

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FLORIDA POWER CORPORATION'S EARNINGS INCLUDING EFFECTS OF PROPOSED ACQUISITION OF FLORIDA POWER CORPORATION BY CAROLINA POWER & LIGHT. DOCKET NO. 000824-EI

REVIEW OF FLORIDA POWER & LIGHT COMPANY'S PROPOSED MERGER WITH ENERGENCY CORPORATION, THE FORMATION OF A FLORIDA TRANSCO, AND THEIR EFFECT ON FLORIDA POWER & LIGHT'S RETAIL RATES. DOCKET NO. 001148-EI

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

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VOLUME 1
PAGES 1 THROUGH 163

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN E. LEON JACOBS
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE: Wednesday, October 3, 2001

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter

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FLORIDA PUBLIC SERVICE COMMISSION 2630 OCT-4 01

FPSC-COMMISSION CLERK

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P R O C E E D I N G S

1
2 CHAIRMAN JACOBS: Good morning. We will call this
3 hearing to order. Counsel, read the notice.

4 MR. KEATING: Pursuant to notice issued August 20th,
5 2001, this time and place have been set for a hearing in Docket
6 Number 000824-EI, review of Florida Power Corporation's
7 earnings including effects of proposed acquisition of Florida
8 Power Corporation by Carolina Power and Light; Docket Number
9 001148-EI, review of Florida Power and Light Company's proposed
10 merger with Entergy Corporation, the formation of the Florida
11 Transmission Company (Florida Transco), and their effect on
12 FPL's rates; and Docket Number 010577-EI, review of Tampa
13 Electric Company and impact of its participation in
14 GridFlorida, a Florida transmission company, on TECO's
15 ratepayers.

16 CHAIRMAN JACOBS: We will take appearances.

17 MR. LONG: Harry Long appearing on behalf of Tampa
18 Electric Company.

19 MR. WILLIS: I'm Lee L. Willis of the firm of Ausley
20 and McMullen, P.O. Box 391, Tallahassee, Florida, 32302,
21 appearing on behalf of Tampa Electric Company.

22 MR. CHILDS: Matthew Childs of the firm of Steel,
23 Hector and Davis appearing on behalf of Florida Power and
24 Light.

25 MR. FAMA: Jim Fama, LeBoeuf, Lamb, Greene & MacRae,

1 appearing on behalf of Florida Power Corporation. I would also
2 like to enter the appearance of Jim McGee, in-house with
3 Florida Power Corporation.

4 CHAIRMAN JACOBS: Fama? You said Fama, correct?

5 MR. FAMA: Fama, yes. Thank you.

6 MR. McWHIRTER: John McWhirter, Jr., assisting Vicki
7 Gordon Kaufman on behalf of the Florida Industrial Power Users
8 Group.

9 MR. BRYANT: Bill Bryant of the firm of Katz, Kutter,
10 Haigler, et al, representing Enron Corporation. And I would
11 also like to enter the appearance of Ms. Natalie Futch with the
12 law firm.

13 MR. McGLOTHLIN: Joe McGlothlin of the McWhirter
14 Reeves law firm, 117 South Gadsden Street, Tallahassee. I
15 appear for Reliant Energy Power Generation, Inc.

16 MS. PAUGH: Leslie Paugh of Landers and Parsons, 310
17 West College Avenue. Appearing with me is Diane Kiesling. We
18 are appearing on behalf of Calpine Corporation, Duke Energy
19 North America, and Mirant Americas Development, Inc.

20 MR. HOWE: Commissioners, I'm Roger Howe with the
21 Public Counsel's Office appearing on behalf of the citizens of
22 the State of Florida.

23 MR. TWOMEY: Mr. Chairman, Mike Twomey appearing on
24 behalf of Thomas and Genevieve Twomey, Buddy L. Hansen,
25 Sugarmill Woods Civic Association, and as well I filed a

1 petition to intervene on behalf of Louis D. Putney, who is a
2 customer of Tampa Electric Company on September 21st. I spoke
3 to Mr. Willis this morning, they have no objection, so I assume
4 that intervention is appropriate. Thank you.

5 CHAIRMAN JACOBS: We will take that up. We have some
6 other intervenors. You can either step to the side mikes or
7 come up to the front table, either way you like.

8 MR. ANTONACCI: Commissioner Jacobs, Pete Antonacci,
9 Gray Harris & Robinson, appearing for Publix in Docket 10577.

10 MR. FRAZIER: Seann Frazier from Greenberg Traurig,
11 also appearing for Publix.

12 CHAIRMAN JACOBS: Seann -- I'm sorry, I didn't get
13 your last name.

14 MR. FRAZIER: Frazier.

15 CHAIRMAN JACOBS: I'm sorry?

16 MR. FRAZIER: Frazier.

17 CHAIRMAN JACOBS: Very well. Here it is, I've got
18 it.

19 MR. STRICKLAND: Wes Strickland for Foley & Lardner,
20 106 East College Avenue, Suite 900, Tallahassee, Florida,
21 32301, appearing on behalf of Seminole Electric.

22 MR. FRANK: Dan Frank of Sutherland Asbill & Breenan
23 in Washington, D.C. on behalf of Walt Disney World Company.

24 CHAIRMAN JACOBS: Very well.

25 MR. KEATING: And Cochran Keating appearing on behalf

1 of Commission staff, as well as Bob Elias.

2 CHAIRMAN JACOBS: Very well. Mr. Moyle is listed, I
3 assume he is going to participate, as well?

4 MR. MOYLE: Jon Moyle, Sr. --

5 CHAIRMAN JACOBS: Oh, we get the first team.

6 MR. MOYLE: As my grandchildren said this morning,
7 the real Jon Moyle. And also Cathy Sellers and Dan Doorakian
8 of the law firm of Moyle, Flanigan, Katz, Raymond & Sheehan.
9 We are here on behalf of PG&E National Energy Group, and
10 Competitive Power Ventures Atlantic, Limited. Thank you, Mr.
11 Chairman.

12 CHAIRMAN JACOBS: Very well. Thank you. Staff, I
13 understand we have a couple of preliminary matters?

14 MR. KEATING: There are three motions or petitions
15 that are outstanding at this point. As Mr. Twomey mentioned
16 his petition to intervene on behalf of Louis Putney is pending.

17 CHAIRMAN JACOBS: Is there any opposition to that?

18 MR. WILLIS: No opposition.

19 CHAIRMAN JACOBS: Very well. Show it granted.

20 MR. KEATING: And I believe that the petition to
21 intervene of Publix in Docket 010577 is still pending, as well.

22 CHAIRMAN JACOBS: Any opposition to that?

23 MR. LONG: No objection.

24 CHAIRMAN JACOBS: Very well. Show that granted, as
25 well.

1 MR. KEATING: Finally, on staff's list of preliminary
2 matters is staff's motion to strike portions of the testimony
3 of Korel M. Dubin that has been filed in this docket.

4 CHAIRMAN JACOBS: Very well.

5 MR. KEATING: And we are prepared to address that.

6 CHAIRMAN JACOBS: We are going to take that up now
7 unless Commissioners have any other preference on that. Here
8 is what I would like to do. I would like to limit argument
9 to -- this is -- we will go eight minutes per side, okay. And
10 you can reserve time if you need. You may proceed.

11 MR. KEATING: I think that will be plenty of time.

12 Commissioners, staff's motion to strike is based on
13 two orders of this Commission that we believe establish the
14 parameters of this proceeding and we believe that Ms. Dubin's
15 testimony concerning a cost-recovery or proposing a
16 cost-recovery methodology for certain costs associated with
17 GridFlorida goes beyond those parameters.

18 First, to step back and to see how this proceeding
19 started, Florida Power and Light, Florida Power Corporation,
20 and Tampa Electric requested an expedited proceeding for review
21 of GridFlorida, and they requested that it be done in a generic
22 docket. The Commission granted the request for an expedited
23 proceeding, but not for a generic docket. In granting the
24 request, the Commission found that the review should take place
25 within the existing dockets that we are here at hearing on

1 today, and established a Phase I and Phase II proceeding for
2 those dockets with the exception of the Tampa Electric docket,
3 for which there is no Phase II rate proceeding established at
4 this time.

5 In its order establishing this proceeding, the
6 Commission stated some parameters for what would be done in
7 Phase I and Phase II. And we believe in pertinent part the
8 Commission stated we will not in Phase I allocate any of the
9 costs or benefits associated with GridFlorida. And in Phase
10 II, we will include cost-recovery.

11 FPL has argued in its response to our motion that it
12 is not proposing cost-recovery, only a cost-recovery
13 methodology. However, we believe that different cost-recovery
14 methodologies can result in different allocations by retail
15 rate class. As the Commission stated in its order, Phase I
16 will not involve an allocation of costs or benefits associated
17 with GridFlorida, so therefore even if you accept FPL's
18 argument that it is not asking for cost-recovery, only
19 cost-recovery methodology and therefore that it is within the
20 parameters of the Phase I proceeding, we still believe that
21 given the language in the order that it falls outside of
22 Phase I.

23 The second order that staff has relied on is the
24 order establishing issues in this docket. We conducted an
25 informal issue ID with the parties and we conducted before the

1 prehearing officer a formal prehearing issue identification
2 conference to identify the issues to be addressed in testimony
3 in this proceeding. That order does not include an issue
4 concerning cost-recovery or concerning a cost-recovery
5 methodology.

6 In fact, Florida Power and Light had proposed an
7 issue that is very similar to what is listed as Issue 4 in the
8 prehearing order and in the order establishing issues today
9 which asks what the estimated costs of GridFlorida are to FPL's
10 ratepayers. In FPL's proposed issue it included the phrase at
11 the end of Issue 4, "And how should these costs be recovered?"
12 That phrase was not included in the issue list that was set
13 forth in the order establishing issues.

14 Now, Florida Power and Light has suggested in its
15 response to our motion that the order establishing issues
16 includes language suggesting that the parties could approach
17 these issues as very broad issues. We believe that reading the
18 order, however, to allow FPL to address cost-recovery, even if
19 it is just a cost-recovery methodology, would be inconsistent
20 with the order from this Commission establishing the bounds and
21 the parameters of the Phase I review in these dockets. I think
22 it is important to note that no reconsideration was sought of
23 either order.

24 In preparing for this hearing, the staff has, I
25 believe, reasonably relied upon these orders as defining the

1 scope of the proceeding. And we believe that allowing the
2 testimony at this time to be put into the record puts not only
3 the staff, but other parties at an unfair advantage -- or
4 disadvantage. And we believe that allowing the testimony would
5 be inconsistent with the order establishing this proceeding and
6 the order establishing the issues in this proceeding.

7 I just want to make one final point. In the
8 deposition of Ms. Dubin, she asserted that when asked -- and
9 this is stated in staff's motion, the exact question and
10 answers -- how a cost-recovery methodology was somehow subsumed
11 in Issue 4 as it is currently worded which asks what the
12 estimated costs are to FPL's ratepayers. She said that in
13 order to determine the estimated cost to FPL's ratepayers you
14 have to have a method to do that. And we believe that is
15 simply not true.

16 In fact, we believe it is in the public interest to
17 not address cost-recovery methodologies until Phase II. In
18 Phase II we will have more concrete cost data and cost studies
19 that will allow staff and the Commission to more fully consider
20 the impacts of these costs on FPL's ratepayers and to establish
21 a cost-recovery methodology which most equitably allocates
22 those costs to ratepayers.

23 In summary, we believe that allowing those portions
24 of Ms. Dubin's testimony that address a cost-recovery
25 methodology would be inconsistent with your orders, first,

1 establishing this proceeding, and, second, establishing the
2 issues in this proceeding, and would not be in the public
3 interest. As an alternative to striking the testimony, staff
4 has suggested in its motion that the testimony could simply be
5 deferred to Phase II of this proceeding. And perhaps another
6 alternative, although it's not listed in our motion, is that it
7 simply clarified the cost-recovery methodology is not a Phase I
8 issue. Thank you.

9 CHAIRMAN JACOBS: What would be the procedure if you
10 were to defer the testimony to Phase II simply to be held in
11 the docket, but not considered in your order?

12 MR. KEATING: Yes, I suppose that if you chose that
13 route, FPL could choose to withdraw the testimony and refile it
14 at Phase II, in Phase II, or it could leave it as is.

15 CHAIRMAN JACOBS: Very well. Thank you. Mr. Childs,
16 you may proceed. I guess I should ask before you begin are
17 there others who want to speak as proponents of the motion?

18 MR. TWOMEY: Mr. Chairman, I filed a joinder on
19 behalf of my clients supporting the staff's motion, and I won't
20 reiterate the fine points Mr. Keating said, except just to say
21 that there is a time and place for everything, and the time for
22 the testimony that is sought by staff to be excluded, I think,
23 is in the second phase and not the first. And we support the
24 Staff's motion. Thank you.

25 CHAIRMAN JACOBS: Thank you. You may proceed, Mr.

1 Childs.

2 MR. CHILDS: Commissioners, having you address the
3 testimony of Ms. Dubin in Phase I is important to Florida Power
4 and Light Company because it addresses a methodology for cost
5 recovery that we believe is appropriate and necessary, not just
6 appropriate but necessary because of the cost circumstances
7 associated with implementing GridFlorida. We were asked -- in
8 the first order which set forth the phasing of this hearing, we
9 were asked to tell you what we believe was necessary in order
10 to go forward with GridFlorida to be addressed in Phase I. We
11 were asked to tell you that, and we did. And this is one of
12 the things that we raised.

13 As to what we are asking for, I want to spend a
14 moment on that. We are not asking that you change rates, we
15 are not asking that you allocate costs to rate classes. We are
16 not asking that at all. What we are asking is simply that you
17 look at a procedure that is presented to you, which
18 incidentally is a procedure that you already have and have used
19 for a number of years in connection with the recovery of
20 capacity costs. And we are suggesting to you not that there
21 are -- what we want you to set the rate at, we are not asking
22 you to set any factor. We are saying this is a procedure and
23 we need to have some authorization or recognition from the
24 Commission that this is an appropriate procedure if and when.

25 I mean, we are not presuming that you are going to

1 approve or find prudent the pursuit of GridFlorida. But if you
2 do, in order for us to be able to go forward we want some
3 assurance that there is a method for cost-recovery. One of the
4 reasons is, and I say it's important, is that if you did
5 approve GridFlorida, and if the company is then confronted with
6 the decision of what does it do, it is not going to be in a
7 position to incur costs if it is not going to address even the
8 methodology to recovery those costs until some later date. We
9 believe we were asked to tell you that. We were asked to
10 petition for that relief, and we did.

11 Now, as to the interpretation of the orders, I want
12 to spend a few moments on that. First, I want to go to the
13 order setting the issues out. All parties met, and we had
14 several sessions with the prehearing officer who had a great
15 deal of patience with all the parties in this docket as to
16 their issues in several meetings and several filings by all of
17 the parties. And at the end of that process the prehearing
18 officer issued an order.

19 This order, which is Number 1485, set forth the
20 issues which staff identifies and says that none of those
21 issues include any specific mention of a cost-recovery
22 methodology. They're right. There is no specific issue that
23 covers that. We proposed an issue, we proposed an issue to the
24 prehearing officer that we believe was appropriate to cover
25 cost recovery. And in setting forth the issues and resolving

1 all of the disagreements with all of the parties about what
2 issues were going to be addressed in Phase I, the prehearing
3 officer said, and I am going to quote, he said -- this is right
4 before he listed the issues -- said I believe it is in the best
5 interest of all parties that the issues remain as broad as
6 reasonably possible thereby allowing all parties the
7 opportunity to address their issues in the positions taken on
8 the broad issues. The issues as stated below -- and he lists
9 them all -- are sufficiently broad as to encompass or subsume
10 all of the issue statements provided by all of the parties and
11 allow the individual utilities to present their cases
12 consistent with the joint order.

13 Well, we did have an issue and it did include the
14 method that we wanted to address how the costs should be
15 recovered. And we took this to say just exactly what it says,
16 that all parties will have the opportunity to address their
17 issues in the positions taken on the broad issues. This is
18 something the Commission does from time to time when they say
19 that something is subsumed within an issue. But it went on
20 beyond that and said in addition that these issues are stated
21 sufficiently broad as to encompass all of those issues. I
22 don't think there is any dispute or should be any dispute as to
23 whether our issue is appropriate.

24 Now, I want to come back to that other order in just
25 a minute, but I want to tell what you we did to try to

1 implement that. When we filed our prehearing statement we
2 identified this issue in our position. We identified that in
3 our prehearing statement for all parties and ultimately filed
4 the testimony of Ms. Dubin. And if you will look to the
5 prehearing order, you will see that we still have that position
6 in the prehearing order. Page 56 of the prehearing order,
7 which asks what the costs are, what are the estimated costs to
8 the utility ratepayers of its participation in GridFlorida.

9 The issue that is in our prehearing order says FPL
10 maintains that such incremental GridFlorida transmission
11 charges are properly recoverable through the capacity
12 cost-recovery clause. Explicit approval of the recovery of the
13 incremental transmission costs through a recovery clause is
14 required for FPL to proceed with RTO development. So we have a
15 path. We have the path from the beginning where we believe we
16 were asked to state the issue, we did. The prehearing officer
17 attempted to resolve difficulties as to multiple issues that
18 have been raised and he reached an accommodation and said he
19 was going to state those broadly, but parties could address
20 their issues and their issue statements were subsumed within
21 the broad issues. We did that.

22 We filed a prehearing statement. We identified this
23 in our prehearing statement. That's how it got in this
24 prehearing order is it was in our prehearing statement. At no
25 time until the motion to strike was filed had there been an

1 objection raised. And I want to come back to the first part
2 which staff relies upon, which he is the argument that the
3 original order circumscribes the proceedings such that you
4 should not be entertaining this testimony now.

5 I want to read because I think it is a little
6 different than saying that the Commission said that it wouldn't
7 consider anything that had to do with rates. And at Page 3, I
8 quote an order which is -- I quote a portion of the order which
9 is not in the motion to strike, I don't believe, or that
10 portion is. And what the Commission said is we will not change
11 retail rates or allocate any of the costs or benefits
12 associated with GridFlorida in Phase I.

13 COMMISSIONER JABER: Mr. Childs, which order are you
14 reading from?

15 MR. CHILDS: I am reading on Page 5 of Order 1372.
16 And, you know, I understand, and I'm not trying to suggest that
17 there is anything other than a cost-recovery methodology.
18 That's what it is, and the staff has acknowledged it is a
19 proposed methodology. But we are not proposing to change
20 rates. The argument was made earlier that the issue shouldn't
21 be addressed and we ended up with the direction from the
22 prehearing officer as to the scope.

23 The other point that I try to make in the response to
24 staff's motion is that the Commission in this Order 1372
25 addressed what was going to happen three times, three separate

1 occasions. And I'm going to read, however, from -- first, I'm
2 going to read from the ordering paragraph after the discussion.
3 The ordering paragraph said, ordered that each utility FPC,
4 FPL, and TECO shall no later than June 28th file a separate
5 petition specifically requesting such affirmative relief with
6 respect to its participation in GridFlorida as it believes
7 appropriate. No later than July 30, 2001, each utility shall
8 file direct testimony and exhibits in support of its petition.
9 The Commission will make a decision on each petition within 90
10 days following the filing of the utilities' direct testimony
11 and exhibits.

12 Now, we didn't file on that date because the
13 prehearing officer granted an extension of time, but I think
14 this sets forth the parameters. And I want to reiterate, we
15 believe it is important, we told the Commission it was
16 important, we petitioned for it. We were told that the
17 issues -- our issue statement could be subsumed within the
18 broad issues that had been listed and that is what we did. We
19 proposed that it be subsumed to no objection. We listed that
20 in our prehearing statement, we filed testimony, and it is now
21 in your prehearing order.

22 One other comment, I guess, and that is as to the
23 deposition questions to Ms. Dubin. Staff sets out an exchange,
24 and I don't think that that sets the basis for a decision made.
25 It's one point, but I think the staff is wrong. The staff says

1 that Ms. Dubin's comment that you need to set the methodology
2 is circular in order -- that you need to set the methodology in
3 order to know what the costs are that the customers will bear
4 is circular. And I say it is anything but circular, because if
5 you don't have a way to determine the costs will be borne by
6 the customers then it's really kind of an empty exercise to
7 determine what the costs are that will be borne by the
8 customers, because you don't know. And that's what she thought
9 she was doing was to present a methodology and when asked that
10 question that was her answer. And I think it's correct, but I
11 don't think it is the whole story.

12 We urge that you not defer this. We urge that you
13 hear this and that you decide it and that you decide it
14 favorably so that we will be in a position to go forward with
15 GridFlorida if you decide that doing so would be prudent.

16 Thank you.

17 CHAIRMAN JACOBS: Mr. Childs, is it the premise --
18 and I don't want to put you in a position of having to state
19 opinions based on Ms. Dubin's testimony, but it would occur to
20 me that an important condition to reach your position is that
21 cost recovery is an important aspect of the viability of
22 GridFlorida, is that a correct?

23 MR. CHILDS: I think it is. I think it is important
24 to the viability of GridFlorida because, Commissioner, we were
25 asked to tell you what we needed to know to go forward and that

1 is what we are telling you.

2 CHAIRMAN JACOBS: And here is my point. One of the
3 fundamental elements in my mind of the discussion we are having
4 goes to the idea that we are embarking on this brave new world
5 and to the extent that we are asking the retail ratepayers of
6 these companies to essentially buy into this brave new world,
7 we want to give them some assurance that there is no undue
8 risk, I will put it that way.

9 So it would occur to me that the very debate that we
10 are having has to do with to what extent there is any extra
11 cost recovery that would be put onto retail ratepayers as a
12 result of going into this exercise, rather than in my mind the
13 idea that there is an extra cost recovery and it should
14 absolutely occur in a prescribed manner. Do you get my
15 distinction?

16 MR. CHILDS: Well, I think I do. And I think I agree
17 with most of what you said. We are not asking you to prejudge
18 whether you think it is prudent by authorizing cost recovery.
19 We are not asking you to do that. We are asking you that as an
20 issue, we are asking you to determine that going forward with
21 GridFlorida as proposed is the right thing to do and we are
22 prudent. We are asking you to do that.

