Statutes, as expressed in Section 366.01, defines the regulation of electric utilities to be an attribute of the police power, necessary for the protection of the public health, safety, and welfare and provides for the liberal interpretation of laws to accomplish that purpose. Among the powers delegated to the Commission in Section 366.05 is the power to require additions and extensions to the plant and equipment of any electric utility "when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto." Such wording suggests the Commission should jealously guard against attempts to divest it of any of its powers and responsibilities.

3. As a general matter, the Commission does not order construction of power plants, transmission and distribution lines or any of the other facilities needed to deliver electricity to the customer's meter because the utilities act on their own initiative with the Commission's concurrence. Commission approval varies in form from formal orders to acquiescence in the recording of expenses and investment for rate-of-return surveillance purposes. In the past, this process was adequate to assure sufficient assets under the Commission's jurisdiction to meet its statutory responsibilities.

4. Today, however, things may be viewed differently. FERC has issued its Order 2000 urging electric utilities to see the wisdom of voluntarily creating RTO's, not as an end unto itself, but as a means to facilitate competition in the wholesale electric generation market. In response, peninsular Florida's large investor-owned utilities have set about to create GridFlorida. Two of them,

Florida Power & Light Company and Tampa Electric Company, propose to get out of the electricity transmission business altogether by transferring their above-69kv transmission facilities to this new FERC-regulated entity. The third utility, Florida Power Corporation, plans to maintain ownership but turn over complete operational control of its high-voltage transmission assets to GridFlorida.

5. In the absence of explicit statutory language giving the Commission authority to evaluate the transfer of assets to entities outside its jurisdiction, the companies and, indirectly, the Commission itself have acted as though the Commission's jurisdiction extended only to the question of whether after-the-fact cost recovery would be allowed. This is apparently the limit of Florida Power's concerns. It is not asking for the Commission to approve its transfer of operational control of its transmission assets to the RTO. It is only asking that the Commission find the company's unilateral decision prudent, which by unstated implication would open the door for uncontested cost recovery.

6. The issue of cost recovery is obviously of paramount concern to Florida Power's customers: Should Florida Power's voluntary decision to transfer operational control of its transmission assets and incur costs in the process be allowed to increase retail customers' rates? The answer from ratepayers: Of course not. But this issue should probably be the second one addressed by the Commission. The first should be whether the Commission should allow Florida Power to transfer operational control of retail rate-based assets in the first place.

7. A fair assumption is that all of Florida Power's assets were acquired in the first instance to serve retail customers. Retail customers, among other things, are entitled to economic dispatch which commits the lowest cost generation (consistent with good utility practices) to meet their load on the system. Florida Power's entire system is (or certainly should be) operated with an

understanding of the priority status of retail native load customers under the Commission's oversight.

8. It is in this light that the Commission should evaluate its own authority. Is there any substantive difference between assets acquired at the Commission's insistence and those a utility gets on its own with either prior or after-the-fact Commission approval? Can statutes reasonably be interpreted in such a way that an electric utility can be forced by Commission action to acquire a used and useful asset in the first place but cannot be prevented from selling it immediately afterwards? If memory serves, Florida Power & Light Company built the two 500 kv lines down the East Coast of the State at the Commission's urging to bring in "coal by wire" from the Southern Company to the north. Retail ratepayers provided accelerated cost recovery through the oil-backout cost recovery process. Has FPL always had the ability to just transfer those backbone transmission assets out of the Commission's jurisdiction at anytime and to anyone it chose? The Commission's jurisdiction is the same now as it was then.

9. The only thing that has really changed has been FERC's pronouncements. It may be that FERC could preempt the Commission's jurisdiction, but that has not happened. As things now stand, the Commission must regulate Florida's investor-owned electric utilities as the Florida Statutes direct. Those utilities should not be allowed to unilaterally divest the Commission of its jurisdiction over retail transmission assets or to impose higher costs on retail ratepayers because of the utilities' voluntary participation in GridFlorida.

10. The Citizens, therefore, respectfully suggest that the following issues are deserving of resolution in this docket:

- a. Can Florida Power Corporation stop providing retail transmission service without the Commission's prior authorization?
- b. Can Florida Power Corporation transfer operational control of its retail transmission assets currently subject to the Commission's jurisdiction without the Commission's prior approval?
- c. Should the level of retail customer rates be adversely affected by Florida Power Corporation's voluntary transfer of operational control of retail transmission assets to GridFlorida LLC?

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, oppose Florida Power Corporation's petition.

Respectfully submitted,

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Attorneys for the Citizens
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**CERTIFICATE OF SERVICE
DOCKET NO. 000824-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing PUBLIC COUNSEL'S RESPONSE IN OPPOSITION TO FLORIDA POWER CORPORATION'S PETITION TO DETERMINE THE PRUDENCE OF FORMATION OF AND PARTICIPATION IN GRIDFLORIDA, LLC has been furnished by U.S. Mail or *Hand-delivery to the following parties on this 15th day of June, 2001.

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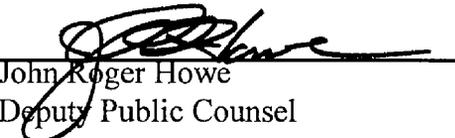
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