23 If you make that decision, then we are saying would
24 you -- because we are going to have to take some action next.
25 If we are going to go forward with GridFlorida, we are going to

1 have to incur expenses to do that. We are saying would you
2 address -- after you determine it is prudent, would you address
3 a method for us to recover costs. We are not saying don't set
4 any cost recovery now. We are not proposing that you change --
5 and you set anything in a clause or change rates at all, we are
6 simply saying would you make a decision that this is an
7 appropriate methodology to recover the costs of GridFlorida so
8 that -- and that is one of the things the testimony goes into
9 is to try to tell you why we think that is necessary because of
10 the volatility of costs, because of the way the costs are going
11 to be structured. So I'm not suggesting, and Florida Power and
12 Light is not suggesting that you do anything to impose costs on
13 customers, or to agree with us to impose costs on customers
14 until and unless you find that going forward with GridFlorida
15 is appropriate.

16 CHAIRMAN JACOBS: Very well.

17 MR. CHILDS: But we are trying to avoid that gap in
18 the decision, that if you decide that it is appropriate and we
19 don't come back until some future time and we are then
20 confronted with having to make the argument all over again
21 about the methodology. We are in significant doubt as to what
22 to do in the interim.

23 CHAIRMAN JACOBS: I understand. Commissioners, any
24 questions? I had offered the opportunity for proponents. Are
25 there any opponents of the motion who would like to speak, as

1 well? I'm sorry, you had a question?

2 COMMISSIONER JABER: It's to staff. I guess I have a
3 clarifying question, too. The staff filed a motion to compel.
4 Is there a separate staff that is going to advise us on this?

5 CHAIRMAN JACOBS: No, actually I was not going to ask
6 for a recommendation from staff since they proposed the motion.

7 COMMISSIONER JABER: Okay. Well, my question to
8 staff on the motion to compel, is there -- regardless of what
9 FPL's response to the motion is, just a bigger picture, is
10 there a way -- is it possible that the cost methodology
11 information could help us in figuring out where the costs could
12 be mitigated? That would be my only concern. I don't want
13 to -- I don't want to leave an opportunity out for the
14 Commission where it is possible that the methodology actually
15 helps us in the cost/benefit analysis.

16 I have made clear from the beginning I am interested
17 in looking at cost/benefit, you know, analyses and looking at
18 the prudence. And I'm not, quite frankly, concerned with the
19 arguments you make in your motion to strike, nor the response.
20 To me it's bigger than that. Are we precluding an opportunity
21 for the Commission to form where there might be some mitigation
22 in this if the Commission finds that some form of RTO is
23 appropriate?

24 MR. ELIAS: Well, I think that that would be a Phase
25 II issue. When we are looking holistically at all aspects of

1 the utilities' operations and we have an opportunity to look at
2 the specific costs and various functions.

3 COMMISSIONER JABER: But what if you get to Phase II
4 and you find out because there is no way to mitigate the costs
5 it wasn't a prudent thing to do, prudent thing to participate
6 in? See, something -- just to borrow a word from Mr. Childs --
7 is this a circular argument? What if you get to the very end
8 of the proceeding and you find out this is so cost prohibitive
9 that it is not feasible for the state and not a good idea for
10 the state?

11 MR. ELIAS: And those were the sorts of things that
12 we had talked about when we suggested that considering it in
13 the context of the retail rate proceeding was going to give the
14 Commission the best information. But the Commission's decision
15 was to break it up into two phases, so, you know, the decision
16 was made to do it that way and we are trying to make the best
17 we can of it.

18 COMMISSIONER DEASON: Well, let me ask a question and
19 I will direct it to staff at this point. First of all, just a
20 quick clarification. When was the motion to strike filed?

21 MR. ELIAS: The day after the deposition, or two days
22 after the deposition, and the prehearing conference.

23 COMMISSIONER DEASON: What date was that?

24 MR. ELIAS: September 19th.

25 COMMISSIONER DEASON: September the 19th. I was

1 under the impression that -- and maybe I was looking at it too
2 simplistically -- but that the way we went about this in this
3 bifurcated approach was basically to look at the broad policy
4 issues associated with an RTO development within the State of
5 Florida and that we would defer consideration of the actual
6 rate impacts. And when I say rate impacts, I'm talking about
7 actual cost recovery, dollars recovered and how those costs are
8 going to be allocated to customer classes. Is that basically
9 correct?

10 MR. ELIAS: I think that is absolutely correct. I
11 think that is clear from the Commission's orders and the issues
12 that have been identified thus far.

13 COMMISSIONER DEASON: All right. Given that broad
14 understanding of the nature of the bifurcation, I'm having some
15 difficulty understanding why a question of cost-recovery
16 methodology, not the dollars or how those dollars are
17 allocated, but a methodology, how that falls outside the scope
18 of the broad policy implications of an RTO development.

19 MR. ELIAS: I do not think that given the bifurcated
20 nature of this proceeding, that you can draw a bright line
21 between -- or if you are going to draw a bright line anyplace,
22 it's going to be at costs, because when you get into
23 methodology, then there are all kinds of other rate related
24 considerations that are dependent upon information and issues
25 that are not resident in this phase of the proceeding.

1 COMMISSIONER DEASON: But Issue 4 is directly on
2 costs, and we have to have an evaluation of cost and benefits
3 at least if we are going to avoid the criticism we have levied
4 against at FERC, we are going to have to do a cost/benefit
5 analysis ourselves.

6 MR. ELIAS: And we are prepared to do that. But the
7 question of how those costs are ultimately recovered from or
8 allocated from customers is not dependent upon an assessment of
9 what the dollar costs are.

10 COMMISSIONER JABER: Mr. Elias, I think we are
11 talking past you. We are not -- I don't envision in this
12 proceeding weighing the costs, looking at the costs, or any of
13 that. The methodology may be significant to the cost/benefit
14 analysis. It might be that one methodology is better than the
15 other in determining whether the RTO is a good idea or a bad
16 idea for the state.

17 Everyone could take us by surprise and say they are
18 not going to seek cost-recovery. I would just be pleased as
19 punch. And if that were the testimony, then that would weigh
20 positively on my mind with respect to the benefit to the state.
21 That is an example of methodology, how they intend or not
22 intend to recover the costs might be important to whether this
23 is good or bad for the state.

24 MR. ELIAS: You know, and I can't disagree that if
25 they are not going to seek to recover the costs then obviously

1 that changes the equation in terms of cost-effectiveness. But
2 as we understood the Commission's decision it was that we were
3 going to look at costs, and costs versus benefits to the state,
4 and that once we had made an affirmative determination on that
5 basis, that this was -- the utilities' actions to date were
6 prudent and that this made sense for the people of the State of
7 Florida, then we were going to in the context of a full review
8 of the two larger investor-owned utilities rates decide what
9 methodology might be appropriate for recovering and what method
10 for recovering those costs would be appropriate.

11 CHAIRMAN JACOBS: That decision in and of itself, the
12 decision in Phase I that there is prudence attached to actions,
13 doesn't that also have attached with it some assurance of cost
14 recovery?

15 MR. ELIAS: In one form or another, absolutely. We
16 have an obligation to allow the utility an opportunity to
17 recover prudently incurred costs in one form or another.
18 Whether it's through base rates, whether it's through a clause,
19 whether there are some set-offs that are appropriate or what
20 have you. But, yes, the decisions in this phase do carry some
21 weight as far as the prudence of the costs that will be
22 incurred.

23 COMMISSIONER PALECKI: Mr. Elias, we have a lot on
24 our plate in Phase I, and some really momentous decisions that
25 need to be made both by the staff and the Commission. Is part

1 of your concern that just as a pragmatic matter we already have
2 enough and this is an additional issue that can wait until the
3 second phase?

4 MR. ELIAS: In a word, yes. The timing of the costs
5 and the recovery of the costs is -- right now I think people
6 are talking about a start up at the earliest a year down the
7 road, so the costs that have been incurred to date by and large
8 are being deferred. And, you know, the benefits, it has always
9 been our supposition that the benefits to the extent that they
10 are would be timed to match up with the recovery of the costs.

11 COMMISSIONER PALECKI: Now, as far as cost recovery
12 is concerned, my own opinion is I don't mind hearing the
13 testimony. I'm not sure in this phase I want to be locked in
14 on determining cost-recovery methodology, but I certainly don't
15 mind hearing the testimony with the idea of making a decision
16 in Phase II. Do you have any problem with instead of striking
17 the testimony, just this Commission or the Chairman making a
18 ruling that the issue will be decided in Phase II?

19 COMMISSIONER JABER: Well, let's be clear about the
20 issue, because Issue 4 is already identify in Phase I. And I
21 wouldn't be interested in deferring that Issue to Phase II
22 because Issue 4 is critical. What are the estimated costs to
23 the utility's ratepayers of its participation in GridFlorida,
24 that is 50 percent of the cost/benefit analysis.

25 MR. ELIAS: Absolutely. And we see recovery and

1 methodology for recovering those costs as being separate and
2 distinct from the question of what the costs are.

3 COMMISSIONER DEASON: But let's get back, and I think
4 Commissioner Palecki may be making a good point in the sense --
5 and I was thinking about this, as well -- by allowing the
6 testimony, I do not think that the Commission is making a
7 decision that we are going to decide based upon the evidence we
8 get over the next three days whether we should or should not
9 allow recovery through some type of a cost-recovery mechanism.
10 It may be that we get evidence and we feel very comfortable
11 with that and we do want to take action, or it may be that we
12 are not and we decide that we will not take action on that.

13 I don't think that by allowing the testimony we are
14 saying that we are absolutely going to vote up or down a
15 recovery mechanism. And as I have said all along in this whole
16 docket, the way I look at this is that I call this the comfort
17 seeking docket. I think the Commission is seeking a comfort
18 level with an RTO development as to whether we have enough
19 comfort to make a decision on it and to try to give some
20 comfort to the utilities, because in all honesty, they are
21 placed in an uncomfortable position between two potentially
22 conflicting regulatory agencies when it comes to an RTO.

23 We are going to take evidence, and to the extent that
24 we get enough evidence that we are comfortable giving guidance
25 to our utilities, it may be that they are willing then to make

1 a decision up or down on an RTO. Maybe they are willing to
2 battle the FERC or maybe we are willing to give them enough
3 guidance and comfort that they are willing to go forward with
4 an RTO. I don't want to make any decision at this preliminary
5 stage that is just going to preclude us from making a decision
6 to giving whatever comfort level it is. And that comfort level
7 may be zero on the scale of from 1 to 100, or it may be 100.
8 My guess is it is going to be somewhere between the two.

9 But that's the problem that I'm having. I want to
10 hear the testimony. I may decide that there is not enough
11 information to make a decision in this phase and it has got to
12 be deferred. But I want the option to make the decision, and
13 by excluding the testimony I think then we are saying we are
14 not going to make any decision on cost-recovery methodology at
15 this point. And so I guess having said that, I would move that
16 we deny the motion to strike.

17 COMMISSIONER BAEZ: Before we get there --

18 COMMISSIONER JABER: Commissioner Baez has something
19 to say.

20 COMMISSIONER BAEZ: I just wanted to say something.
21 And part of it, part of my difficulty as a prehearing officer,
22 part of my difficulty with a motion to strike and certainly
23 with the companies' responses is that both made good points,
24 valid points from different directions. And after hearing Mr.
25 Childs couching of what the reasons were that they needed it,

1 and certainly having my own words thrown back to me is a
2 sobering experience, as well, I am somewhat persuaded by his
3 argument.

4 My concern is this, this is one of those issues for
5 me where we are confronted with what we did mean at the time
6 when we took this vote to expedite the process and now we are
7 seeing the consequences of that. I'm not smart enough to --
8 and certainly not at that time to have separated the cost
9 recovery, or what will be recovered from how it will be
10 recovered. I realize that that is entirely possible, and I see
11 your point, Mr. Childs.

12 My main concern is this, although we have now
13 proceeded with these dockets on a consolidated basis, I'm
14 concerned that even though this motion to strike only deals
15 with testimony that FPL has provided, and while I am perfectly
16 comfortable hearing testimony now, and as certainly some of the
17 Commissioners here have -- several of the Commissioners here
18 have suggested, you know, perhaps at the end of the day we do
19 decide that we don't have to address that particular question,
20 but certainly hearing the testimony may help us on some broader
21 questions. I am concerned about whatever prejudice might come
22 to the companies that did not necessarily interpret the
23 broadness of the issues to such an extent and we may be in
24 fact, you know, cutting out similar testimony on the other two
25 dockets that we have here.

1 Now, I think there is a way of dealing with that. I
2 mean, certainly the companies are free to file it under a Phase
3 II. Except, of course, for TECO, who I think is particularly
4 prejudiced in this instance because they don't have -- you
5 know, if we are going to be dealing with cost-recovery
6 methodologies in the next two days, I don't believe -- and Mr.
7 Willis can correct me if I'm wrong -- but I'm not sure that
8 there is any testimony by the company addressing it, if they
9 had ever any intention of addressing it.

10 MR. WILLIS: There is not any company testimony on
11 that, but we do not feel prejudiced by the presentation by
12 Florida Power and Light at all.

13 COMMISSIONER BAEZ: I guess in this case if you can
14 address my concerns and certainly Florida Power, as well, are
15 there any -- sorry to drag you all into this, but are there any
16 concerns, or would you have done it any differently, or was
17 your interpretation of the broadness of the order different
18 such that we don't have your testimony on a cost methodology?

19 MR. WILLIS: No, our interpretation is not any
20 different than Mr. Childs.

21 COMMISSIONER BAEZ: You just chose to treat it a
22 different way?

23 MR. WILLIS: That is correct.

24 CHAIRMAN JACOBS: I echo. In fact, that was exactly
25 the point I was going to bring out, Commission Baez. We would

1 have to survey the whole community of participants in the
2 dockets on the very question you just asked. And I have a real
3 concern that if we -- I don't have any problem at all leaving
4 the option there as to hearing testimony, but I am absolutely
5 concerned that if at the end of this proceeding we choose to
6 render a decision based on the testimony in the record, that we
7 will have put ourselves at risk of -- or actually put parties
8 at risk of some level of prejudice because they didn't have
9 prefiling opportunities. I would doubt that depositions other
10 than staff's deposition of this witness would have broached
11 this subject.

12 COMMISSIONER BAEZ: Well, Mr. Chairman, certainly we
13 have heard from TECO, and I don't know what Mr. Fama is going
14 to offer up at this point, but there is a subsequent phase to
15 this. I think that these three dockets all along have had, you
16 know, a little bit of a domino effect. I mean, one broad
17 decision on one docket is certainly going to impact a similar
18 decision on the other docket. And I don't think this is any --
19 this particular issue might not be any different, but I am
20 comforted -- assuming hearing from Mr. Fama, certainly -- that
21 they probably would have an opportunity to deal with it
22 adequately at a subsequent date.

23 CHAIRMAN JACOBS: It is my understanding from the
24 context of discussion we have had thus far, and I think it is
25 anticipated by the testimony that we would take as an

1 affirmative issue the relevance of cost-recovery to the
2 prudence of RTO formation and consider at least whether or not
3 the proper and most appropriate manner of cost-recovery is as
4 proposed by the witness of -- or by Ms. Dubin. That is the
5 issue that concerns me. That if we are to consider that issue
6 at the end of this testimony, that we would not have given all
7 parties an opportunity to address that issue.

8 MR. CHILDS: Commissioner, it may be inappropriate
9 for me to comment on that at this time, but --

10 CHAIRMAN JACOBS: We asked a lot of questions of
11 staff, I was going to give you a chance to come back, so go
12 ahead.

13 MR. CHILDS: As to your concern, let me try to make
14 clear we raised this in our position on our prehearing
15 statement. We filed the testimony, and this testimony of Ms.
16 Dubin that staff seeks to strike addresses this point. All
17 parties had an opportunity to respond to that testimony and
18 didn't. No party except the staff to my recollection even
19 pursued any questions on it. And if you look at their
20 statement of position, most parties -- I mean, we have that
21 stated, we came to the prehearing conference and addressed it,
22 the testimony had been filed and exhibits were identified, and
23 they had an opportunity to file and I don't think they did, or
24 they didn't.

25 CHAIRMAN JACOBS: Thank you. I'm sorry, were you

1 done, Commissioner?

2 MR. FAMA: Chairman Jacobs, excuse me, could Florida
3 Power state its position on this issue?

4 CHAIRMAN JACOBS: Go right ahead.

5 MR. FAMA: Commissioner Baez asked about it. Florida
6 Power supports the procedure being proposed by Power and Light
7 and their witness, Ms. Dubin. And Mr. Southwick has a very
8 brief paragraph in his testimony that indicates that we support
9 the same pass-through mechanism for recovery of the costs.

10 CHAIRMAN JACOBS: Thank you. Commissioners, I have
11 inquired of general counsel and been informed that while it is
12 within the purview of the presiding officer to rule on this
13 motion, it could come back very expeditiously under a motion
14 for reconsideration. Because of the importance of the issue
15 and the obvious interest of the Commissioners, I am prepared at
16 the moment to go ahead and put it before the full Commission
17 for several reasons.

18 First of all, this whole process is an attempt to
19 expedite our delivery of some manner of decision on these
20 issues, and so to make this decision and then have to come back
21 on a motion for reconsideration would in my mind defeat that
22 purpose. So I am prepared to move forward and take this at
23 this moment in an effort -- and I would take, I would consider
24 that to forestall any process to come back for a motion for
25 reconsideration on this matter.

1 COMMISSIONER DEASON: Mr. Chairman, I apologize I
2 didn't mean to presume by making a motion that I was somehow
3 circumventing your authority to rule on it, but I think that
4 your observation is correct, that if you are to rule that there
5 is probably going to be a reconsideration to the full
6 Commission regardless of how you rule, so --

7 CHAIRMAN JACOBS: But having said that, I think --
8 and given the tenor of our discussion, I think we may want to
9 open this argument up to the intervenors, because I think
10 therein lies the gist of the prejudice that could exist on the
11 basis of our decision.

12 MR. BRYANT: Mr. Chairman, Bill Bryant on behalf of
13 Enron.

14 CHAIRMAN JACOBS: If I may, Mr. Bryant, just for a
15 moment. I kind of want to get a sense of the Commission on
16 that. And I assume you were going to make an argument as to
17 whether or not to allow argument, correct?

18 MR. BRYANT: Right.

19 COMMISSIONER DEASON: Well, I thought we had already
20 opened it one time before and that we really didn't have any
21 takers.

22 COMMISSIONER BAEZ: I suspect Mr. Bryant is going to
23 say that he probably doesn't have a position on this, but --

24 (Simultaneous conversation.)

25 CHAIRMAN JACOBS: I assume then there is no

1 opposition to doing that. Go ahead, Mr. Bryant.

2 MR. BRYANT: Bill Bryant for Enron. This Commission
3 is wise enough to take information and then deal with it in the
4 course of the proceeding, and eliminating the information from
5 consideration just means that you won't have it in front of you
6 to accept or reject. And so, I mean, I don't see -- it seems
7 like we are in an expedited proceeding, we do want to move
8 forward and get a decision.

9 And, Commissioner Jacobs, you mentioned the brave new
10 world and you're right. There are a lot of activities right
11 now on parallel tracks to try to get this RTO issue resolved.
12 And if information is before you, I mean, it seems to me your
13 only question is a logistical question. Do you have the time
14 to take this information in Phase I and at the same time keep
15 on your schedule. And if the answer to that is yes, there is
16 almost nothing that Enron would be afraid of you knowing and
17 then let you deal with it in your normal course.

18 CHAIRMAN JACOBS: Very well.

19 COMMISSIONER BAEZ: I stand corrected, sorry.

20 CHAIRMAN JACOBS: Very well. Are there other
21 intervenors who would like to give comments briefly, hopefully?

22 MR. MCGLOTHLIN: Reliant Energy takes no position on
23 the motion.

24 CHAIRMAN JACOBS: Okay.

25 MS. PAUGH: My clients take no position on the

1 motion.

2 MR. HOWE: Commissioners, I'm Roger Howe. I told
3 staff they could put me down as supporting their motion. And
4 the reason I said that was I think that looking at just the
5 scope of what was intended, staff is correct. However, I think
6 this is not so much of a black and white what it says in the
7 order, it's kind of what you, the Commissioners, are open to
8 hear. And so in that sense I support staff in its technical
9 argument and still do, but on the other hand I see this as very
10 much a policy decision to be made by the Commission itself.

11 CHAIRMAN JACOBS: Thank you. Any others? Very well.
12 I'm sorry, Mr. McWhirter.

13 MR. McWHIRTER: Mr. Chairman, I was going to address
14 this in the opening statement, but I wouldn't want to be
15 precluded from doing that later if you vote to include this
16 issue.

17 CHAIRMAN JACOBS: We wouldn't think of preventing you
18 from having that opportunity, Mr. McWhirter.

19 MR. McWHIRTER: FIPUG has a feeling of ambivalence
20 about this issue. We see in Issue Number 4 the amount of money
21 involved is \$188 million. If it is Florida Power and Light's
22 intention by this proceeding in Phase I your determination of
23 the cost methodology combined with your determination of
24 prudence is that you give consumers a \$188 million rate
25 increase, we would be outraged by that.

1 The second aspect of it -- and one of the reasons we
2 would be outraged by it is \$136 million of the cost is start-up
3 costs. And the question pertaining there is should you collect
4 the \$136 million the first year or do you amortize it over the
5 useful life of the system as you do with other expenses of this
6 kind. So, we would want to make it very clear that by not
7 stating the position on this motion one way or the other, we
8 are certainly not endorsing a \$188 million increase.

9 The second aspect of our concern is that the types of
10 costs that are included in Issue Number 4 are matters that are
11 normally handled with base rates. So, if you collect the \$188
12 million through a cost-recovery mechanism over and above base
13 rates, and base rates are already too high, you might have a
14 problem. And I think that is what the Phase II aspect of this
15 case is all about anyway.

16 It's possible that base rates are totally adequate at
17 the present level or at some reduced level to fully recover all
18 the transmission costs affiliated with setting up the RT0. So,
19 our concern, and I was going to put it in our opening argument
20 should you vote to consider this at this time, is that
21 certainly no decision you make on the comfort issue, which is
22 really what Mr. Deason has pointed out to you, you want to give
23 the utilities a level of comfort that if they incur these costs
24 they will be recovered and they will be recovered in an
25 appropriate manner. And we endorse that. If the utilities

1 incur these costs and the costs are in the consumers' best
2 interest, we want the utility to recover them.

3 However, having said that, we don't want it all to be
4 done in the first year and we don't want it all to be done
5 through a cost-recovery mechanism if base rates are already
6 adequate. So, it is a complex issue, and however you vote,
7 whether you consider it now or consider it later, I would hope
8 that if you vote on the methodology now you would reserve the
9 opportunity to adequately examine those costs and the amount of
10 money that should be recovered from retail consumers.

11 Now I have spoken my peace, and thank you for the
12 opportunity.

13 CHAIRMAN JACOBS: Thank you very much. I think we
14 have a motion and a second. I'm sorry, I assume there were no
15 others wanting to speak. We have a motion and a second. All
16 in favor?

17 (Unanimous affirmative vote.)

18 CHAIRMAN JACOBS: Opposed? Very well. I would
19 request that at the -- a clarification, and we can do this at
20 the end, because one of the points that Commission Palecki
21 raised I thought was a good point, that we can all -- this
22 testimony, I think, has been raised by the parties, this
23 testimony is relevant to both part of these proceedings and we
24 have discretion as to which part we choose to give it the
25 greatest weight. Is that the essence of your comments?

1 COMMISSIONER PALECKI: That is correct, Mr. Chairman.
2 And, you know, what I said about having a lot on our plates, I
3 am very serious about there are some tremendous decisions that
4 have to be made here. I understand that it is important that
5 we give parties a comfort level in this docket. I appreciated
6 Mr. McWhirter's statement that, you know, legitimately incurred
7 costs need to be recovered and recovered in an appropriate
8 manner. And I certainly agree with that, but I want to put all
9 the parties as well as my fellow Commissioners on notice that
10 I'm not certain that I will be prepared to vote on cost
11 recovery in this phase of the proceeding. And I am very
12 concerned that perhaps we might not want to lock ourselves in
13 in this early stages on what the exact cost recovery
14 methodology should be.

15 CHAIRMAN JACOBS: Very well. Any other preliminary
16 matters, staff?

17 MR. KEATING: Well, I just wanted to -- with respect
18 to the motion to strike, not to reargue it, but I will let you
19 know we will do our best to get into the record as much
20 information as we can concerning that methodology. We are not
21 as prepared as we are on the other issues to address that, we
22 have done some discovery and we will attempt to address that as
23 thoroughly as we can.

24 CHAIRMAN JACOBS: That is another point of
25 clarification. Anybody can file testimony in Phase II on the

1 same issue, correct? I mean, it may be moot if we made a
2 decision, but certainly if we make a final decision on that
3 issue can parties file further clarification or further
4 testimony?

5 COMMISSIONER JABER: I'm sorry, I'm confused. What
6 issue would we be deciding other than the issues that are in
7 Phase I? There isn't a specific cost methodology issue, so I
8 don't think we have a huge problem. I really -- it is FPL's
9 burden to make sure Ms. Dubin's testimony goes to Issue 4. My
10 approval of my support of allowing that testimony in is I see
11 the relationship to Issue 4. I also would not be prepared to
12 make some huge cost methodology decision, but I also don't
13 think that is an issue before us.

14 CHAIRMAN JACOBS: Let me give you the reason I bring
15 it up. In Ms. Dubin's testimony she specifically addresses
16 backing out certain elements of base rates, and in my mind that
17 is something that would have been -- that parties would have
18 been addressing in Phase II, so that when we get to the
19 determination of base rates in Phase II, if we consider --

20 COMMISSIONER JABER: Then it would be the utilities'
21 burden to file that testimony in Phase II. How can we vote on
22 a part of her testimony that won't go to a specific issue? Do
23 you see what I'm saying? Just because she makes some
24 adjustments backing things out of base rates -- and I know what
25 you're talking about, I read her testimony -- doesn't mean we

1 will make a specific vote on that part of her testimony. I
2 could be wrong.

3 CHAIRMAN JACOBS: My point was regardless of that is
4 this will be the subject of testimony in Phase II, and so we
5 have allowed it into the record now, some party may want to
6 address it in the context of our decision in Phase II, and I am
7 assuming that there will be the opportunity to file that
8 testimony in Phase II. That is the essence of my issue, and
9 I'm assuming that that will be consistent with how we are
10 proceeding thus far.

11 MR. KEATING: And I guess I would assume that if a
12 cost-recovery methodology is not established by order in Phase
13 I, then --

14 CHAIRMAN JACOBS: No, forget about cost-recovery
15 methodology. What I'm talking about is establishment of base
16 rates. And I guess that is cost-recovery, but this goes to
17 what we do with regard to these costs in base rates. And my
18 only point was this, that some parties may want to and probably
19 will file testimony regarding that in Phase II. This testimony
20 will be absolutely relevant, I'm just saying rebuttal testimony
21 to this testimony will be relevant in Phase II. Would it be?

22 MR. KEATING: I would expect so.

23 CHAIRMAN JACOBS: Okay. Now that we have gotten
24 that, we are at the point of opening arguments.

25 MR. KEATING: I would just make one other comment as

1 a preliminary matter, and there may be some from the parties,
2 but this is the last one I have on my list. With respect to
3 the order of witnesses, I have had some questions about that
4 and how we would go forward. They are listed starting on Page
5 7 of the prehearing order, and we would propose that they just
6 go forward in that order.

7 We do have some witnesses whose testimony is offered
8 in all three dockets, some that is only offered in a particular
9 company-specific docket. Rather than bring them back and forth
10 onto the stand and have them provide their -- have the joint
11 witnesses provide their testimony three times, three separate
12 times for three separate dockets, we would have them addressed
13 all at the same time.

14 I guess there was one question that I still have is
15 whether the Commission would prefer as we go through these,
16 there are two witnesses in particular, Mr. Ashburn and Mr.
17 Southwick who have filed joint testimony and company-specific
18 testimony. I want to find out if it is the Commission's
19 preference to address the joint and company-specific at the
20 same time or to bring them back to the stand a second time to
21 address the company-specific.

22 CHAIRMAN JACOBS: I prefer coming to the stand once,
23 unless there is a problem with the parties.

24 MR. LONG: Commissioner, I would think we would
25 prefer, if it is at all convenient, to have the joint testimony

1 and the company-specific testimony separated. I think the
2 status of these witnesses is very different in each case. In
3 one case they are testifying on behalf of all three companies
4 and will only be able to represent positions held by all three
5 companies. And obviously with regard to the company-specific
6 testimony, they will be representing positions taken by the
7 individual companies. And I think the record would be helped
8 if we could maintain that distinction.

9 CHAIRMAN JACOBS: Okay. That sounds like a
10 reasonable prospect.

11 MR. McGLOTHLIN: Mr. Chairman.

12 CHAIRMAN JACOBS: Yes.

13 MR. McGLOTHLIN: Joe McGlothlin. One caveat to the
14 order of witnesses. Mr. Mechler is listed as last. That is
15 fine, if time permits, but I wanted to alert you to the fact
16 that he needs to leave by noon Friday because of the limited
17 number of flights available. And so if -- that may not come
18 into play, but if we get into some kind of a time crunch, I
19 would like for you to just consider that.

20 CHAIRMAN JACOBS: I would prefer if you work that out
21 with the parties to see if he can be taken out of order and
22 come back with an agreement on that.

23 MR. McGLOTHLIN: If it looks like it's going to be a
24 problem, we will do that.

25 CHAIRMAN JACOBS: That will be great. Anything else?

1 Okay. We are at opening arguments. And what is the process,
2 is it per side or each individual party?

3 MR. KEATING: The prehearing order establishes a ten
4 minute limit for opening statements from each party. I would
5 suggest we start with the joint applicants and move to the
6 intervenors.

7 CHAIRMAN JACOBS: Let me ask is it anticipated that
8 each applicant will make an opening statement and then each
9 intervenor will make an opening statement?

10 MR. WILLIS: We will make a joint opening statement
11 for the three companies.

12 CHAIRMAN JACOBS: How about the intervenors?

13 MR. BRYANT: I will have a very brief one.

14 MR. McGLOTHLIN: Mine will be certainly less than ten
15 minutes, about five minutes.

16 MS. PAUGH: Ours is brief.

17 CHAIRMAN JACOBS: Very well. The reason I asked is
18 that I didn't want to interrupt the opening statements and we
19 kind of want to give our court reporter a break. Why don't we
20 go ahead and take a brief recess at this moment so we can come
21 back and do them all in order. We will come back in ten
22 minutes.

23 (Recess.)

24 CHAIRMAN JACOBS: Thank you. We are prepared to
25 proceed with opening arguments. Mr. Willis, are you going to

1 do the argument for the applicants?

2 MR. WILLIS: Yes. I will be making an opening
3 statement for Florida Power and Light, Florida Power
4 Corporation, and for Tampa Electric Company, which for ease of
5 reference I am going to refer to as the GridFlorida companies.

6 The GridFlorida companies have filed extensive
7 evidence in this case which shows without a doubt that their
8 respective decisions to, one, participate in an RTO and, two,
9 to participate in the development of the GridFlorida RTO
10 continue to be prudent under the facts and circumstances which
11 have faced and are facing these companies.

12 A central factor in that regard has been the
13 activities at the Federal Energy Regulatory Commission, or
14 FERC, which has resulted in the issuance of Order 2000 on
15 December 20th, 1999, which established a national policy that
16 is in the public interest for all public utilities that own,
17 operate, or control facilities for transmission of electric
18 energy in interstate commerce to form and participate in
19 reasonable transmission organizations.

20 In the wake of the clear statements of policy in
21 Order 2000, the GridFlorida companies had a choice to make.
22 They could either proactively develop an RTO proposal that was
23 tailored to meet the needs of Florida, or in the alternative,
24 they could face the prospect of ultimately being ordered by
25 FERC to participate in an RTO developed by others who do not

1 have Florida's interests in mind.

2 Order Number 2000 makes it clear that the formation
3 of RTOs is an integral part of a federal initiative to increase
4 competition nationally in the wholesale generation market.
5 Pursuant to the mandatory process established in FERC Order
6 2000 that all jurisdictional utilities were required to make a
7 filing on October the 16th, 2000, in which they either
8 submitted a proposal to join an RTO, or in the alternative, to
9 describe the specific obstacles to their participation and
10 their plans for overcoming these obstacles.

11 FERC did not intend for the utilities simply to
12 decide to opt out of the RTO participation, despite FERC's
13 adoption of a, quote, voluntary, end quote, approach to RTO
14 formation in the first instance. This requirement was clearly
15 intended to further FERC's policy and its goal that all
16 transmission owners participate in an RTO. The GridFlorida
17 proposal was not made in a vacuum. Quite to the contrary, the
18 proposal for the formation of GridFlorida was the product of
19 many intense and detailed discussions with a wide range of
20 market participants. Those participants included municipal
21 utilities, REAs, existing and potential nonutility operators,
22 the FERC staff, and in addition, the FPSC staff members also
23 attended and participated in many of the public meetings.

24 In addition, a number of workshops were held before
25 this Commission in order to keep it fully apprised of the

1 GridFlorida proposal as it evolved. The result was an RT0
2 proposal with a Florida focus that meets the requirements of
3 the FERC and creates significant benefits for Florida
4 ratepayers. In particular, the GridFlorida proposal eliminates
5 pancaked rates for new transactions, depancakes existing
6 transactions over a period of ten years, and provides for
7 congestion management leading to a more efficient allocation of
8 transmission capacity.

9 These and other aspects of the GridFlorida proposal
10 represent tangible benefits to ratepayers that will stimulate
11 increased competition in the wholesale market. The GridFlorida
12 companies have invested significant time and resources in
13 developing an RT0 proposal that is in compliance with Order
14 2000. The GridFlorida companies submit to you that the
15 Commission should determine that the decisions to participate
16 in and to form GridFlorida were prudent and that the
17 GridFlorida companies' decisions with respect to the scope,
18 form, ownership structure, and functions of GridFlorida were
19 also prudent.

20 The GridFlorida companies have worked hard to design
21 GridFlorida in a manner that meets the criteria for acceptable
22 RT0s established by the FERC. The GridFlorida will provide a
23 system that not only operates reliably and effectively, but
24 also provides for an open and independent process that will
25 give participants confidence that the transmission grid will be

1 operated in an equitable manner.

2 We now urge this Commission to ratify in a clear and
3 unambiguous ruling that the GridFlorida companies' actions in
4 participating in the formation of the RTO are reasonable and
5 prudent. Such an unequivocal decision is essential to preserve
6 GridFlorida as an option for Florida. Without such a ruling,
7 the GridFlorida companies cannot and will not go forward with
8 additional expenditures unless specifically ordered to do so by
9 FERC. Thank you.

10 MR. McWHIRTER: Mr. Chairman, I am John McWhirter
11 appearing on behalf of the Florida Industrial Power Users
12 Group.

13 CHAIRMAN JACOBS: Let me make sure, Mr. Willis, you
14 are completed and that does complete the presentation of the
15 applicants?

16 MR. WILLIS: Yes, it does.

17 CHAIRMAN JACOBS: Very well. You are next in line,
18 Mr. McWhirter.

19 MR. McWHIRTER: As you know, the group I represent is
20 a consumer group, and our primary concern in this case is the
21 Phase II aspect. However, I want to point out that the
22 Industrial Power Users Group endorses and is encouraged by the
23 fact that many independent power producers have intervened in
24 this case and have shown a willingness to participate in
25 operations in Florida if we can open the grid and it can be

1 managed in a fashion that is beneficial both to suppliers and
2 end users. So we endorse Phase I of this aspect
3 whole-heartedly.

4 We suggest to you that there may be an even better
5 way to do it if you went with a larger RTO for the southeastern
6 region, and that may be forth coming in the not too distant
7 future. My only reason for participating in Phase I at all is
8 to suggest that you don't want to do anything that would
9 preclude Florida utilities from participating in the larger RTO
10 when and if that comes into being.

11 And, secondly, as I pointed out earlier when given
12 the opportunity with respect to the motion you had, you don't
13 do anything in your feel good comfort policy decision that
14 encourages utilities to go forward that makes a final
15 determination or can be considered to make a final
16 determination on serious revenue issues that may be passed
17 along to the end users in the end of this case.

18 The Public Counsel has done an admirable job, and I
19 won't seek to duplicate his presentation, but he is concerned
20 that this Commission retain jurisdiction over the protection of
21 retail consumers and that you take no action in Phase I that
22 would lose that jurisdiction. And we certainly endorse that
23 proposition along with the Public Counsel and the other
24 consumer advocates. And thank you for listening.

25 COMMISSIONER DEASON: Mr. McWhirter, let me ask you a

1 question. Can we have our cake and eat it, too? Can we
2 endorse an RTO and encourage or maybe even order our utilities
3 to go forward with GridFlorida or a southeast RTO and still
4 maintain jurisdiction?

5 MR. McWHIRTER: I am hopeful that that is the case,
6 and I think you definitely can. But you need to proceed with
7 great care and caution. As the Public Counsel pointed out in
8 his presentation, other states unwittingly wound up with
9 unintended results when they allowed retail competition and
10 then they lost control over the retail rates. And that would
11 be disheartening.

12 You have some very significant and important people
13 here, former members of FERC who were in and around that
14 important institution at the time that 888, 889, and 2000 were
15 rendered by that entity, and they may tell you whether or not
16 you lose your jurisdiction. I would certainly encourage you to
17 ask them that question and that any decision you finally make
18 you be sure that you do protect the retail consumers' interest.

19 COMMISSIONER DEASON: Thank you.

20 CHAIRMAN JACOBS: Mr. Bryant.

21 MR. BRYANT: Mr. Chairman, members of the Commission,
22 Bill Bryant on behalf of Enron. Enron also enthusiastically
23 supports the petition of the joint GridFlorida applicants that
24 the participation -- their participation in an RTO is prudent.
25 We think that an RTO of some description is inevitable and

1 GridFlorida is well designed. The question of whether it is
2 GridFlorida or that evolves into a southeastern RTO is a
3 question that can't be decided at this point, but the reality
4 is that the IOUs do have to participate and do have to be a
5 part of that or get left behind. And we think that that
6 participation is essential to the development of a wholesale
7 market and to encouraging private capital to flow into Florida
8 to invest in energy assets.

9 So, we agree with their position and encourage the
10 Commission to find that it is a prudent expenditure, both it
11 has been and Enron has been working very closely with them on
12 the GridFlorida plan and that going forward they need to move
13 quickly, which means that there are going to be certain costs
14 incurred if this Commission decides that it is a prudent thing
15 to be a member of an RTO. And we encourage anything the
16 Commission can do to help the IOUs in that position make the
17 decision and move forward.

18 CHAIRMAN JACOBS: Thank you. Mr. McGlothlin.

19 MR. MCGLOTHLIN: Joe McGlothlin for Reliant Energy.
20 Reliant Energy believes strongly that an independent RTO such
21 as GridFlorida is essential to the development of an efficient
22 and fully competitive wholesale generation market.

23 We have heard several Commissioners state over time
24 that they want to have a comfort level that the formation and
25 operation of an RTO such as GridFlorida will be cost-effective

1 to ratepayers. And we have also seen this Phase I take on the
2 attributes of policy formulation, and our participation in
3 Phase I focuses on these areas.

4 Reliant Energy in this case will sponsor the
5 testimony of Robert Mechler who is Reliant's manager of
6 transmission policy. In his testimony, Mr. Mechler will pull
7 together in one place the attributes of an independent RTO that
8 can lead to a more efficient wholesale market and that will
9 translate into lower costs for consumers. He will show how the
10 RTO will reduce transaction costs thereby increasing the number
11 of transactions that are economically feasible and also
12 simultaneously effectively enlarging the size of the
13 geographical market.

14 He will show how the independent RTO will encourage
15 new entrants thereby increasing competition and also reducing
16 market power. He will explain how the RTO's approach to the
17 management of congestion is superior to that which is in place
18 now and will enhance reliability. And he will show how the
19 integrated approach to the planning of transmission facilities
20 that the RTO will adopt will optimize both local needs and the
21 need to facilitate bulk power transfers.

22 As to the comfort level that the Commissioners are
23 looking for that these benefits will offset the costs of
24 forming and operating the RTO, Mr. Mechler will explain that
25 the comfort level can be seen in the difference between the

1 incremental cost of forming and operating the RT0 on the one
2 hand and the cost of generation on the other, because the
3 difference can be measured in orders of magnitude. He will
4 testify that the costs of generation are some 18 times larger
5 than the total cost of transmission. And what that means is
6 that it takes only a very small reduction in the cost of
7 generation to more than offset the identified cost of forming
8 and operating the RT0.

9 CHAIRMAN JACOBS: Mr. McGlothlin, the argument is
10 presented very often, and I'm wondering if your witness can
11 address the idea of the complimentary impact. I agree that the
12 relative impact as exactly as you have described, but in the
13 dynamic operations of these markets it has become clear --
14 well, let me not state that, that is stating more of an opinion
15 than I want to state. But there is certainly the prospect that
16 how the transmission system operates at critical times
17 absolutely can impact the price of generation that is delivered
18 to the marketplace.

19 MR. McWHIRTER: I believe Mr. Mechler will be well
20 equipped to respond to those types of questions, Mr. Chairman.
21 But in terms of the overall comfort level, I would like to
22 preview his point that given this disparity in the cost of
23 generation on the one hand being 18 times larger than the total
24 cost of transmission and working with some information provided
25 by TECO and by the applicants in terms of the predicted costs

1 of the RTO versus what is known in terms of the cost of
2 generation, Mr. Mechler will calculate that a reduction of 1.3
3 percent in the cost of generation will pay for the cost of the
4 RTO.

5 And given the magnitude of the difference, either the
6 estimates of the cost of the RTO or the quantification of the
7 cost of generation would have to be substantially way off
8 before the impact on this calculation of a break even point
9 will be materially different. So there is comfort in the level
10 of disparity is the point that he is going to make.

11 At the same time, Mr. Mechler will point out that
12 some 50 percent of installed generating capacity in the State
13 of Florida is over 20 years old. Older generators are
14 inefficient and that means they are expensive to operate. So
15 there is this opportunity to reduce generation costs by
16 displacing the aging fleet that is being impaired or hampered
17 by the inefficiencies that the RTO is designed to overcome.

18 And we believe there is a significant comfort level
19 in all of those facts. So much so that we suggest that the
20 policy of the Commission should be not only to support the
21 formation of the RTO, the policy of the Commission should be to
22 regard the RTO as an investment that through the disparity I
23 mentioned a minute ago and through this enormous opportunity to
24 lower generation costs, it is an investment with which to
25 leverage savings. And the extent of those savings he will

1 testify will depend upon the depth and liquidity of the
2 wholesale market. The greater the depth, the greater the
3 liquidity, the more competitive the market, the farther beyond
4 the break even point you are going to go.

5 So we encourage the Commission to adopt a policy of
6 supporting the formation of the RTO and simultaneously working
7 to maximize the savings that will result by looking for ways to
8 increase both the liquidity and depth of the wholesale market.

9 Thank you.

10 CHAIRMAN JACOBS: Thank you. Ms. Paugh, do you have
11 an opening statement?

12 MS. PAUGH: Commissioners, an appropriate independent
13 RTO will benefit Florida and its ratepayers by remedying
14 existing impediments to the efficient and reliable grid
15 operations and fostering wholesale competition which will lower
16 electricity costs and increase products and services.

17 Any costs associated with start up and operation of
18 an RTO will be far outweighed by the concomitant reductions in
19 generation transactions costs. A properly designed RTO will
20 enhance access to and use of the transmission systems and thus
21 facilitate the least cost supply of power. The least cost
22 supply of power is achieved by eliminating rate pancaking,
23 restrictive transmission policies, and market participant
24 control of the grid. An RTO would replace these impediments
25 with a Florida-wide optimization of supply, transparent market

1 signals, and independent system operation.

2 Florida consumers access to power supply alternatives
3 will be further enhanced through uniform interconnection
4 procedures, coordination of planning functions, and enhanced
5 transmission expansion and upgrade activities. Enhanced grid
6 reliability and more efficient power supply is readily
7 achievable. First, since an RTO will consider all resources
8 under its control in assuring reliability and selecting the
9 least cost supply solutions, it will be more efficient and
10 reliable than the existing local level of system control.
11 Likewise, unified transmission system operation and planning
12 will lower transmission costs through economies of scale and
13 the elimination of duplicative parochial practices.

14 Second, an RTO will provide the operational
15 independence and infrastructure necessary to facilitate a
16 viable competitive wholesale market. In general, a competitive
17 wholesale market will provide consumers with access to a
18 broader array of generation supply alternatives including
19 merchant generation where the investment risk is borne by the
20 market participants and not ratepayers.

21 Clearly there are a multitude of benefits to a robust
22 competitive wholesale power market in Florida. We can and
23 should work together to eliminate transmission related
24 impediments to a competitive wholesale electricity market such
25 as pancaked transmission rates, burdensome intraFlorida

1 reservation and scheduling practices, absence of transparency
2 and the continuing opportunities for undue discrimination in
3 the operation of the grid for the good of all citizens of the
4 state, and we should do these difficult but laudable tasks in
5 conjunction with our efforts to establish a competitive
6 wholesale generation market. Thank you.

7 CHAIRMAN JACOBS: Mr. Howe.

8 MR. HOWE: Chairman Jacobs, Commissioners, I'm Roger
9 Howe with the Public Counsel's Office. This Commission has
10 provided effective retail regulation of electric utilities in
11 Florida for many years. And I would suggest that if you don't
12 have to you should not take any action in this docket that
13 might cause or allow a loss of your total oversight of the
14 provision of retail service.

15 In the past, the distinction of jurisdiction between
16 the Public Service Commission and FERC turned on such things as
17 wholesale versus retail, interstate transmission versus
18 intrastate, and whenever it did turn on those types of
19 decisions deference had to be given to FERC. If they said it
20 was interstate transmission, it was interstate transmission.

21 Today, the focus of FERC has shifted and they are now
22 construing old case law dealing with such things as wholesale
23 versus retail and interstate versus intrastate in a new light.
24 They are interpreting those decisions in terms of whether
25 retail transmission service is bundled or unbundled. FERC's

1 consistent statements since Order Number 888 has been that it
2 has exclusive jurisdiction over the transmission of electricity
3 in intrastate commerce and that includes all wholesale sales as
4 well as all unbundled retail sales.

5 So, FERC applies what I consider a fairly simple
6 test, and they look and they focus on the transmission aspect.
7 I kind of view it as being four separate boxes of information.
8 The first being generation or purchased power, the second
9 transmission, the third distribution, and the fourth the end
10 use retail customer. And FERC focuses on that second box. And
11 they ask the question, is the retail transmission providing
12 entity providing electricity to its own end use retail
13 customers and is it doing so for a single bundled price. In
14 other words, is transmission not carved out separately.

15 And if the answer to that question, which I guess you
16 might call two questions, is no, FERC says they do not have
17 jurisdiction and the reason they do not have jurisdiction is
18 because it is not transmission in interstate commerce, it is
19 solely within the providence of this Commission or other state
20 commissions.

21 So it is very important for this Commission to
22 consider what effect its decisions might have. I think it
23 would be reasonable, for example, to interpret FERC's recent
24 actions to say that if, for example, this Commission thought it
25 was wise to allow an electric utility, let's use FPL as an

1 example, to charge separately for transmission, to not include
2 it in the delivered price of retail electricity. I think FERC
3 would consider that an unbundling. And although your decision
4 may appear fairly innocuous, there is just going to be two
5 items on the bill instead of one, FERC would say it is now
6 unbundled, it is now transmission in interstate commerce and it
7 is now solely FERC's jurisdiction.

8 Similarly, if the question is asked is another entity
9 providing the transmission service such that the entity
10 providing the service is not serving its own end use retail
11 customers, FERC says that is unbundled retail service and it is
12 exclusively FERC's jurisdiction. It is transmission in
13 interstate commerce.

14 So I think this Commission should apply the same
15 focus as FERC does. Look at it from the perspective of the
16 transmission provider and I think you will reach the same
17 results. So if you look at the provision of electric retail
18 transmission service, for example, by Florida Power and Light,
19 and ask the question is Florida Power and Light providing
20 retail transmission service to Florida Power and Light's own
21 end use retail customers, the answer is yes. It looks like the
22 state probably has jurisdiction and it looks like it's probably
23 not in interstate commerce.

24 But you need to go one step further and also ask the
25 question is the transmission, the retail transmission component

1 part and parcel of the delivered price of electricity FPL is
2 charging to its end use retail customers. And if that answer
3 is also yes, it is strictly a sale of electric energy at retail
4 and FERC does not have jurisdiction.

5 However, I believe under FERC's recent
6 interpretations any action by this or any other Commission that
7 has the effect of unbundling retail service from that
8 perspective -- and that perspective being from the retail
9 transmission provider -- jurisdiction is going to transfer to
10 FERC. And, Commissioners, I think it will be totally lost to
11 you. In answer to your question to Mr. McWhirter, Chairman
12 Deason, I think what you are going to find is once -- if
13 jurisdiction is transferred it is lost to you completely.

14 And, Commissioner Jaber, your reference earlier to
15 the fact that what it is going to cost is a very important
16 issue, I would suggest that it may become irrelevant. And the
17 reason I say that is whatever costs FERC approves, whatever
18 increases in costs FERC demands that these utilities incur,
19 whatever amortization period FERC allows for the start-up
20 costs, under the supremacy clause of the United States
21 Constitution I believe you are going to have to just include
22 those in the final rates you allow FPL as now a distribution
23 and generation utility to charge to its customers.

24 So, returning to my starting point, I would suggest
25 that if you do not believe you absolutely have to you should

1 not take any action in this docket which permits or causes
2 either directly or indirectly the transfer of jurisdiction over
3 retail transmission service from this agency to a federal
4 agency. Thank you very much.

5 COMMISSIONER JABER: Mr. Howe, let me try to
6 understand your concern regarding jurisdiction so that I keep
7 it in my mind as we go forward. Your concern would be limited
8 to the jurisdiction of the Florida IOUs, the retail providers
9 only, not the merchant plants or the independent power
10 producers, right?

11 MR. HOWE: Yes, except I'm not sure that you can look
12 at it that way. And the reason is FERC's jurisdiction is over
13 all wholesale sales of electricity and all transmission in
14 interstate commerce. So I think the inquiry has to be directed
15 to who is providing the retail transmission service. The
16 merchant plants are going to take transmission service, but it
17 is not going to be transmission service necessarily provided to
18 the ultimate consumer. It depends on which way it goes.

19 FERC has addressed this somewhat. For example, if a
20 merchant plant sells electricity to Florida Power and Light,
21 and Florida Power and Light, as the transmission entity,
22 provides that purchased power to Florida Power and Light's own
23 end use retail customers, FERC considers that -- and provides
24 it for a bundled retail rate in which transmission is not
25 listed or charged separately -- then FERC considers that a

1 retail sale of electricity and does not consider it to be under
2 their jurisdiction.

3 So, whether it comes from a merchant plant or not, it
4 depends from a jurisdictional standpoint who is providing the
5 transmission service, the retail transmission service to the
6 ultimate end use customers. And I think if you adopt the same
7 perspective that FERC uses you will always get consistent
8 results. So, for example, if you look at it from the
9 perspective of GridFlorida and you ask the first question is
10 GridFlorida going to be providing service to its own end use
11 retail customers, the answer I clearly no. So you clearly are
12 dealing with transmission in interstate commerce solely subject
13 to FERC's jurisdiction.

14 COMMISSIONER JABER: See, and that's why I'm asking
15 the question. Are your comments also separate from having a
16 concern over the jurisdiction of the RTO, and specifically
17 because there was early on when we were doing some workshops a
18 concern about who would have jurisdiction of the RTO, do you
19 share that concern?

20 MR. HOWE: Yes. I think the RTO in terms of rates,
21 terms, and conditions of service will solely reside with FERC.
22 For issues such as transmission line siting, I think it will
23 remain with the state.

24 COMMISSIONER JABER: Okay. Well, as it relates to
25 IPPs being part of whatever RTO is formed, how does that impact

1 the jurisdictional question? If we ask the question you want
2 us to ask to ourselves who is providing the retail transmission
3 service, then clearly you can make that decision as it relates
4 to the Florida IOUs, but as it relates to the IPPs and how they
5 participate in an RTO, what should I be looking for?

6 MR. HOWE: I would suggest that if you are even
7 thinking of it in terms of an RTO, you have already conceded
8 jurisdiction is at FERC, because if you have an IPP, for
9 example, selling electricity to an existing -- for example, I
10 will stay with Florida Power and Light as the transmission
11 entity. To the extent that FPL, for example, is transmitting
12 the IPP power to Tampa Electric, that is under FERC's
13 jurisdiction because you asked the question is FPL in that
14 instance transmitting electricity to its end use customers, the
15 answer is no. So it's clearly a FERC jurisdictional
16 transmission activity.

17 Where you are dealing with an RTO, though, I think if
18 you start from the premise that you are dealing with some power
19 being transmitted by an RTO, by definition you are outside of
20 the jurisdictional question. It has been ceded to FERC.

21 COMMISSIONER PALECKI: Mr. Howe, taking into
22 consideration your argument, is there any way that this
23 Commission can obtain the benefits of an RTO without conceding
24 the jurisdiction to FERC, and those benefits would include the
25 elimination of pancaking, open access to the transmission

1 system to competitors, and the other benefits that have been
2 discussed this morning?

3 MR. HOWE: I would suggest no. And the reason being
4 if you have an RTO, it takes an RTO to provide those
5 nonpancaked rates. Now, perhaps you could through some method
6 of regulating Florida's utilities perhaps you could do
7 something at the retail level, but the whole concept of
8 pancaked rates itself is dealing with wholesale generation.
9 You are almost exclusively talking about the RTO as an
10 identified vehicle of FERC with the specific purpose of
11 increasing generation in the wholesale generation market. So
12 the whole concept is essentially outside the purview of this
13 Commission.

14 The benefits that are alleged flow from the fact that
15 that could theoretically lead to lower cost generation and
16 lower cost transmission rates. Because after all, all
17 electricity ends up eventually going to a retail end user. So
18 that may be reflected in there, but it will be something that
19 you will no longer be concerned with because all of those rates
20 and charges will have been set by FERC.

21 COMMISSIONER PALECKI: Well, whether or not this
22 Commission is concerned with them, I think all of us have an
23 overriding concern for the ratepayers and those benefits would
24 bring benefits to the ratepayers, as well, would they not?

25 MR. HOWE: I would suggest no, and let me tell you

1 why. Whenever you hear the discussion, for example, of lower
2 cost generation, you usually hear the discussion of how
3 competition will bring the market price of generation down.
4 But keep in mind that under your current retail state
5 regulation, these utilities as part of good utility practices
6 have to dispatch their units on an economic basis.

7 The retail customers right now are getting the lowest
8 cost units and then as the load grows the next lowest cost
9 unit. So the market price very likely, although it might be
10 lower, does not necessarily have to in any instance be lower
11 than what an economic dispatch cost would be. And only if you
12 discount economic dispatch do I think you get into that realm
13 where you say competition necessarily reduces cost. It does in
14 the abstract, and it certainly does where you are dealing with
15 unregulated monopolies, but not necessarily where you are
16 dealing with a regulated monopoly that is charged with at all
17 times providing its lowest cost generation to its native load
18 and use retail customers.

19 COMMISSIONER PALECKI: But isn't the economic
20 dispatch driven in part by the expense of transmission so that
21 generation that is available in a portion of Florida that would
22 require pancaked rates to be paid is not going to be economic
23 generation so it is eliminated from the dispatch scheme.
24 That's not part of the equation anymore.

25 MR. HOWE: That's correct, that can affect it. But

1 one of the things to keep in mind even there is even FERC's
2 jurisdiction, utilities are not required, in fact, I think it
3 is a jurisdictional issue with FERC, they are not allowed to
4 take their own transmission service at their open access
5 transmission tariffed rate. FERC has said that is only used
6 for where these utilities, our in-state utilities are making
7 wholesale sales. Where our in-state utilities are using their
8 own transmission system to deliver electricity to their own
9 customers it is not even at a FERC rate.

10 COMMISSIONER PALECKI: Thank you.

11 CHAIRMAN JACOBS: I saw that argument and you say
12 then that the companies are without authority to change that,
13 they can't change how they are going to provide that
14 transmission service for retail.

15 MR. HOWE: I'm saying they should not be allowed to
16 change it. What is happening is FERC's position, as I
17 understand it, and you people know that I have been dealing at
18 the state level all of my career, so all I know is what I read
19 in books, but FERC has turned its interpretation on what is
20 unbundled. And so, for example, FERC isn't driving any
21 unbundling, they have said that they take jurisdiction of what
22 was previously bundled retail transmission service that becomes
23 unbundled either through a state retail program, which I
24 construe to mean a retail competition initiative, or a
25 voluntary action by the utility.

1 So FERC is sitting there waiting to take jurisdiction
2 if something happens to voluntarily on the utility's part place
3 the retail transmission component under FERC's jurisdiction.
4 It is my position that a utility in Florida cannot take a
5 voluntary action in such a way as it would transfer
6 jurisdiction away from this Commission.

7 CHAIRMAN JACOBS: Under state law they can't do that.

8 MR. HOWE: Yes.

9 CHAIRMAN JACOBS: And let's say that there were some
10 event that brought about that, then you would argue that we are
11 under some obligation to require for lack of a better term, a
12 firm retail tariff from this RTO.

13 MR. HOWE: I don't believe you can participate. You
14 can request, but the actual tariff and everything is going --
15 you won't be able to demand it, I don't believe, in the sense
16 that you will have regulatory oversight over the RTO. If you
17 can prevail upon the utilities that it would be in their best
18 interest when they are here before you, you might be able to
19 get that result. But essentially you are going to have to, I
20 believe, flow RTO tariffed rates through to your retail
21 customers to the extent that we are talking about the provision
22 of retail transmission service.

23 CHAIRMAN JACOBS: Right, I understand that point.
24 Once we go to an RTO environment we are at a point of flowing
25 through rates, but even then, isn't it a question of

1 appportionment of risk and benefits such that, you know, do we
2 have an opportunity at that point in time to say we are only
3 willing to accept a portion of the risk of operating this RTO
4 to be flowed through to the retail ratepayers?

5 MR. HOWE: I would suggest no. And the reason is I
6 can't recall the cases specifically, but there has been some
7 cases dealing with wholesale power purchases that I think are
8 analogous.

9 CHAIRMAN JACOBS: But then -- I understand your
10 point, but the premise of your -- and I interrupted you, so
11 excuse me, but the premise there is that everything gets
12 declared as wholesale. What I heard you arguing initially was
13 that that wasn't --

14 MR. HOWE: Let's be careful there. When we talk
15 about wholesale versus retail generally we are talking about
16 the sale of electricity. In other words, if the sale of
17 electricity is from one utility to another, that is wholesale,
18 all right. Transmission -- and this is one of the things that
19 perhaps we will have to get sorted out here, but there is a
20 real question of whether FERC considers this to be a
21 wholesale/retail situation. I would suggest that they do not.

22 FERC's jurisdiction on the one hand is wholesale
23 sales of electricity, all right, and there FERC has
24 jurisdiction over the generation, the transmission, everything
25 incident to the sale of electricity at wholesale. On

1 transmission their jurisdiction is just over transmission in
2 interstate commerce. The RTO is a transmission entity. I'm
3 not sure you can say that where GridFlorida, for example, sells
4 transmission service to FPL that it is necessarily -- it's not
5 a wholesale sale of electricity, it's just a transmission
6 service. So, I think we need to be careful when we cross that
7 line between wholesale/retail, and wholesale transmission.

8 COMMISSIONER DEASON: Let me ask you this question,
9 does it make any difference whether it is a Florida only RTO or
10 if it is a southeastern RTO as to whether the creation of the
11 RTO would trigger FERC's jurisdiction?

12 MR. HOWE: I do not think so. And I think that is
13 clear from the testimony filed in this case. And I again go
14 back to the way I view the simple first question, would
15 GridFlorida as a Florida RTO, Florida only RTO, be providing
16 transmission service to its own end use retail customers. If
17 you get the answer no, it's FERC jurisdiction.

18 COMMISSIONER DEASON: Well, how did Texas for so long
19 avoid FERC jurisdiction?

20 MR. HOWE: Texas -- and, again, this is again all I
21 have read. Texas early on established itself without any
22 interstate connections.

23 COMMISSIONER DEASON: So since the connections didn't
24 exist you couldn't very well argue that there was interstate
25 commerce.

1 MR. HOWE: Right. And they have successfully over
2 the years maintained that independence. For example, there is
3 a U.S. Supreme Court case dealing with whether FERC has
4 jurisdiction over Florida Power and Light. And if I recall
5 that case correctly, Florida Power and Light's position at that
6 time was they were not subject to FERC's jurisdiction because
7 all of FPL's transmission was within the state, all of its
8 generation was within the state, and all of its customers were
9 within the state, and it was not interconnected with any
10 utility outside the state, and, therefore, FERC had no
11 jurisdiction.

12 Well, FERC blew right past that argument and said but
13 you are interconnected with Florida Power Corporation, who is
14 interconnected with Georgia Power, and for all we know when you
15 are selling electricity to Florida Power it's going to Georgia
16 or vice versa. And that was good enough to determine that FERC
17 had jurisdiction over FPL even when it was totally within the
18 state.

19 Texas has avoided that because I have heard that they
20 have basically weak direct current kind of connections where
21 they need them but otherwise it is an allegedly isolated island
22 outside of FERC's jurisdiction for that reason.

23 COMMISSIONER DEASON: Mr. Howe, you have indicated
24 that -- and I think I have this correct, is that the Florida
25 Commission should take no action which has the effect of

1 transferring jurisdiction?

2 MR. HOWE: Yes, that is correct.

3 COMMISSIONER DEASON: So by that I take it that we
4 should not endorse, encourage, or allow our utilities to join
5 an RTO, that is your position?

6 MR. HOWE: Well, I guess --

7 COMMISSIONER DEASON: First, let me back up just a
8 second. First of all, under state law, is it your position
9 under state law that we even have the ability to allow our
10 utilities to join an RTO or is that something that the law has
11 to be changed to even allow that?

12 MR. HOWE: I believe the law has to be changed. And
13 it's not explicit in statutory law at all, but from the way
14 that Florida has regulated utilities for many years I think it
15 is implicitly understood that until there was a change in
16 statutes that you would continue to regulate all aspects of
17 retail service including retail transmission. So, yes, my
18 feeling is it would have to be a change in law.

19 COMMISSIONER DEASON: But retail basically meant
20 non-FERC, correct?

21 MR. HOWE: It used to mean non-FERC, now it means
22 FERC if it is unbundled. And this is where it gets so very
23 confusing. In other words, a retail transmission service that
24 is either not provided by the transmission entity serving its
25 own end use retail customers or by the transmission entity not

1 serving at a bundled rate. That retail transmission is under
2 FERC's jurisdiction and they draw -- I can't explain it better
3 than just kind of repeating what they do -- is where an
4 electric -- a retail utility is providing bundled service, in
5 other words, charging one rate for everything, FERC says that
6 is a retail sale and it is not transmission in interstate
7 commerce, even though it has a transmission piece, obviously.

8 However, FERC has said where anything happens to pull
9 that transmission, that retail transmission piece out, either a
10 separate provider of transmission service or a separate charge
11 of transmission service, the language FERC has used is the
12 jurisdictional lines change at that point and it becomes retail
13 transmission in interstate commerce subject solely to FERC's
14 jurisdiction.

15 COMMISSIONER DEASON: So it is your position that if
16 an RTO is formed, ignoring the legal issue as to whether we can
17 allow it under state law or not, if one is formed then that
18 means we lose jurisdiction?

19 MR. HOWE: Yes. And I would address it from your
20 jurisdiction. I guess the preliminary step would be should you
21 allow the utilities to stop providing their own retail
22 transmission, should you allow them to transfer their assets or
23 operational control to someone else, and should you allow them
24 to unbundle with unbundling being defined from the same
25 perspective FERC uses. That's how I think you would address it

1 at the state level. Whether or not you can allow them or not
2 allow them to join an RTO, the RTO itself as a concept, as a
3 construct that they can join is a matter outside your
4 jurisdiction if they can find a way to get there. And I don't
5 think they can get there without going through you by stopping
6 providing and so forth.

7 COMMISSIONER DEASON: They cannot divest their assets
8 unless they come through this Commission, is that your
9 position?

10 MR. HOWE: That is my position, yes. And I go a step
11 further to say and I doubt that you have -- they need your
12 permission, but I doubt that you have the authority to grant
13 permission because the way -- we must assume the way utilities
14 have always been regulated in Florida, that that would continue
15 until some pronouncement from the legislature.

16 Are my ten minutes up?

17 CHAIRMAN JACOBS: There is about 30 seconds left.

18 MR. MCGLOTHLIN: Chairman Jacobs, I don't want to get
19 in the way of Mr. Howe's latitude in making his opening
20 statement or the Commissioners' ability to ask questions, but
21 there was one point during what was primarily a discussion of
22 jurisdictional matters where Mr. Howe started commenting on
23 factual assertions and specifically the role of economic
24 dispatch and whether competition can take place or not given
25 economic dispatch. Reliant believes that there was a

1 misstatement of fact, and if we had some opportunity to cross
2 his witness, we would, but he has no witness. So I hope you
3 will use your discretion during the hearing and allow our
4 witness, Mr. Mechler, either to have the Commissioners pose the
5 same question to him or give me an opportunity to have him say
6 something about that.

7 CHAIRMAN JACOBS: I think that latitude is proper, or
8 you can address it in your brief, either way.

9 MR. McWHIRTER: Thank you, sir.

10 COMMISSIONER JABER: Mr. Chairman, since this is on
11 jurisdiction, can I ask one last question of Mr. Howe. This is
12 really the only opportunity we have to talk about the legal
13 matters.

14 Your position with jurisdiction is that you believe
15 we lose jurisdiction if we allow the creation of an RT0 as it
16 relates to rates only, or is it rates and reliability?

17 MR. HOWE: If you mean reliability in the sense of --

18 COMMISSIONER JABER: Transmission.

19 MR. HOWE: -- transmission siting and so forth, no,
20 you would not lose that jurisdiction. I think FERC fairly well
21 concedes that they don't have jurisdiction over reliability
22 issues.

23 COMMISSIONER JABER: Okay. So your comments just the
24 last few minutes really were only related to our loss of
25 jurisdiction as it relates to rates?

1 MR. HOWE: Rates and otherwise as to terms and
2 conditions of service.

3 COMMISSIONER DEASON: I can't help -- I've got to ask
4 this question, Mr. Howe. You seem intent that this Commission
5 should retain this jurisdiction. I take it then that you feel
6 like we have done a good job protecting retail customers in the
7 State of Florida?

8 MR. McWHIRTER: You don't have to answer that
9 question.

10 MR. HOWE: I don't mind answering it. I do
11 believe -- and my job, of course, everybody knows is as an
12 advocate, but as I have told the utilities, it is my job to
13 advocate the consumers' perspective, but I think the utilities
14 in the State of Florida have done a very good job of providing
15 safe, efficient, reasonably priced service for many, many years
16 under the oversight of this Commission. So both together, yes.

17 COMMISSIONER DEASON: Thank you, Mr. Howe.

18 CHAIRMAN JACOBS: Thank you. Mr. Twomey.

19 MR. TWOMEY: Thank you, Mr. Chairman, Commissioners.
20 I'm Mike Twomey. My clients have a substantially more
21 simplistic view of this case than the parties that have spoken
22 thus far. Three of my four individual clients are retired,
23 those three are elderly. You know the people from Sugarmill
24 Woods from some of our water and sewer cases. They are mostly
25 a retirement community, many of them elderly. In short, they

1 don't want to pay, Commissioners, for any unwarranted rate
2 increases. They don't want to pay for any rate increases at
3 all. And the bottom line of this proceeding is to ask your
4 permission for these utilities to increase the retail rates of
5 their customers, pure and simple.

6 My clients don't want to be -- don't want to see this
7 Commission cowed or bullied into approving cost recovery as a
8 result of this RTO as a result of undue pressures by the FERC.
9 So, in essence you have two issues before you, Commissioner,
10 that you need to address in the next two and a half or three
11 days. One is -- and it is a threshold issue in this case -- is
12 participation in an RTO and the formation and the operation of
13 an RTO by these three utilities voluntary or indeed is it
14 mandatory under legitimate authority of the FERC. If it is
15 mandatory, then generally we would say that whatever dollars
16 the utilities expend as long as they were reasonable in forming
17 the RTO have to be recovered through retail rates and this
18 Commission has no second chance of reexamining those costs.

19 If, on the other hand, participation by these
20 utilities is voluntary, which my clients say that it is, then
21 the Commission has the responsibility and statutory obligation
22 to come forth and as in any other issue in a rate case is to
23 say are the monies reasonably and prudently expended and is it
24 cost-effective in the sense that the economic benefits will
25 equal or exceed the costs. If the costs exceed the benefits

1 and they go ahead and do this, then you ought to make them eat
2 the cost, have their shareholders do it or have somebody else
3 pay. But the retail customers shouldn't have to pay for
4 anything where the costs exceed the benefits to the retail
5 customers.

6 Now, with respect to the first issue, is it voluntary
7 or is it mandatory? My clients submit to you that the evidence
8 in this case, the testimony of the ten witnesses you will hear
9 in the next two and a half or three days shows that it is
10 voluntary, pure and simple. Not one witness will come up,
11 Commissioners, and tell you that the FERC has the statutory
12 authority to make them join an RTO or indeed that the FERC
13 possesses the statutory authority to do so.

14 The testimony will instead say to you it is the
15 strong FERC policy that we join a RTO. They want us to do it.
16 More recently in a document that you will receive in evidence
17 through the first witness today, a memo of September 26, 2001,
18 by the Chairman of FERC, you will see where they propose not to
19 tell them to do it, but if they don't do it -- and I submit
20 they can't tell them to do it because they don't have the
21 authority -- you will see in this memo, Commissioner, where the
22 Chairman of the FERC proposes three coercive measures to punish
23 any utility in this country that doesn't join in an RTO
24 voluntarily.

25 Take away the prospect of future mergers, eliminate

1 the ability to charge market-based rates for transmission
2 services prospectively, after a fair hearing presumably. And
3 another threat, none of these witnesses will tell you that the
4 FERC has the authority and indeed is mandating this
5 participation. And you need to pay attention to their
6 testimony, and I submit you need to ask each and every one of
7 them is it mandatory or is it merely coercive bullying threats
8 by a federal agency that proposes abuses of its own legitimate
9 powers in order to force participation in this RTO.

10 We maintain that it is voluntary. If it is
11 voluntary, Commissioners, you have to do the test to weigh the
12 cost versus the benefits. Again, you have ten witnesses here,
13 not one of them in our reading of the prefiled testimony offers
14 one credible penny savings or benefits to any customer, retail
15 or wholesale. And I say credible because I don't buy -- my
16 clients don't buy the merchant plant witness' testimony.

17 And when we get to costs, while these witnesses can't
18 specify one penny of savings, one penny of credible savings,
19 they have no problem listing the costs involved. Hundreds of
20 millions of dollars in start-up costs, net increases in annual
21 operating costs for transmission services which are being
22 provided today with no apparent problems. The system is not
23 obviously broken, Commissioners. So they have lots of costs,
24 fanciful illusory, perhaps, benefits that customers will
25 receive.

1 They like to use the term, you will see it repeatedly
2 throughout the testimony the next couple of days, we will get
3 from spending all of this money robust wholesale competition,
4 maybe. Even if we do get robust wholesale competition who
5 benefits, Commissioners? We think the testimony will show that
6 even though the so-called benefits are not quantified, if, in
7 fact, they occur, they will inure to the advantage of the other
8 intervenors in this case who include the merchant plants, who
9 as we all know can't fully operate in the state anyways because
10 of the footdragging of the petitioners, but it will inure to
11 the benefit if they occur of the merchant plants who can make
12 sales easier and the transmission dependent utilities, whether
13 the cooperatives or the municipalities, they will have better
14 sales opportunities and perhaps lower cost of generation.

15 Even if that comes true, how does that benefit retail
16 customers who are being asked to pay all of these costs of a
17 vertically integrated utility that professes to this
18 Commission, the legislature, and the 2020 Electric Study
19 Commission that they have adequate generation reserves. We
20 think the evidence will show that it is voluntary, that is not
21 cost-effective, and in short you should deny them recovery of
22 the monies being sought. Thank you.

23 CHAIRMAN JACOBS: Thank you. Mr. Moyle.

24 MR. MOYLE: Mr. Chairman and members of the
25 Commission, my name is Jon Moyle, Sr. of the firm of Moyle,

1 Flanigan, Katz, Raymond & Sheehan, and I have a brief opening
2 statement today.

3 First, let me apologize to the Commission, Jon Moyle,
4 Jr., who is more frequently over here than I am and remembers
5 to turn the button on or off better than I do has a
6 longstanding conflict and was unable to be here. But we are
7 here today on behalf of PG&E National Energy Group, which I
8 will refer to as NEG, PG&E, and also Competitive Power Ventures
9 Atlantic, Limited, which I will refer to as CPV.

10 I hadn't planned on mentioning this, but as a result
11 of some points that were made in some of the opening statements
12 and someone reminded me of a situation that I really don't know
13 about, but I have a vague recollection about, and I would
14 suggest that staff may want to check this out, because
15 Commissioner Deason, I think you asked the question about Texas
16 and the FERC jurisdiction, and I don't know this for sure, but
17 it's worth checking out whether that lack of jurisdiction may
18 relate to a congressional statutory exemption which occurred
19 during the presidency of LBJ as opposed to the grid system or
20 the interconnect system. It might be worth knowing and getting
21 an answer to your question.

22 Continuing with my opening statement, on behalf of
23 NEG and CPV we reassert the positions contained in our
24 separately filed prehearing statements of issues and positions
25 and our participation in this proceeding will be in support of

1 those positions.

2 An additional matter, though, that I would like to
3 take a few minutes, and this will be brief, on behalf of NEG I
4 would like to make a clarification statement in connection with
5 the RT0. Apparently some confusion has arisen as to the
6 position of NEG on a region-wide RT0 for the southeast and for
7 the GridFlorida model in particular. NEG has asked me to state
8 in this docket that it has been a strong advocate of RT0
9 development across the country, that it strongly supports the
10 GridFlorida as well as the southeast regional RT0 both in the
11 development and implementation.

12 As a national power marketer and as a developer,
13 owner, and operator of generating facilities in Florida and the
14 southeast, NEG participated in the development of the proposed
15 GridFlorida model through the stakeholder process. NEG was
16 also an active participant in the FERC ordered mediation
17 sessions held to determine the form of a southeast RT0. The
18 company believes that a southeast RT0 is necessary to develop
19 the wholesale market in the southeast.

20 In its view, such an organization will provide cost
21 efficient benefits that will reduce costs to consumers. Among
22 these benefits are the appropriate size and scale for regional
23 transmission and market operations, access to highly efficient
24 lower cost generation to meet growing demand, optimal operation
25 for all generation resources as a result of fair and open

1 transmission access and transparent market operations, removal
2 or improvement of seams, pancake access, these types of
3 problems as well as costs associated with the transfer of power
4 between regions and subregions, and an opportunity to increase
5 needed transmission investments.

6 NEG supports many of the market design and market
7 structure features contained in the original GridFlorida model
8 which were subsequently incorporated into the collaborative
9 governance model recommended to FERC by the administrative law
10 judge who presided over the recent mediation. The company
11 believes that a full review, including the prudence
12 determination by the PSC, is appropriate and needed at this
13 time notwithstanding the absence of deregulation decisions in
14 Florida, and that the proposed RT0 will be beneficial to all
15 parties under existing or present circumstances and will also
16 be beneficial to a further deregulated market when that occurs.

17 A southeast RT0 will bring benefits to the region to
18 increase competition and commercial opportunities for needed
19 transmission expansion. NEG hopes this statement clarifies its
20 position for the Florida PSC and looks forward to working with
21 the Commission and the other market participants on the
22 ultimate implementation of the southeast RT0. And thank you on
23 behalf of NEG for allowing the presentation of this statement.

24 CHAIRMAN JACOBS: Thank you. I believe that was the
25 last presentation by the intervenors? Very well.

1 COMMISSIONER DEASON: Mr. Chairman, I apologize, but
2 I need to ask Mr. Willis a question.

3 CHAIRMAN JACOBS: Very well.

4 COMMISSIONER DEASON: Mr. Willis, I tried to take
5 notes, and I believe that you indicated at the conclusion of
6 your opening statement that this Commission should ratify
7 GridFlorida and should make an unequivocal ruling to that
8 effect, is that correct?

9 MR. WILLIS: That is correct.

10 COMMISSIONER DEASON: Now, you really didn't go into
11 jurisdiction, but I feel compelled to ask you, what is our
12 jurisdiction when it comes to RTO approval? First of all,
13 under present statutory scheme do we have the ability to act on
14 this RTO proposal, and if the divestiture of assets are
15 required for a utility to join an RTO, is that something this
16 Commission must approve?

17 MR. WILLIS: To answer the last question first, we do
18 not believe that you have the jurisdiction to deny the company
19 divestiture. That is not really clear, clearly spelled out in
20 the law, but we don't believe that your current jurisdiction
21 allows you to do that. You certainly have ample jurisdiction
22 over each of the GridFlorida companies, though. You are
23 exercising that jurisdiction here today, and we pay very close
24 attention to the views of the Commission. So in a practical
25 sense, we are very interested in your point of view, and as a

1 practical matter can influence it very extensively. So --

2 COMMISSIONER DEASON: So you are saying this
3 Commission can do the same thing FERC has done. In areas where
4 we have clear jurisdiction we make your life miserable.

5 MR. WILLIS: Well, you used to call it amiable
6 terrorism and it has been practiced for a long period of time
7 and that is kind of a flip label to reality is that your ideas
8 are known on various subjects and we pay very close attention
9 to them.

10 CHAIRMAN JACOBS: Picking up on that same question,
11 you are familiar with the grid bill, correct?

12 MR. WILLIS: Well, the grid bill and any number of --
13 you have pretty wide authority over any public utility that is
14 providing electric utility service at retail in this state. I
15 mean, you have a very wide authority and sometimes persuade us
16 to do things with respect to one thing when you are reviewing
17 another thing.

18 CHAIRMAN JACOBS: I want to go to a fairly specific
19 question, and if you want to defer this to the witness, that is
20 fine. But under GridFlorida it is my understanding that the
21 RTO will have exclusive control over upkeep, maintenance, and
22 the whole realm of operation of the transmission facilities
23 that it takes ownership of.

24 MR. WILLIS: I think it would be appropriate for you
25 to put that question to Mr. Naeve or the panel.

1 CHAIRMAN JACOBS: That would be fine. Very well.
2 Questions, Commissioners? Very well. Then that ends opening
3 statements, and we are prepared to swear the witnesses,
4 correct?

5 All those who are intending to testify, would you
6 stand and raise your right hand.

7 (Witnesses sworn collectively.)

8 CHAIRMAN JACOBS: Thank you very much. You may be
9 seated.

10 MR. KEATING: Mr. Chairman.

11 CHAIRMAN JACOBS: Yes.

12 MR. KEATING: Before we start with the first witness,
13 I would like to bring up one matter. Staff has prepared some
14 composite exhibits that consist of several of the discovery
15 responses that the parties have provided. At this point in
16 time we have reached a -- Florida Power Corporation has agreed
17 that those exhibits could be stipulated into the record. With
18 respect to those composite exhibits for Florida Power and Light
19 and Tampa Electric it is my understanding from the last time I
20 talked to both of them that they have not had the chance to
21 completely go through that list of exhibits to determine if
22 there is anything that they felt needed to be clarified or was
23 objectionable.

24 What I would like to do is I guess at this point if
25 there is no objection to offer the Florida Power Corporation

1 composite exhibit. It's not something that we intend to
2 cross-examine their witnesses on, and it is my understanding
3 from talking to Florida Power and Light's counsel that they
4 expect before we start tomorrow they will have had the
5 opportunity to go through the list that we provided them and
6 that we can perhaps -- it's my hope that most of what we have
7 identified could be stipulated into the record. And where
8 there needs to be some clarification or there is some
9 objection, that we deal with that as it comes up, and once --

10 CHAIRMAN JACOBS: It sounds like we can mark it now.
11 First of all, let me ask, are there any objections?

12 MR. MCGLOTHLIN: Mr. Chairman, I have not had a
13 chance to review that package. It may very well be we could
14 stipulate, but I would like a chance to see it first.

15 CHAIRMAN JACOBS: Okay. We will mark it now and we
16 will hold off a motion for admission until the parties have had
17 a chance to further review it.

18 MR. KEATING: Okay. What we will do is distribute
19 each set at this point, and what I would propose and I
20 discussed briefly with FPL's counsel is that when they have had
21 a chance, those parties that haven't agreed that these
22 interrogatory responses could be made a part of the record. So
23 when they have had a chance to do that that we would --

24 CHAIRMAN JACOBS: I will leave it to you to come back
25 in the morning and tell us whether or not you have a

1 stipulation on its admission. If not, then we will hear the
2 objections to it.

3 MR. KEATING: It's our hope, like I said, that most
4 of this could be stipulated in. And my only concern is that
5 there may be some witnesses that come up today that would
6 address a question that is related to those interrogatories
7 that may not be stipulated, and that the staff have the
8 opportunity, once we have heard back from the parties that have
9 not had a chance to completely look through our list, that we
10 be able to address the question with the appropriate witness to
11 perhaps bring that witness back up out of order if necessary.

12 CHAIRMAN JACOBS: You can use the subject matter for
13 cross. I don't think we need to have it as an exhibit for you
14 to use it as cross. And if there is something -- if there was
15 an objection as to the question on cross, we can deal with it
16 then, so I don't think there is a problem with that. But in
17 terms of bringing it into evidence, that I think will be
18 deferred. But I don't think it should be a problem.

19 COMMISSIONER DEASON: Mr. Chairman, I believe the
20 concern is, though, if a witness takes the stand and then
21 leaves and then something is not stipulated into the record,
22 staff wants the ability to recall that witness to ask cross
23 questions.

24 MR. KEATING: That we will have lost the opportunity.
25 We want to avoid having lost the opportunity to have asked

1 cross questions, and I don't know to what extent we will need
2 to do that. I hope it's limited.

3 CHAIRMAN JACOBS: Okay. Over the lunch break would
4 you just coordinate with the parties and find out what the
5 prospect of that is, whether or not a witness that may have --
6 it doesn't sound like there is any kind of broad objection to
7 it in any event, but check with the parties who do have some
8 prospective objections and coordinate with their witnesses and
9 make sure they will be here in the event you need to do that.
10 Very well. So we will mark that as Staff Composite Exhibit 1.

11 MR. KEATING: Well, we have three separate composite
12 exhibits, one for each company. And if you would like we could
13 distribute those now. Because I realize that there are other
14 parties whose agreement is required in this case, and I don't
15 want to short circuit their ability to review these. The list
16 of interrogatories and document requests was provided to all
17 parties, the actual exhibits have just been put together in the
18 last 24 hours.

19 MR. CHILDS: Are you doing these as three separate
20 exhibits?

21 MR. KEATING: Yes.

22 CHAIRMAN JACOBS: As I'm seeing it, it looks like
23 they are distinguished by docket, so interrogatory responses
24 distinguished by docket.

25 MR. KEATING: That is correct.

1 CHAIRMAN JACOBS: Okay. So we will mark as Exhibit 1
2 staff's composite interrogatories responses in Docket 000824.

3 MR. KEATING: Okay.

4 CHAIRMAN JACOBS: We will mark as Exhibit 2 responses
5 to staff's interrogatories in Docket Number 010577, composite.

6 And we will mark as Exhibit 3 responses to staff's
7 interrogatories in Docket Number 001148.

8 (Composite Exhibits 1, 2, and 3 marked for
9 identification.)

10 COMMISSIONER JABER: You forgot to say the part about
11 no cell phones in the agenda room, didn't you?

12 CHAIRMAN JACOBS: Yes, I did. Very well.

13 MR. KEATING: Thank you. And I apologize for the
14 interruption. Given the expedited nature of this case, many of
15 these requests were received just last week and many of them
16 were provided to staff even a few days early so the parties
17 haven't been dragging their feet on this, but it has just been
18 a matter of running out of time prior to this hearing to get
19 this wrapped up. And it's our hope that in the long run this
20 will expedite the hearing and streamline it a bit.

21 CHAIRMAN JACOBS: Very well. And we are prepared for
22 the first witness. I believe, Mr. Childs, it's your witness.

23 MR. CHILDS: For the first witness we call Mr. Naeve.

24 CLIFFORD M. NAEVE

25 was called as a witness on behalf of Florida Power Corporation,

1 Florida Power and Light, and Tampa Electric Company and, having
2 been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CHILDS:

5 Q Would you state your name and address, please?

6 A My name is Clifford M. Naeve. I go by Mike Naeve.
7 My address is 1440 New York Avenue, Washington, D.C., 20005.

8 Q By whom are you employed and in what capacity?

9 A I am a partner in the law firm of Skadden, Arps,
10 Slate, Meagher & Flom.

11 Q Do you have before you a document that is identified
12 as being sponsored in three dockets, that is Docket Number
13 001148, 010577, and 000824 entitled testimony of Mike Naeve?

14 A Yes, I do.

15 Q Was that prepared by you as your testimony for this
16 proceeding?

17 A Yes, it was.

18 Q And I understand, Mr. Naeve, that you do not have any
19 changes or corrections to make to this testimony?

20 A That is correct.

21 Q And do you adopt it as your testimony?

22 A Yes, I do.

23 MR. CHILDS: Commissioners, we ask that the prepared
24 testimony of Mr. Naeve be inserted into the record as though
25 read.

1 CHAIRMAN JACOBS: Without objection, show the
2 testimony is entered into the record as though read.

3 MR. CHILDS: Mr. Naeve in the prehearing order
4 identifies an exhibit that he is sponsoring, and he talks about
5 that on his testimony, Pages 3 and 4. I would like to have
6 that marked for identification, please.

7 CHAIRMAN JACOBS: Very well. That is Volume 1 of the
8 GridFlorida RTO Formation Documents?

9 MR. CHILDS: I believe it is Volumes 1 through 6 of
10 the RTO documents.

11 CHAIRMAN JACOBS: Now, there were other witnesses who
12 are associated with those, so they are jointly sponsoring
13 those?

14 MR. CHILDS: There are other witnesses who speak to
15 it, but this witness is sponsoring it.

16 CHAIRMAN JACOBS: Show that marked as Exhibit 4.
17 (Exhibit 4 marked for identification.)

18 MR. CHILDS: In addition, I have distributed, or I
19 think I was successful in distributing yesterday a three-page
20 document dated September 26th from Pat Wood, III. I am going
21 to go through identification of that right now.

22 BY MR. CHILDS:

23 Q Mr. Naeve, do you have a document that is addressed
24 to Bill Massey and two other individuals from Pat Wood, III?

25 A Yes, I do.

1 Q Could you tell us what that is, just describe it?

2 CHAIRMAN JACOBS: Could you give us just a moment
3 until we get copies of that, Mr. Childs?

4 MR. CHILDS: I will get copies. I have copies of
5 that for you.

6 BY MR. CHILDS:

7 Q Mr. Naeve, will you identify that three-page memo
8 that I just handed out?

9 A Yes. This is a memo from Pat Wood, who is the
10 Chairman of the Federal Energy Regulatory Commission, and it is
11 directed to the three existing Commissioners of the Federal
12 Energy Regulatory Commission other than Commissioner Wood, who
13 are Bill Massey, Linda Breathitt, and Nora Brownell. That is a
14 memo in which Chairman Wood expresses his views on the FERC
15 policies pertaining to RTOs, and a memo in which he makes
16 various suggestions to accelerate the development of RTOs. One
17 suggestion is that --

18 Q Just identify it for just a moment.

19 A Okay.

20 MR. CHILDS: I would like to have that marked as an
21 exhibit.

22 CHAIRMAN JACOBS: Show that marked as Exhibit 5.

23 MR. CHILDS: Okay.

24 (Exhibit 5 marked for identification.)

25

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

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

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

FILED: August 15, 2001

**TESTIMONY OF
MIKE NAEVE**

1 **Q. Please state your name and occupation.**

2 A. My name is Mike Naeve. I am a partner in the law firm Skadden, Arps, Slate,
3 Meagher & Flom LLP.

4 **Q. Please briefly describe your background.**

5 A. I previously served on the staff of two Texas Governors, was Director of the
6 Legislative Staff of U.S. Senator Lloyd Bentson, and from 1985-1988 was a
7 Commissioner at the Federal Energy Regulatory Commission ("FERC"). While at
8 FERC, I was deeply involved in establishing FERC's policies for enhancing
9 competition in the natural gas industry. These policies included open access
10 transportation, relaxation of wellhead price regulations and deregulation of gas

1 merchant activities. I also helped to develop new approaches to the FERC's
2 regulation of the electric power industry. Since leaving FERC, I have continued
3 to be involved in FERC regulatory matters, most particularly with respect to the
4 electric utility industry. I have worked on a number of electric utility merger
5 proceedings, and I helped to develop the first market-based rate tariff and the first
6 open access transmission tariff used by FERC as a model for its Order No. 888
7 pro forma Open Access Transmission Tariff. I have been involved in a number of
8 electric utility restructurings, and I have testified before Congress on several
9 occasions on energy policy and antitrust issues in energy markets. I represent
10 Florida Power & Light Company ("FPL") in a number of matters, including
11 representation at FERC with respect to FPL's participation in GridFlorida.

12 **I. INTRODUCTION**

13 **Q. What is the purpose of your testimony in this proceeding?**

14 A. I am presenting testimony on behalf of FPL, FPC and TECO (the "GridFlorida
15 Companies") in support of their position that it is prudent for them to participate
16 in the GridFlorida RTO, as they have proposed to FERC. In particular, my
17 testimony addresses the following issues:

18 **1. Prudence and Benefits (Issue Nos. 2, 3, 5 and 6)**

19 When I discuss the "prudence" of the GridFlorida Companies' decisions, I am
20 addressing this issue from the perspective of the GridFlorida Companies'
21 ratepayers. I address the prudence issue on two levels. First I explain why, given
22 FERC's clearly stated policy that all transmission-owning utilities should join an
23 RTO, it was prudent for the GridFlorida Companies to proactively develop and
24 request approval of an RTO. Second, I explain why, given the decision to

1 participate in some kind of RTO, the GridFlorida Companies made various
2 choices as to scope, form, ownership and functions that led to the GridFlorida
3 proposal, and why those choices were prudent. In order to explain why these
4 decisions are prudent, I also address the benefits of those decisions.

5 **2. FERC Southeastern RTO Proceeding (Issue No. 11)**

6 Recently, FERC issued a series of orders requiring that parties attend mediation
7 before a FERC ALJ to discuss how to form a large Southeastern RTO. Although
8 the GridFlorida Companies were not required to attend, they were strongly
9 encouraged by FERC to do so. As a consequence, the GridFlorida Companies and
10 other GridFlorida stakeholders, including the Florida Public Service Commis-
11 sion's ("FPSC") Staff, have participated in the FERC discussions. My testimony
12 also deals with this development.

13 **3. Retail Unbundling (Issue Nos. 8 and 9)**

14 Issue Numbers 8 and 9 assume that the GridFlorida Companies have proposed to
15 unbundle their retail electric service. As I explain below, however, that is not the
16 case. These issues therefore are not relevant to the GridFlorida proposal.

17 **4. Chronology of Significant Events**

18 Finally, I also am providing a brief chronology of significant events that have led
19 the GridFlorida Companies to the current stage of GridFlorida development.

20 Although this testimony does not directly relate to any of the hearing issues, it
21 provides useful background information for the FPSC.

22 **Q. Are you sponsoring any exhibits as part of your testimony?**

23 A. Yes. On July 30, five volumes of GridFlorida formation documents were filed as
24 Exhibit CMN-1 to my testimony. These documents also were filed to give the

1 FPSC useful background regarding GridFlorida. I have included a sixth volume
2 to Exhibit CMN-1 in the filing made today.

3 **Q. What other witnesses are testifying on behalf of the GridFlorida Companies?**

4 A. In addition to my testimony, the GridFlorida Companies are jointly sponsoring a
5 number of other witnesses in support of their position. In particular, the
6 GridFlorida Companies are submitting testimony addressing the following issues:

- 7 **1. FERC RTO Policy (Issue Nos. 1-3).** Mr. James Hoecker, the recent
8 Chairman at FERC who was responsible for the issuance of Order No.
9 2000, will testify regarding FERC's RTO policy. In particular, he will
10 explain that it is FERC's clearly expressed policy that all transmission
11 owners join an RTO. Mr. Hoecker also will explain the benefits that
12 FERC believes would result from RTO participation, and why those
13 benefits should apply to Florida.
- 14 **2. Governance, Planning, Operations and Market Design (Issue Nos. 2,**
15 **3, 5 and 6).** This testimony addresses the substance of the GridFlorida
16 proposal and explains why the various substantive provisions are
17 appropriate. Since the various subjects are all interrelated, this testimony
18 is being jointly sponsored by myself, Mr. Marty Mennes of FPL, Mr. Greg
19 Ramon of TECO and Mr. Henry Southwick of FPC. I refer to this
20 testimony later on as the "Panel Testimony."
- 21 **3. Pricing (Issue Nos. 2, 3, 5 and 6).** The GridFlorida Companies have not
22 yet filed the proposed rates for GridFlorida. However, the GridFlorida
23 Companies have made detailed filings regarding the approach that they
24 will follow, including a rate plan designed to mitigate cost shifts resulting

1 from the elimination of pancaked rates as required by FERC. Mr. William
2 Ashburn of TECO is presenting testimony describing the GridFlorida rate
3 proposal and why it provides adequate mitigation of cost shifts and
4 otherwise is appropriate.

5 **4. Start-Up and Operating Costs (Issue No. 4).** Mr. Brad Holcombe of
6 Accenture, which has helped the GridFlorida Companies to develop a
7 blueprint and budget for GridFlorida start-up, presents testimony on the
8 proposed GridFlorida start-up and initial operating costs. Mr. Holcombe
9 explains how cost estimates were developed and shows that the
10 GridFlorida costs are reasonable when compared to start-up costs for other
11 RTOs. Mr. Holcombe's testimony relates to the total GridFlorida budget –
12 some portion of which would have been incurred by the GridFlorida
13 Companies even if GridFlorida never is implemented. Mr. Holcombe also
14 sponsors an analysis prepared by the three companies that identifies which
15 annual operating costs are incremental to GridFlorida, i.e. the portion of
16 total operating costs described by Mr. Holcombe that would not be
17 incurred by the GridFlorida Companies in the absence of GridFlorida. Mr.
18 Holcombe's testimony was filed on July 30.

19 **5. GridFlorida Development Activity and Costs (Issue Nos. 4 and 6).** Mr.
20 Henry Southwick presents testimony describing the interim development
21 work that the GridFlorida Companies performed in order to make
22 GridFlorida operational, and also addresses the estimated total costs of
23 GridFlorida. This testimony was filed on July 30.

1 **6. Company Specific Testimony.** Finally, each of the GridFlorida Compa-
 2 nies is presenting company-specific testimony dealing with issues specific
 3 to the individual companies. Those witnesses are as follows:

4 Florida Power Corp H. I. Southwick

5 Florida Power and Light C. M. Mennes

6 Florida Power and Light K. M. Dubin

7 Tampa Electric Co W. R. Ashburn

8 Tampa Electric Co T. L. Hernandez

9
 10 **II. IT WAS PRUDENT FOR THE GRIDFLORIDA COMPANIES TO**
 11 **PROPOSE RTO PARTICIPATION (ISSUE NOS. 2, 3, 5 , 6 AND 11)**

12
 13 **A. GIVEN FERC'S POLICY THAT ALL TRANSMISSION OWNERS**
 14 **JOIN AN RTO, IT WAS PRUDENT FOR THE GRIDFLORIDA**
 15 **COMPANIES TO HAVE SUBMITTED A PROPOSAL TO FORM**
 16 **AN RTO**

17
 18 **Q. What was the GridFlorida Companies' view as to whether they were re-**
 19 **quired to join an RTO?**

20 **A.** As Mr. Hoecker explains, it was FERC's clearly stated policy that all transmission
 21 owners join an RTO. The GridFlorida Companies read Order No. 2000 as raising
 22 the very strong likelihood that, if the GridFlorida Companies did not file their own
 23 RTO proposal, FERC eventually would force RTO participation, either through a
 24 direct order or through the imposition of a number of ever increasing penalties –
 25 "guidance and encouragement" – as FERC put it in Order No. 2000.¹ The

¹Order No. 2000 at 115.

1 GridFlorida Companies did not believe that RTO participation was voluntary in
2 the long run, notwithstanding that FERC declined to make a generic finding in
3 Order No. 2000 that every utility was required to join an RTO. In this regard, I
4 think that the opinion of DC Court of Appeals Judge Williams is instructive in
5 describing FERC's claim that participation in its natural gas pipeline restructuring
6 rule was "voluntary": "[W]hen a condemned man is given the choice between the
7 noose and a firing squad, we do not ordinarily say that he has 'volunteered' to be
8 hanged."²

9 **Q. Given FERC's stated policy about RTO participation, what is your opinion**
10 **as to the prudence of the GridFlorida Companies' decision to submit a**
11 **proposal to form an RTO?**

12 A. A prudent utility would not frame the question simply as whether or not it should
13 join an RTO, but instead as whether it is better to proactively develop and submit
14 a proposal or to wait and run the substantial risk that it ultimately would be
15 required by FERC to join an existing RTO. In my view, it was prudent for the
16 GridFlorida Companies to make the decision to submit their own proposal rather
17 than take the substantial risk that they later would be forced to join an existing
18 RTO.

²Associated Gas Distributors v. FERC, 824 F.2d 981 at 1024 (D.C. Cir. 1987).

1 **Q. Why is that?**

2 A. It is a question of controlling your own destiny. If the GridFlorida Companies
3 later were forced to join an existing RTO, they would have to take that RTO as
4 they found it, and would have minimal input into its essential features. By
5 contrast, there have been considerable benefits to Florida ratepayers resulting
6 from the GridFlorida Companies' decision to form their own RTO and to develop
7 their own proposal, including the following:

8 **1. Florida Collaborative Process:** One of the chief benefits of the
9 GridFlorida Companies' decision to form their own RTO is that they established a
10 substantial collaborative process in which all Florida stakeholders, including
11 representatives of the FPSC, were able to provide guidance and advice on the
12 content of the GridFlorida Companies' RTO proposal. While the GridFlorida
13 Companies did not accept all comments that they received (many of which were
14 mutually exclusive with other comments received) the comments that the Florida
15 stakeholders provided materially shaped the ultimate contents of the GridFlorida
16 proposal. By contrast, if the GridFlorida Companies had not filed their own
17 proposal, but later were required to join an RTO formed without the benefit of the
18 Florida collaborative process, the Florida stakeholders (including the GridFlorida
19 Companies) would have been completely shut out of the development process.

20 **2. Peninsular Florida Scope:** The FPSC has expressed on numerous
21 occasions its strong preference that any RTO joined by the GridFlorida
22 Companies be limited to Peninsular Florida. Because the GridFlorida Companies
23 submitted their own proposal, they were able to achieve this goal. By contrast, if

1 the GridFlorida Companies had declined to develop their own proposal and later
2 were forced to join an existing RTO, the only existing RTOs would be located
3 outside of Florida. The benefit of a Florida RTO to Florida electric consumers
4 was recognized by the FPSC's Staff in a September 2000 briefing paper by the
5 Division of Policy Analysis & Intergovernmental Liaison entitled "Regional
6 Transmission Organizations: Policy Analysis Briefing Paper: The Viability of an
7 RTO in Florida." At page 33 of the briefing paper, the Staff noted that:

8 Any RTO adopted for Florida should take into account the state's unique
9 geographical location and transmission tielines. Also, this RTO must
10 balance the current level of the state's energy prices and electric reliability
11 with the desire of industrial users and merchant plant owners for fair and
12 equal access to the state's transmission grid. Each operating RTO across
13 the country has been designed to address particular regional issues, many
14 of which are quite different from the Florida status quo.
15

16 **3. Florida Focus:** A closely related benefit to the Peninsular Florida
17 scope of the RTO is that such an RTO would have a Florida focus in the way that
18 it operates after it commences operations. The RTO would be headquartered in
19 Florida, would focus its operational and planning efforts on Florida, and would
20 not be put in the position where it would have to balance the impacts of its actions
21 between Florida and other regions and thereby benefit another state at the expense
22 of Florida.

23 **4. Cost Shifts and Mitigation:** While the GridFlorida proposal, as a
24 consequence of implementing FERC's requirement that rate pancakes be
25 eliminated, does result in some cost shifts among various Florida customers,

1 participation in an out-of-state RTO might result in Florida customers being
2 required to bear costs previously borne by out-of-state customers. Furthermore,
3 the GridFlorida Companies developed, through the Florida collaborative process,
4 a cost-shift mitigation plan designed to mitigate the impacts of any such cost
5 shifts. The GridFlorida Companies would be required, of course, to accept
6 whatever cost shift mitigation plan, if any, is established by an existing RTO if
7 they were forced to join such an RTO in the future.

8 **5. Cost Control:** Finally, because the GridFlorida Companies have
9 been responsible for developing the GridFlorida proposal, they have been able to
10 shape that proposal in ways intended to limit cost incurrence. For example, as
11 explained in Mr. Holcombe's testimony, the GridFlorida Companies have decided
12 to use the existing FPL control center initially on an interim basis, which will
13 allow significant cost savings when compared to the construction of an entirely
14 new control center. FERC has required the GridFlorida Companies to wait until
15 the Independent Board is formed before making certain implementation decisions
16 affecting market design, but the GridFlorida Companies are permitted to make
17 other development decisions that can impact the overall costs of GridFlorida. The
18 cost issue is addressed in more detail in the testimony of Mr. Holcombe and Mr.
19 Southwick.

20 **Q. What is your conclusion about the prudence of the GridFlorida Companies'**
21 **decision to develop and file an RTO proposal?**

22 A. First of all, notwithstanding FERC's decision to follow a "voluntary approach", it
23 was FERC's clearly stated policy that all transmission owners join an RTO, as Mr.

1 Hoecker explains in his testimony. I do not believe that the GridFlorida
2 Companies should be found to be imprudent for following a clearly articulated
3 federal policy.

4
5 Furthermore, given FERC's stated policy, it was prudent for the GridFlorida
6 Companies to proactively develop and file an RTO proposal rather than wait and
7 take the significant risk that they ultimately would be forced to join an existing
8 RTO that would have been developed without their input. This decision has
9 resulted in benefits to the GridFlorida Companies and their Florida ratepayers
10 when compared to the results if the GridFlorida Companies later were forced to
11 join an existing RTO.

12 **Q. How are your conclusions impacted by the FERC's recent order initiating**
13 **mediation to establish a larger Southeastern RTO?**

14 A. As of the filing date of this testimony, the parties are still involved in the FERC
15 mediation, so I do not know what proposal may arise out of that mediation, how
16 FERC will react to any such proposal, or whether the GridFlorida Companies
17 would agree to join the larger RTO. However, the GridFlorida Companies are
18 participating in the FERC mediation for the same reason that they believed that it
19 was prudent to develop the GridFlorida proposal in the first place. They are
20 concerned that someday they may be ordered by FERC to become part of the
21 Southeastern RTO and, even if that is not the case, a Southeastern RTO will have
22 a significant impact on the Florida market. By participating actively in the
23 Southeastern RTO discussion, the GridFlorida Companies already have been able

1 to influence the process, and it appears that the parties are likely to agree to many
2 of the same features that are in the GridFlorida proposal. The GridFlorida
3 Companies hope that by participating they can make the proposed RTO as
4 efficient and effective as possible, and otherwise protect Florida ratepayers. Of
5 course, the GridFlorida Companies would consult with the FPSC prior to making
6 any decisions about Southeastern RTO participation.

7 **Q. Will the GridFlorida Companies be required by FERC to participate in the**
8 **Southeastern RTO?**

9 A. At this point, it is too early to tell. I believe that it is possible that FERC will not
10 require the GridFlorida Companies' participation in a Southeastern RTO initially,
11 given that FERC did not require the GridFlorida Companies to participate in the
12 mediation. However, I believe in the long run that it is likely that GridFlorida will
13 be required to join the Southeastern RTO if the GridFlorida Companies do not
14 agree to join initially. The GridFlorida Companies therefore likely will be faced
15 with a similar situation to the one that they faced with Order No. 2000 – they can
16 participate actively and shape the RTO to benefit Florida to the extent possible or
17 they can refuse to join initially and ultimately be required to participate in an RTO
18 that was formed without their involvement and with no Florida focus whatsoever.

19 **B. OTHER BENEFITS OF RTO PARTICIPATION**

20 **Q. Are there other benefits to the GridFlorida Companies' decision to form an**
21 **RTO?**

22 A. Yes. Mr. Hoecker addresses the general benefits that FERC believes would result
23 from RTO participation. My testimony focuses on some of the specific benefits to

1 Florida that would result. Many of these benefits are difficult if not impossible to
2 quantify.

3 **Q. What benefits result from the GridFlorida proposal?**

4 A. As discussed by Mr. Hoecker, one of the benefits of RTO participation is the
5 elimination of pancaked rates. FERC stated that this should allow more efficient
6 transactions to occur. As Mr. Ashburn explains in detail, the GridFlorida proposal
7 eliminates pancaked rates for new transactions and depancakes existing
8 transactions over a period of 10 years.

9
10 A second benefit is a congestion management proposal that leads to more efficient
11 allocation of transmission capacity. The GridFlorida proposal includes a Physical
12 Transmission Rights ("PTR") model of congestion management that FERC
13 approved. This approach is discussed in more detail in the Panel Testimony.

14
15 A third benefit is the creation of a real-time balancing market and ancillary
16 services markets that are market based as is described in more detail in the Panel
17 Testimony. Again, this should permit a more efficient wholesale market. The
18 GridFlorida Companies included a revised market design in their May 29
19 Compliance Filing at FERC, and FERC's order on that filing is pending.

20 **Q. These benefits all relate to creating a more efficient wholesale market. Can**
21 **such benefits be obtained in Florida given the Florida Supreme Court's**
22 **ruling interpreting the application of the Florida Electrical Power Plant**
23 **Siting Act ("Siting Act") to merchant plants?**

1 A. Mr. Hoecker explains that there can be benefits from increased competition in
2 Florida even if merchant plants cannot be built. Furthermore, as I understand it,
3 the Supreme Court's ruling does not prevent non-utility generation owners from
4 building plants in Florida. For example, a nonutility generation owner can
5 execute a contract with a load-serving entity to supply all or a significant portion
6 of its entire output. In addition, plants with a steam cycle below 75 MW in size
7 and any plant that does not have a steam cycle, such as a simple cycle peaking
8 plant, are exempt from the Siting Act and therefore do not need to be owned by or
9 dedicated to a load serving entity. Such plants provide competition for existing
10 wholesale sellers of power to load-serving entities. Changes that eliminate rate
11 pancaking and ensure nondiscriminatory open access will benefit these plants and
12 increase wholesale competition.

13
14 The argument that non-utility generation facilities can still be developed in Florida
15 is not just a theoretical argument. As described in the Panel Testimony, the
16 GridFlorida Companies currently have pending requests for interconnection of
17 over 50 plants representing over 26,000 MW of non-utility owned generation to
18 be placed in service in the next five years. While not all of these plants will be
19 placed into service (and indeed some of the requests have been filed in
20 anticipation of a revision to the Siting Act), the magnitude of the requests shows
21 that a significant amount of non-utility plants likely will be built in Florida
22 notwithstanding the Florida Supreme Court's ruling.

23

1 Furthermore, I would note that the Governor has appointed a Committee to study
2 steps that can be taken to foster increased wholesale competition in Florida.

3 Whatever form any restructuring of the Florida utility industry might ultimately
4 take, having an RTO in place is an important predicate for wholesale competition.
5 It is appropriate to establish GridFlorida soon so that the infrastructure will be in
6 place at such time as the Florida legislature acts. This conclusion is consistent
7 with the FPSC Staff's opinion as expressed at page 34 of the briefing paper I
8 described above. "An effective RTO is a necessary . . . condition toward the
9 development of a competitive wholesale generation market."

10
11 Finally, there are many merchant plants and other generation facilities located
12 outside of Florida. Improving wholesale competition should at the very least have
13 a positive impact on the availability and price of power imported into Florida.

14 **Q. Are there other benefits from having an RTO?**

15 A. Yes. Another significant benefit is in having the planning function discharged by
16 a single entity, particularly with respect to interconnection planning. As noted
17 above, there are a large number of interconnection and transmission service
18 requests pending before the GridFlorida Companies. Many of these requests
19 impact the systems of more than one of the GridFlorida Companies, and therefore
20 have to be studied by more than one of the GridFlorida Companies, or have to be
21 organized into a joint study among the GridFlorida Companies. The use of
22 separate queues has had the effect of complicating new supplier access to the
23 Florida grid, as explained in more detail in the Panel Testimony regarding the

1 GridFlorida proposal. When separate queues are combined into a single
2 GridFlorida queue and the planning function is performed on a regional basis by
3 GridFlorida (or by a larger RTO), the impacts of a particular interconnection
4 and/or transmission request can be analyzed in one study performed on a regional
5 basis. This should facilitate access to the grid and encourage new generation.

6 **Q. What other benefits result from the GridFlorida Companies's decision to**
7 **form an RTO?**

8 A. As Mr. Hoecker testifies, FERC has indicated that it will be much more open to
9 innovation in transmission service from RTOs than it has been to deviations from
10 the Order No. 888 pro forma tariff by individual transmission owners. This
11 should be the case for GridFlorida as well. It is difficult to foresee exactly what
12 innovations will arise in the future, but the ability to adjust to a rapidly changing
13 industry is an important benefit that should permit the GridFlorida Companies to
14 access power to serve their customers at a lower overall cost.

15 **Q. Do these benefits justify the GridFlorida Companies' decision to incur the**
16 **costs of GridFlorida?**

17 A. As I stated above, the choice faced by the GridFlorida Companies was whether to
18 proactively propose to join an RTO or run the strong risk that they would be
19 forced to join an existing RTO in the future. The prudence of this decision cannot
20 be judged simply by comparing the costs of GridFlorida with a quantification of
21 the benefits, because such a calculation ignores the substantial likelihood that the
22 GridFlorida Companies would be forced to join an RTO eventually. The proper
23 way to evaluate the prudence of the GridFlorida Companies' decision is to

1 compare the outcome of the GridFlorida Companies' decision to proactively
 2 propose GridFlorida with the outcome that would result if the GridFlorida
 3 Companies were forced to join an RTO at some point in the future. As I showed
 4 above, it is clear that it was prudent and in the best interests of the GridFlorida
 5 Companies' ratepayers for the GridFlorida Companies to have developed their
 6 own proposal rather than be forced to join an RTO designed by someone else out
 7 of state.

8
 9 Having said that, the benefits to joining an RTO described above are significant,
 10 particularly in the long run as competitive wholesale markets evolve and mature.
 11 However, some of these benefits are very difficult to quantify. The significant
 12 benefits of RTO formation reinforce the prudence of the decision to go forward
 13 rather than attempt to resist RTO participation to the bitter end. The FPSC should
 14 not let the fact that many of these benefits are difficult to quantify color its view of
 15 the soundness of the GridFlorida Companies' decision to go forward with
 16 GridFlorida.

17 **III. THE GRIDFLORIDA COMPANIES' DECISIONS REGARDING THE**
 18 **SPECIFIC GRIDFLORIDA PROPOSAL WERE PRUDENT (ISSUE NOS.**
 19 **2, 3, 5 AND 6)**
 20

21 **Q. So far, you have addressed the prudence of submitting an RTO proposal to**
 22 **FERC, and have concluded that the GridFlorida Companies' decision to do**
 23 **so was prudent. Would you now please address specific decisions regarding**
 24 **the structure of GridFlorida that were made by the GridFlorida Companies.**
 25 **What were the key alternatives considered by the GridFlorida Companies?**

1 A. In my view, there were four key strategic alternatives considered by the
2 GridFlorida Companies. These alternatives were as follows: (1) Whether to
3 propose a scope larger than Peninsular Florida; (2) Whether to propose a for-
4 profit Transco or a non-profit ISO; (3) Whether the GridFlorida Companies would
5 transfer ownership of their transmission facilities to GridFlorida or retain
6 ownership and only transfer operational control over the transmission facilities;
7 and (4) Whether to propose an Independent Board or a Stakeholder Board.

8
9 In reviewing the GridFlorida Companies' choices with respect to these strategic
10 alternatives, it is important to recognize that the GridFlorida Companies were not
11 completely free to advance whatever alternative they wanted. Order No. 2000 had
12 some very specific guidelines as to characteristics and functions an acceptable
13 RTO proposal would have to include. To the extent that an alternative is
14 inconsistent with Order No. 2000, it could never be approved by FERC and
15 therefore was not selected by the GridFlorida Companies even if they otherwise
16 might have believed that the alternative had merit.

17
18 Below, I will discuss the most important strategic consideration for each of the
19 alternatives and will evaluate the GridFlorida Companies' decisions.

20 **A. REGIONAL SCOPE**

21 **Q. What alternatives did the GridFlorida Companies consider with respect to**
22 **the regional scope of their RTO?**

1 A. The GridFlorida Companies knew that FERC likely would not consider an RTO
2 smaller than Peninsular Florida, and the FERC would prefer a larger size if
3 possible.

4 **Q. What factors did the GridFlorida Companies consider in deciding on the**
5 **appropriate scope?**

6 A. The GridFlorida Companies knew that the FPSC strongly preferred a scope
7 limited to Peninsular Florida for many reasons, including the fact that peninsular
8 Florida has unique geography, being surrounded by water on three sides, the
9 FRCC region encompasses peninsular Florida, transmission facilities in Florida
10 are already subject to regional coordination for reliability purposes, and
11 peninsular Florida is already a large energy market unto itself. A Peninsular
12 Florida scope would allow the RTO to be headquartered in Florida and to focus on
13 reliability and operations in Florida. In addition, Florida had become a separate
14 reliability region in 1996, underscoring the reasonableness of using peninsular
15 Florida as the proper regional scope for an RTO. Finally, the GridFlorida
16 Companies knew that it would be more difficult to reach agreement with entities
17 outside of Florida, which would make it more difficult to meet FERC's October
18 15, 2000 deadline for filing RTO proposals, if indeed any agreement at all could
19 be reached with entities outside of Florida. Based on these factors, the
20 GridFlorida Companies decided to limit their RTO proposal to Peninsular Florida.

21 **Q. Was this a prudent decision?**

1 A. Yes it was. While there was some risk that FERC might reject a Florida-only
2 RTO, the GridFlorida Companies were able to convince FERC that this was an
3 appropriate scope.

4 **Q. What is the GridFlorida Companies' position with respect to participation in**
5 **the Southeastern RTO that FERC is attempting to form?**

6 A. As I stated previously, GridFlorida was invited but not required to participate.
7 Nevertheless, the GridFlorida Companies are attending these meetings. They
8 believe that it is prudent to at least participate in the meetings to protect the
9 interests of Florida. The GridFlorida Companies will evaluate whether it is
10 appropriate to participate after the Southeastern RTO proposal is developed and
11 FERC provides further guidance on its expectations for participation in such an
12 RTO. As I noted above, any decision will be made after consultation with the
13 FPSC.

14 **B. FOR PROFIT TRANSCO OR NON-PROFIT ISO**

15 **Q. What alternatives did the GridFlorida Companies consider with respect to**
16 **the corporate nature of their proposed RTO?**

17 A. There were two basic alternatives considered. The first was forming a for-profit
18 transmission company ("Transco"). The second was forming a non-profit
19 independent system operator ("ISO").

20 **Q. What concerns about Transcos did the GridFlorida Companies consider in**
21 **evaluating these alternatives?**

22 A. The GridFlorida Companies were aware that some concerns had been raised
23 nationally that Transcos would not be the neutral system operators that FERC

1 requires. However, FERC specifically addressed this issue in Order No. 2000 and
2 found that a properly structured Transco would be independent from market
3 participants, if the proposal limited market participant ownership to "passive"
4 ownership without any rights to control the decisions or operations of the Transco.

5 **Q. What concerns did the GridFlorida Companies have about ISOs?**

6 A. The GridFlorida Companies were concerned that the existing ISOs did not appear
7 to have the proper incentives to operate efficiently or to attempt to reduce costs.
8 For example, the California ISO built a redundant and expensive control center
9 and hired a large staff. The problem is that a non-profit ISO is not directly
10 accountable to anyone or to any entity that has an interest in ensuring that costs
11 are incurred efficiently. So long as the ISO is able to recover its costs in its rates
12 and at the same sees no benefit from reducing those costs, it has no real incentive
13 to keep costs down.

14
15 By contrast, a for-profit Transco is accountable to its owners for the way that it
16 incurs costs, which adds an additional incentive for efficiency. The GridFlorida
17 Companies recognize that there are significant start-up and staffing costs that will
18 be incurred in forming an RTO under either a Transco or an ISO proposal.
19 However, they believe that these costs could be kept under better control with a
20 Transco.

21 **Q. Are there other concerns about the accountability of an ISO?**

22 A. Another problem with the fact that an ISO Board of Directors does not have to
23 answer to shareholders is that it can become entrenched and less responsive to the

1 needs of customers and other stakeholders. It is very difficult for any outside
2 party to remove an Independent Director of an ISO without compromising the
3 ISO's independence, even when the ISO is not performing satisfactorily. By
4 contrast, the Directors of a Transco are responsible to their shareholders. If the
5 Transco is not operating efficiently and providing good service, then the Directors
6 can be replaced.

7 **Q. What is another concern about ISOs?**

8 A. A non-profit ISO generally owns relatively few assets. This means that the ISO is
9 not financially strong, and as a consequence must be extremely risk-averse. When
10 faced with a decision that could require it to take on some risk, an ISO must avoid
11 such risk, and instead must shift the risk to others even at the expense of not
12 providing better service or failing to improve the workings of the market. There is
13 no incentive for an ISO to propose more efficient tariff structures or services if
14 those tariffs or services expose the ISO to both greater risk and greater
15 opportunity when the upside of the opportunity will not be retained.

16
17 I do not mean to suggest that a Transco would or should be willing to take on risk
18 unnecessarily. However, as an entity with considerably greater financial strength,
19 a Transco will be able to weigh the benefits and consequences of risk, and to take
20 on an acceptable amount of risk if that will result in improved service or
21 efficiency, and if the risks are balanced with a potential for reward. As a for-
22 profit entity, the Transco will have the incentives to do so in order to increase its
23 profits. I want to emphasize here that I am referring here to business risk, such as

1 a decision to install equipment that allows service to be provided more efficiently
2 in the expectation that the resulting cost savings will offset the cost of equipment.

3 I do not believe that a Transco is more likely to take operational risks that could
4 threaten the reliability of the grid, nor do I believe that taking such risks would be
5 appropriate.

6 **Q. Are there other advantages to the Transco structure?**

7 A. Yes. Another advantage to a Transco that owns assets is that it has greater
8 financial strength and access to capital necessary to fund construction and
9 maintenance at a lower cost. The GridFlorida Companies also believed that a
10 Transco that owns its own assets is more likely to focus more carefully on prudent
11 asset operation and maintenance policies. These prudent policies will be applied
12 not only to the assets owned by the Transco, but to all other assets under its long-
13 term control.

14 **Q. What decision did the GridFlorida Companies make with respect to the**
15 **Transco?**

16 A. FPL decided early on that a Transco was more desirable. Although TECO
17 initially had proposed an ISO, after TECO discussed the relative benefits of a
18 Transco, TECO became convinced that the Transco approach was superior. FPC
19 also initially contemplated an ISO, but was willing to go forward with a Transco
20 approach since that was what was preferred by the other GridFlorida Companies.

21 **Q. Do you believe that this was a prudent decision?**

1 A. Yes. In my view, the aspects of a Transco that made it attractive to the
2 GridFlorida Companies, i.e. efficiency, economy, accountability, innovation and
3 financial strength, all also work to the benefit of Florida ratepayers.

4 **Q. Have other RTOs proposed a Transco structure?**

5 A. Yes. In the Southeast, GridSouth has proposed that a Transco be the RTO. The
6 Alliance RTO also is structured to eventually be a Transco.

7 **C. OWNERSHIP OF TRANSMISSION FACILITIES**

8 **Q. What alternatives did the GridFlorida Companies face with respect to the**
9 **ownership of their transmission facilities?**

10 A. Even after the GridFlorida Companies decided to form a Transco, they still had to
11 decide whether or not to transfer ownership of their transmission facilities to the
12 Transco or simply to transfer operational control while retaining ownership.

13 **Q. What considerations applied to this decision?**

14 A. Some of the considerations are similar to the considerations regarding the choice
15 between a Transco and a non-profit ISO. As I discussed above, if the Transco
16 owns considerable assets, it will have greater financial strength and more
17 incentives to innovate, and will be able to assume an acceptable amount of risk in
18 order to provide improved service.

19 **Q. What other benefits are there to transferring ownership of transmission**
20 **facilities to GridFlorida?**

21 A. There is a benefit to aligning the ownership of the transmission facilities with the
22 responsibility for operating and maintaining those facilities. This alignment also
23 results in the entity that is responsible for decisions regarding expansion and other

1 capital expenditures also being an owner of facilities with the responsibility for
2 obtaining the necessary financing.

3 **Q. What are the benefits of retaining ownership of transmission facilities?**

4 A. Given the current uncertainties regarding the ultimate shape of the restructured
5 electric industry, there is a benefit in retaining ownership of transmission facilities
6 in order to increase flexibility to respond to changes that may occur in the future.

7 **Q. Does the decision to transfer ownership of transmission facilities affect the
8 treatment of the GridFlorida Companies' transmission assets for retail rate
9 purposes?**

10 A. No. As I explain further below, FERC has required entities that retain ownership
11 of their transmission facilities to nevertheless take transmission service for retail
12 load from the RTO. Therefore, all transmission facilities of the GridFlorida
13 Companies must be included in GridFlorida's rates, whether those facilities have
14 been divested to GridFlorida or ownership of the facilities is retained by the
15 GridFlorida Companies. While there may be a number of ways to reflect this fact
16 in the GridFlorida Companies' retail rates, the transfer of ownership of
17 transmission facilities to GridFlorida should make no difference in how retail
18 rates are determined.

19 **Q. What decisions did the GridFlorida Companies make regarding the transfer
20 of ownership of transmission facilities to GridFlorida?**

21 A. FPL and TECO decided to transfer ownership of their transmission facilities to
22 GridFlorida while FPC decided to retain ownership and transfer operational
23 control only.

1 **Q. Do you believe that the GridFlorida Companies' decisions with respect to**
2 **transmission facility ownership were prudent?**

3 A. I think that it is very important that GridFlorida own significant assets of its own,
4 for the reasons described above. As a result, I think that it was prudent for FPL
5 and TECO to have decided to transfer ownership of their transmission facilities to
6 GridFlorida. At the same time, I think it is prudent for FPC to continue to own its
7 transmission facilities.

8 **D. INDEPENDENT OR STAKEHOLDER BOARD**

9 **Q. What alternatives were available with respect to Board composition?**

10 A. In Order No. 2000, FERC discussed two types of Boards for RTOs. One type is
11 an "Independent Board" which consists of persons without any connections to any
12 market participant. The second type is a "Stakeholder Board," which consists of
13 representatives of the various groups of market participants.

14 **Q. What factors did the GridFlorida Companies consider in evaluating these**
15 **alternatives?**

16 A. There was some attraction to the GridFlorida Companies in being able to have
17 representation on the Board through the use of a Stakeholder Board. However,
18 the problem with such boards is that the directors tend to represent their
19 stakeholder groups more than the interests of the RTO itself. This can cause real
20 management problems given that no stakeholder group is permitted under Order
21 No. 2000 to have a controlling interest in the Board, and therefore the Board tends
22 to deadlock when forced to make difficult decisions that impact different
23 stakeholders differently. Indeed, the problem got to be so bad in California that

1 FERC ordered the Stakeholder Board to be dissolved and replaced by an
2 Independent Board. The GridFlorida Companies want to have a Board acting in
3 the best interests of the RTO and that is able to make decisive decisions when
4 faced with difficult issues.

5 **Q. Are there other advantages of an Independent Board?**

6 A. Yes. While the stakeholders know a great deal about the electric industry in
7 Florida, they are not necessarily knowledgeable about the corporate governance
8 issues that would typically be expected of a Board of Directors of a company the
9 size involved here. By using an Independent Board, the GridFlorida Companies
10 opened for consideration a much bigger pool of qualified candidates from across
11 the nation with a number of useful skills and experiences that simply would not be
12 available to a Stakeholder Board. The GridFlorida Companies believe that such a
13 Board ultimately should do a much better job in directing the affairs of
14 GridFlorida.

15 **Q. Do you believe that the GridFlorida Companies' decision to employ an**
16 **Independent Board is prudent?**

17 A. Yes, I believe that an Independent Board is much better than a Stakeholder Board.
18 Furthermore, notwithstanding that FERC stated in Order No. 2000 that it would
19 not prevent Stakeholder Boards, I believe that it would be difficult to obtain
20 FERC approval of a Stakeholder Board in light of its ruling described above in
21 which it required the California ISO to dissolve its Stakeholder Board and to form
22 an Independent Board. I also would note that the GridFlorida Companies have

1 provided for a Stakeholder Advisory Committee that will give all stakeholders the
2 opportunity to provide input to the Board.

3 **IV. TREATMENT OF BUNDLED RETAIL LOAD (ISSUE NOS. 8-9)**

4 **Q. What does Order No. 2000 require with respect to transmission service for**
5 **bundled retail load?**

6 A. Under Order No. 888, utilities were permitted to provide transmission service to
7 their own bundled retail load "off the tariff," i.e. they were not required to charge
8 a separate transmission rate for the service provided to their bundled retail
9 customers. Order No. 2000, as written, was somewhat ambiguous as to whether
10 utilities now would have to obtain transmission service for their bundled retail
11 customers from the RTO or whether they could continue to provide that service to
12 themselves without using the RTO tariff. Subsequently, however, FERC issued
13 rulings on this issue with respect to both the GridSouth and Southern Companies'
14 RTO ("SETrans") proposals. In each case, FERC made it clear that bundled retail
15 load would have to be served by the RTO, even if the utility retained ownership of
16 its transmission facilities. These decisions eliminated any possibility that FERC
17 would have permitted the GridFlorida Companies to continue serving their
18 bundled retail loads off of the GridFlorida tariff.

19 **Q. Will this result in the GridFlorida Companies' retail electric service being**
20 **unbundled or Florida retail customers becoming transmission customers of**
21 **GridFlorida?**

22 A. No. The GridFlorida Companies will be the customers of GridFlorida under the
23 RTO tariff, and the rate established by FERC will be the rate paid by the

1 GridFlorida Companies, not the rate paid by retail customers. The GridFlorida
2 Companies then will use the transmission service that they purchase from
3 GridFlorida to continue to provide bundled retail service to their retail customers.
4 Conceptually, this will be no different than when the GridFlorida Companies
5 purchase power for resale to retail customers at wholesale at rates established by
6 FERC. In both instances, the GridFlorida Companies are the purchasers at
7 wholesale and these purchases constitute elements of the bundled service that the
8 GridFlorida Companies provide to their retail customers.

9
10 In my view, Issue Nos. 8 and 9 therefore do not come into play with respect to the
11 GridFlorida proposal. The GridFlorida Companies will continue to provided
12 bundled retail electric service, including the retail transmission portion of that
13 bundled retail service, and therefore need not address the issue of seeking
14 Commission approval to unbundle.

15 **Q. Will FERC assume jurisdiction over the rates paid by retail customers for**
16 **transmission service provided by GridFlorida?**

17 A. Again, the wholesale power purchase example is instructive. The fact that FERC
18 regulates wholesale power purchases by the GridFlorida Companies does not
19 prevent the FPSC from regulating the GridFlorida Companies' bundled retail
20 rates. Although the GridFlorida Companies must, as a matter of law, be permitted
21 to recover in retail rates prudently incurred charges resulting from FERC
22 approved rates, the FPSC determines how these and other prudently incurred costs
23 will be reflected in retail rates.

1 Similarly, the fact that FERC will have jurisdiction over GridFlorida rates will not
 2 prevent the FPSC from reviewing and approving the manner in which these costs
 3 are recovered through bundled rates charged by the GridFlorida Companies to
 4 their retail customers. However, once the FPSC determines that it is prudent for
 5 the GridFlorida Companies to participate in GridFlorida, the GridFlorida
 6 Companies must be allowed to pass through to retail customers the costs of the
 7 transmission rates charged by GridFlorida and approved by FERC, just as they are
 8 permitted to pass through prudently incurred wholesale power purchase costs
 9 approved by FERC.

10 **V. CHRONOLOGY OF SIGNIFICANT EVENTS IN GRIDFLORIDA**
 11 **PROCESS**

12 **Q. Would you please describe the significant events in the process of the**
 13 **development of GridFlorida?**

14 **A.** Yes. The chronology can logically be broken into four time periods: (1) From the
 15 issuance of Order No. 2000 on December 20, 1999 to the initial GridFlorida filing
 16 on October 16, 2000; (2) From October 16 to the issuance of FERC's Order
 17 provisionally approving the GridFlorida proposal on March 28, 2001; (3) From
 18 the issuance of FERC's Order on March 28 to the meeting of the FPSC on May
 19 29,2001 at which the FPSC decided to investigate the prudence of the GridFlorida
 20 Companies' decision to participate in GridFlorida; and (4) From May 29, 2001
 21 forward.

22 **Q. What significant events occurred from the issuance of Order No. 2000 on**
 23 **December 20, 1999 to the initial GridFlorida filing on October 16, 2000?**

1 A. In response to Order No. 2000, the GridFlorida Companies sponsored a number of
2 stakeholder meetings in 2001 to discuss the various aspects of an RTO proposal.
3 Initially, there were four stakeholder groups that held meetings: (1) the Steering
4 Committee, which was assigned the task of overseeing the collaborative process;
5 (2) the Governance Working Group; (3) the Pricing Working Group; and (4) the
6 Planning and Operations Working Group. Later, a fifth working group, the
7 Market Design Working Group, was established and commenced to address
8 market design issues. Each of these groups met on numerous occasions in Tampa,
9 which the stakeholders agreed was a convenient central location. A website was
10 established to provide notice of meetings and on which drafts could be obtained of
11 the various documents being developed in the working group meetings. There
12 were numerous stakeholders who participated, including a number of members of
13 the FPSC's Staff. The list of participants on the website shows 248 persons who
14 participated at one or more meetings.

15
16 After several months of stakeholder meetings, the GridFlorida Companies agreed
17 to pursue a joint filing that ultimately became the GridFlorida proposal. The
18 GridFlorida Companies continued to work their proposal through the stakeholder
19 process, and distributed drafts of the various documents to the stakeholders for
20 their comments. This proposal was filed at FERC on October 16, 2000, as
21 required by Order No. 2000. There were, however, additional details required to
22 make the proposal complete, especially with respect to the proposed market
23 design. The GridFlorida Companies therefore requested that FERC give them

1 until December 15, 2000 to make a supplemental filing that would supply the
2 additional details. However, the GridFlorida Companies had filed a complete
3 governance proposal, and they requested that FERC provide an expedited review
4 and ruling on the provisions regarding board selection. The GridFlorida
5 Companies wanted an early FERC ruling on this issue so that they could
6 commence the board selection process in time to have the board in place prior to
7 the December 15, 2001 deadline in Order No. 2000 for the commencement of
8 RTO operations.

9 **Q. What significant events occurred from October 16 to the issuance of FERC's**
10 **Order provisionally approving the GridFlorida proposal on March 28, 2001?**

11 A. Immediately after making their October 16 filing, the GridFlorida Companies
12 initiated a collaborative process for developing their supplemental December 15
13 filing. Given the relatively short period of time available, the GridFlorida
14 Companies decided that the process of having separate working groups meeting
15 on an ad hoc basis would not work. Instead, they developed a process with
16 professional facilitators who had been hired to assist in the collaborative process.
17 Under this process, the GridFlorida Companies held a series of meetings with the
18 stakeholders in a single group to discuss the supplemental filing. A draft filing
19 was distributed prior to the last meeting, which was devoted to discussing the
20 proposed filing. The GridFlorida Companies then made their supplemental filing
21 on December 15, 2000.

22

1 On January 10, 2001, FERC issued its order addressing the governance issues that
2 the GridFlorida Companies had requested to be addressed on an expedited basis.
3 FERC approved the proposed structure, subject to requiring a few minor
4 modifications. The governance structure is addressed in more detail in the Panel
5 Testimony.

6
7 FERC's order approving the governance structure triggered the time period in
8 which parties were required to provide a notice stating that they intended to divest
9 their facilities and transfer ownership to GridFlorida. FPL issued its Divestiture
10 Notice on February 1, 2001 and TECO issued its Divestiture Notice on February
11 9. As I discussed previously, FPC has decided not to divest its transmission
12 facilities, at least not initially.

13
14 Another consequence of the issuance of FERC's order on governance is that the
15 board selection process then could commence. As a result, the GridFlorida
16 Companies initiated the process for forming the stakeholder Board Selection
17 Committee. Once the Committee was formed, they commenced meeting and
18 selected the search firm of Hiedrick & Struggles to assist in the search.

19
20 The GridFlorida Companies also recognized that development work needed to
21 commence quickly if they were to meet the deadline in Order No. 2000 of
22 December 15, 2001 for the commencement of operations. As a result, they
23 formed GridFlorida and assumed its management on an interim basis. The first

1 steps that they were required to take were to establish a bank account in which to
2 keep the membership fees for the Board Selection Committee and to initiate the
3 process of selecting a consultant to assist with the development work. In order to
4 fund the initial development work, the GridFlorida Companies each entered into
5 an agreement to lend \$1 million to GridFlorida, with the loans to be repaid out of
6 the proceeds of whatever financing arrangements GridFlorida entered into for its
7 initial operations.

8
9 On March 28, 2001, FERC issued an order provisionally approving the
10 GridFlorida proposal. FERC required a number of modifications to be made to
11 the proposal, including the refiling of the market design proposal, but in general
12 FERC found that the GridFlorida proposal was consistent with Order No. 2000
13 and included appropriate provisions. In its Order, FERC required the GridFlorida
14 Companies to make a compliance filing with the required changes by May 29.
15 The GridFlorida Companies also were required to conduct meetings with other
16 entities in the Southeast regarding seams issues and to report back to FERC
17 regarding these meetings by May 14.

18 **Q. What significant events occurred from the issuance of FERC's Order on**
19 **March 28 to the meeting of the FPSC on May 29, 2001 at which the FPSC**
20 **decided to investigate the prudence of the GridFlorida Companies' decision**
21 **to participate in GridFlorida?**

22 A. After FERC's Order, the GridFlorida Companies again had to gear up to make the
23 next filing required by FERC. Since among other things FERC's order had

1 approved the proposed stakeholder Advisory Committee, the GridFlorida
2 Companies took the steps necessary to establish the Advisory Committee, which
3 could then take over the stakeholder collaborative process. A draft of the filing
4 was distributed to all stakeholders and presented by the GridFlorida Companies to
5 the Advisory Committee. The GridFlorida Companies also had meetings with
6 Southern Companies and JEA to discuss seams issues, as directed by FERC and
7 scheduled a June meeting with GridSouth.

8
9 At the same time, the GridFlorida Companies selected Accenture to perform a
10 "Phase I study," in which necessary development activities could be identified and
11 a time line and budget for GridFlorida development activities prepared. The
12 selection of Accenture and the work that was performed is addressed in more
13 detail in the testimony of Mr. Southwick.

14
15 In the meantime, on May 3, the FPSC's Staff issued its recommendation that the
16 FPSC investigate the GridFlorida Companies' prudence in pursuing the
17 GridFlorida proposal. When this recommendation was accepted by the FPSC, the
18 GridFlorida Companies issued a statement saying that they did not believe that it
19 was appropriate to continue expending substantial sums on GridFlorida
20 development until the prudence issue was resolved. The GridFlorida Companies
21 stated that they therefore would continue preparing their FERC compliance filing
22 but otherwise were suspending development activities pending resolution of the
23 instant proceedings.

1 On May 29, the GridFlorida Companies filed their compliance filing, which
 2 included all of the changes and additional detail required by FERC. On the same
 3 day, the FPSC considered at its meeting the GridFlorida Companies' petition to
 4 have the prudence issues severed from the general rate case issues in FPL's and
 5 FPC's rate cases and considered instead in a generic proceeding on a consolidated
 6 basis in an expedited proceeding. The FPSC decided not to sever the prudence
 7 issues or consolidate them, but did determine to address the prudence issues first
 8 in an expedited proceeding.

9 **Q. What significant events occurred from May 29 forward?**

10 A. As they had stated, the GridFlorida Companies for the most part suspended their
 11 development activities after making their compliance filing. However, the
 12 GridFlorida Companies listened to the complaints raised by the FPSC's Staff that
 13 the rate impacts of the GridFlorida proposal were difficult to quantify because no
 14 rate filings had yet been made. As a consequence, FPL and TECO went forward
 15 with the filing of their rate plans, which had been close to being finished at the
 16 time that development activities were suspended. FPL and TECO believed that
 17 their filings would assist the FPSC in their evaluation in these proceedings. The
 18 exact nature of the rate filings is addressed in more detail in the testimony of Mr.
 19 Ashburn.

20
 21 Comments on the May 29 GridFlorida compliance filing were due on July 2. The
 22 GridFlorida Companies believed that their commitment to make the compliance
 23 filing included a commitment to defend that filing against any attacks. Therefore

1 they prepared and filed an answer to the comments on their Compliance Filing on
2 July 17. Since that time, no GridFlorida development activities have occurred.

3
4 Finally, on July 12, 2001, FERC issued its notice announcing the commencement
5 of FERC-directed mediation intended to lead to the formation of a single
6 Southeastern RTO. The GridFlorida Companies were invited, but not required to
7 participate. The GridFlorida Companies have been attending the mediation
8 sessions, which started on July 17. Because the GridFlorida proposal is one of the
9 most well-developed proposals submitted to FERC, many of the features of that
10 proposal have been endorsed by the parties. The GridFlorida Companies have
11 been asked by the FERC ALJ to submit, along with other parties including
12 Entergy and the GridSouth applicants, a strawman proposal for the Southeastern
13 RTO. Competing proposals also will be submitted, however, and the GridFlorida
14 Companies do not know what proposal will ultimately result from the process. In
15 any event, the GridFlorida Companies have not made any commitments to join a
16 Southeastern RTO, pending the outcome of this proceeding and further direction
17 from the FPSC.

18 **VI. SUMMARY AND CONCLUSION**

19 **Q. Would you please summarize your conclusions?**

20 **A.** Yes. There are two main points that I would like for the FPSC to take away from
21 my testimony.

22

1 First, Order No. 2000 established a federal policy that all transmission owners join
2 an RTO. Although Order No. 2000 stops short of mandating that every electric
3 utility join an RTO, the GridFlorida Companies faced the substantial likelihood
4 that, if they refused to affirmatively propose an RTO, they ultimately would be
5 forced to do so by FERC, either directly or through ever increasing penalties.
6 Thus, the choice faced by the GridFlorida Companies was not whether to join an
7 RTO, but whether to affirmatively propose an RTO or else run the risk of being
8 forced to do so later. Given the significant benefits of affirmatively developing
9 and proposing their own RTO rather than being forced to join an RTO designed
10 by out-of-state entities, it was appropriate and prudent for the GridFlorida
11 Companies to have decided to develop their own GridFlorida proposal.

12
13 Second, Order No. 2000 left a number of alternatives available to the GridFlorida
14 Companies. Their decision to propose a for-profit Transco that would own the
15 transmission assets of FPL and TECO will result in an RTO that is independent
16 but accountable, financially strong, and with sufficient incentives to provide
17 reliable, efficient, innovative service. Again, I believe that the decisions made by
18 the GridFlorida Companies are appropriate and prudent.

19 **Q. Does that end your testimony?**

20 A. Yes it does.

1 BY MR. CHILDS:

2 Q Now, at this point, Mr. Naeve, would you please
3 summarize your testimony. And I am going to ask,
4 Commissioners, that he also comment on what has been marked for
5 identification as Exhibit 5.

6 A In my testimony I make two basic points. First, I
7 conclude that the GridFlorida companies were prudent in
8 concluding that in the long run they had no option but to join
9 an RTO and that in the long run FERC would require them to
10 participate in an RTO. And if they chose not to participate in
11 an RTO at this stage, they would ultimately be forced to
12 participate in one in which they had no opportunity to be
13 involved in the structure and formation and policies of the
14 RTO.

15 I know Mr. Twomey said that you should carefully
16 listen to what the witnesses say, that they will all say that
17 in the long run FERC will require it and so forth. He said
18 that no witness will say that FERC has the power to do that. I
19 will say that right now. I am convinced that FERC has the
20 authority under the Federal Power Act to compel utilities to
21 participate in RTOs.

22 So the question would be if they have the power to
23 compel it, why didn't they? First, I would say that at the
24 time they did Order 2000 the Commission clearly stated that it
25 was their policy, it was the national policy that companies,

1 all transmission owners participate in RTOs. They went on to
2 say that they felt the most efficient way to implement that
3 policy was through a voluntary approach. And there are a
4 variety of reasons they felt that may be more efficient. I
5 think they felt that there would be more opportunity for local
6 input if there was a voluntary approach. If they issued a
7 mandatory approach they would have to be very specific as to
8 what each RTO filing would have to be, and this gave them more
9 opportunity for local input. And I'm sure there are a variety
10 of other measures.

11 But the Commission went on to say that if the
12 voluntary approach were not successful, they would look at
13 other measures for achieving compliance, because that was their
14 policy that everybody comply. And one of those other measures
15 would be the possibility of compelling compliance with the RTO.

16 The memorandum that was distributed today that is
17 Exhibit 2 to my testimony reinforces this initial conclusion
18 that the companies had made, that sooner or later if they
19 didn't voluntarily comply they would be forced to do so.
20 Commissioner Wood expressed a concern to his colleagues in this
21 memo, and this memo was discussed at the last FERC Commission
22 meeting and there was no dissent among his colleagues as to the
23 course of action that he is suggesting.

24 But Commissioner Wood, in effect, said that, first,
25 he believes that they will have to narrow the flexibility the

1 companies have in joining RTOs, which is what one has to do if
2 you are going to compel participation and, secondly, he
3 suggested that they impose increasingly severe penalties on
4 companies that do not participate. And he also suggested that
5 they do additional cost/benefit analysis to persuade those who
6 have not been persuaded yet that this is a beneficial thing.

7 I guess another logical question is if they have the
8 power to compel compliance with Order 2000 and compel joining
9 an RTO, why is Commissioner Wood suggesting increasing
10 penalties on companies instead of compelling it right now. And
11 I think the simple answer to that is it is easier to do and
12 faster to do. If the Commission were to compel compliance with
13 Order 2000, they would have to amend Order 2000. They would
14 have to go back and institute a new rulemaking, have public
15 comment, and that could take quite a bit of time. Their
16 desire, as expressed by Chairman Wood, is to move as fast as
17 possible. And the fastest way to achieve compliance is simply
18 to make it unbearable for the companies not to participate.
19 They don't have to amend Order 2000 to do that.

20 As an aside, I would also say that I think we now are
21 in a position where we may have our last chance to preserve
22 GridFlorida as an option for Florida. The Commissioners at
23 FERC increasingly are talking about a four RTO solution, having
24 four giant RTOs that span the United States. They have
25 approved GridFlorida, and I think we have an opportunity to

1 preserve GridFlorida as an option for Florida if this
2 Commission provides its approval and backing for GridFlorida.
3 If this Commission does not provide its approval and backing
4 for GridFlorida, I think we could very well lose it as a
5 possible option for Florida, and the only other option would be
6 to join the southeast RT0.

7 The second point I made in my prefiled testimony is
8 that the Florida utilities were prudent in the various choices
9 they made in forming GridFlorida. And in particular I mean
10 they were prudent in selecting Peninsular Florida as the scope
11 for the RT0, they were prudent in choosing to have an
12 independent board of directors as opposed to a stakeholder
13 board. And in particular they were prudent in choosing the
14 for-profit transco model as opposed to an independent system
15 operator.

16 The transco model provides the best incentives for
17 efficient operation, and importantly it aligns the
18 responsibility for investing capital and recovery of the
19 capital investment with the responsibility for rate design, it
20 aligns ownership of assets with the operation of those assets
21 and the maintenance of those assets, and it aligns
22 responsibility of planning for expansion with the
23 responsibility for investing in that expansion. That
24 summarizes my testimony.

25 MR. CHILDS: We tender Mr. Naeve for cross.

1 CHAIRMAN JACOBS: Very well. Mr. Willis, any cross?

2 MR. LONG: We have no cross examination.

3 CHAIRMAN JACOBS: Very well.

4 MR. CHILDS: Just to clarify, Mr. Naeve is appearing
5 on behalf of the three of us.

6 CHAIRMAN JACOBS: Right. I understand, but I always
7 like to make sure there is no cross from the aligned parties,
8 as well.

9 Mr. McWhirter.

10 MR. McWHIRTER: I have no questions, Mr. Chairman.

11 CHAIRMAN JACOBS: Thank you. Mr. McGlothlin.

12 MR. McGLOTHLIN: No questions.

13 MS. PAUGH: I have just a couple of questions, Mr.
14 Chairman.

15 CROSS EXAMINATION

16 BY MS. PAUGH:

17 Q Mr. Naeve, if you would turn to Page 25 of your
18 prefiled testimony, please. The question starting at Line 7,
19 does the decision to transfer ownership of transmission
20 facilities affect the treatment of the GridFlorida companies'
21 transmission assets for retail rate purposes. Will you please
22 explain your answer to that question?

23 A Yes. And this goes to this question of unbundling
24 and what does unbundling mean and not mean. And I heard a
25 portion of the discussion earlier about unbundling, but I

1 didn't hear all of it, so I'm not sure I could address
2 specifically the way it was previously discussed. I will say
3 this, the term unbundling, I think, is used sometimes with a
4 lack of precision. It can mean more than one thing. And one
5 thing unbundling means is unbundling of charges and rates, so
6 that a utility may offer a bundled service but they simply
7 separately state the different costs of different components of
8 that service, and that is an unbundling of rates.

9 It is a separate matter to have an unbundling of
10 services. And in an unbundling of services, customers are
11 allowed to choose services so they can buy generation from one
12 party, transmission from another, distribution from another,
13 and so forth. Unbundling of services typically is associated
14 with retail access. Order --

15 COMMISSIONER DEASON: Excuse me, I'm trying to
16 understand. Even in a situation where there is total retail
17 choice for customers, are you indicating to me that they have
18 the ability to choose which transmission company will transmit
19 their energy to them?

20 THE WITNESS: No, they don't, but they would buy
21 transmission service from one entity and distribution service
22 from a second. They may not have a choice, but it would be
23 unbundled as to service provider.

24 COMMISSIONER DEASON: Okay. So they don't have a
25 choice, but it is a separate entity which provides the service?

1 THE WITNESS: That's right. They would have choice
2 as to generation, but you would be -- but the distribution
3 company in that situation would not be providing bundled
4 generation, distribution, and transmission service. They would
5 be providing distribution service, a transmission company would
6 be providing transmission service, and a generation company or
7 companies would provide generation service.

8 What I'm saying in this testimony is by joining an
9 RTO that does not cause an unbundling of retail services with
10 respect to services or actually with respect to rates. The
11 rate charges that a distribution company incurs for generation,
12 and in this case they will incur charges for transmission from
13 the RTO and then they will have their own costs for
14 distribution, the Florida Commission is still free to -- they
15 will be provided on a bundled basis to the retail customer by
16 the distribution company, and it's up to the Florida Commission
17 as to whether they unbundle the rates or do not unbundle the
18 rate charges.

19 BY MS. PAUGH:

20 Q Is it safe to say, then, that the Florida
21 Commission's jurisdiction is intact with respect to these rates
22 as you have described it?

23 A The Florida Commission still will have full
24 jurisdiction over the bundled services and rates of the
25 distribution companies.

1 MS. PAUGH: Thank you.

2 CHAIRMAN JACOBS: Question. I won't hold you to the
3 long history of proceedings that we have had with regard to
4 earnings of the companies, but let me pose a generic question.
5 In Phase II of this docket we are going to explore a whole
6 range of issues that have been outstanding for some period of
7 time. If we determine in this proceeding in Phase I that
8 GridFlorida poses and presents benefits and, therefore, is an
9 option that should be explored, do we have the option or
10 flexibility at all to determine how retail payers are exposed
11 to risk of that, and/or how, if at all, that asset should be
12 amortized or recovered by this retail company?

13 THE WITNESS: I think the question is this, if
14 GridFlorida is formed and the companies transfer control of
15 their assets, either ownership of their assets or control of
16 their assets to GridFlorida, does that change your ability to
17 make decisions that not all of these costs should be passed
18 through, that sort of thing, and I think the answer is yes, it
19 does change your ability to some extent.

20 Certainly as to the allocation of those costs among
21 customers you retain that jurisdiction. I do think, though,
22 that if GridFlorida were to be formed and FERC were to approve
23 a transmission rate for GridFlorida, and that those costs were
24 to incurred by the distribution companies, I don't think you
25 would be able to second guess the prudence of those costs and

1 deny pass-through of those costs on that basis.

2 CHAIRMAN JACOBS: Let me ask this question. We have
3 a process in Florida where we encourage the companies to become
4 involved in the wholesale marketplace. And it is a sharing
5 mechanism that says to the extent that you can demonstrate that
6 there are benefits that accrue to the greater operation of your
7 plants by being in the wholesale market then you can share
8 those benefits with your shareholders and with retail
9 ratepayers. Given that we don't have the flexibility to say,
10 well, those costs that were used to do the transmission
11 function, we can't control those, can we say to what extent
12 retail ratepayers can share in the benefits of that?

13 THE WITNESS: Can share in the benefits of --

14 CHAIRMAN JACOBS: The projection is that there should
15 be cost reductions.

16 THE WITNESS: Yes. I think the cost reductions will
17 occur in different ways, and one way in which cost reductions
18 will occur hopefully will be in the long-term through lower
19 transmission rates because of grid-wide planning and more
20 efficient investments in transmission in the future because of
21 grid-wide planning. And in a variety of other ways there may
22 well be lower transmission rates. Those lower transmission
23 charges then will be incurred by the distribution companies and
24 then automatically shared with the customers because the
25 distribution companies will have lower charges to pass through

1 to customers.

2 I think a number of parties have suggested that the
3 larger savings may come from more efficient dispatch of
4 generation. And, again, I think those savings will -- at least
5 under your current system would be largely passed through
6 automatically to retail customers through lower fuel costs and
7 lower purchased power costs.

8 CHAIRMAN JACOBS: Would we have the ability to hold
9 some level of accountability -- and let me just give you this
10 scenario. You would expect there are going to be up front
11 start-up costs and so forth and so on. In your mind do we have
12 the ability to kind of leverage the recovery of those costs
13 against what we expect to be savings that come in the future?

14 THE WITNESS: I think that the start-up costs for
15 GridFlorida will largely be incorporated in the state into FERC
16 filed rates. The GridFlorida will file a rate tariff at FERC,
17 GridFlorida will attempt to recover in its rates at FERC its
18 daily operating costs and its start-up costs. And if FERC
19 approves those costs as being just and reasonable and prudently
20 incurred, I think in that situation this Commission would not
21 be in a position to come to a different conclusion as to those
22 start-up costs.

23 Also FERC will -- I know one of the concerns raised
24 this morning was will it be recovered all in one year or spread
25 out over a number of years. And FERC has policies with respect

1 to what types of costs are recovered immediately and what types
2 of costs are amortized and spread out. I don't think -- I
3 can't speak to your policies as an expert, but I think the FERC
4 policies are probably very similar to your own on those issues.

5 CHAIRMAN JACOBS: Thank you.

6 COMMISSIONER PALECKI: With regard to the savings,
7 Mr. Naeve, I am Mike Palecki, you have mentioned several areas
8 where there might be savings that would incur as a result of
9 GridFlorida. In parts of the country where RTOs have been in
10 place for some time, have those savings occurred and could you
11 give some examples?

12 THE WITNESS: Well, first, I would say that there are
13 no RTOs operating yet. There are some ISOs, independent system
14 operators, and independent system operators can be deemed by
15 FERC to be RTOs, but none have as yet been found to be RTOs and
16 have started operation as an RTO yet. These independent system
17 operators were established and began commercial operation
18 before Order 2000. Order 2000 imposed some additional
19 requirements on them that were not part of ISOs at the time, so
20 each of them had to make compliance filings to come into
21 compliance with Order 2000, and those in are the works now. So
22 in the not too distant future I expect FERC will approve some
23 of the existing ISOs with changes to be functioning RTOs.

24 The question is have there been savings with respect
25 to the operation of these institutions, and even though they

1 are not precisely RTOs, I think many of them like PJM and
2 others function very close to the way that an RT0 would
3 function. And I'm not aware of any studies that have attempted
4 to quantify what the savings are, if there are savings. I
5 think a variety of people believe that there have been
6 operational benefits by the creation of the RT0, but I have not
7 seen any quantification of what those savings are.

8 COMMISSIONER PALECKI: Are you familiar with the
9 study that Commissioner Wood has referred to in the memorandum
10 that you distributed?

11 THE WITNESS: The Mirant study?

12 COMMISSIONER PALECKI: The Mirant study?

13 THE WITNESS: No. I actually have never seen the
14 study. I have heard others discuss it, but I have not seen the
15 study.

16 COMMISSIONER PALECKI: Thank you.

17 COMMISSIONER DEASON: I have a question. I'm trying
18 to understand the actual -- if we find ourselves in a situation
19 where there is a functioning GridFlorida, will a distribution
20 company sign some type of a contract with the RT0 to have power
21 delivered to it at certain points, or will that distribution
22 company go to a generation company and say I want power
23 delivered to these points, you deal with the transmission. I
24 just want a rate from you for power. And I want to negotiate
25 these terms and conditions, and I don't really care what the

1 RT0 does with FERC and what the tariff says, I just want power
2 under these terms and conditions at these locations. How will
3 it work?

4 THE WITNESS: It could work either way under today's
5 tariffs. Most RT0s have a tariff that is based on the Order
6 888 tariff, but changed in significant ways. The Order 888
7 tariff had a physical allocation of capacity rights, RT0s are
8 supposed to develop tariffs that have a financial allocation of
9 capacity rights, or a market oriented allocation of capacity
10 rights for congestion management. So there are a few
11 differences, but for the most part the tariffs are based on
12 Order 888.

13 Order 888 has two basic types of service. One type
14 is called network service, and network service was designed for
15 companies that have a lot of delivery points and a lot of
16 network type uses for the system. And it is mainly designed
17 for distribution companies and for large munies and co-ops, and
18 in this case, distribution companies, the utilities. And under
19 network service, the cost to the distribution company is based
20 on a pro rata allocation of the total cost of the transmission
21 network. And in this case the RT0 would have an annual revenue
22 requirement and if the distribution company -- if their load
23 amounts to 12 percent of the total load on the RT0, they pay 12
24 percent of the total revenue requirement of the RT0. That is a
25 very rough way of describing what happens.

1 There is a second type of service known as
2 point-to-point service, and it could be either firm or nonfirm.
3 And in point-to-point service you don't have multiple receipt
4 points and you don't have the flexibility to move generation
5 from multiple sources to multiple -- with a network service you
6 can designate multiple generation sources all over the network
7 and you can designate multiple receipt points and you don't
8 have to say this unit goes to this receipt point, this unit
9 goes to this receipt point and so forth.

10 With point-to-point service you have to say here is
11 my point of receipt, here is my point of delivery, it's firm
12 service. If you pay for the -- if you are a network customer
13 and you pay this pro rata share of total transmission cost,
14 then transmission -- you don't pay any additional costs for
15 transmission, and you can designate any generator to serve any
16 party or load and there is no additional charge other than line
17 losses.

18 If you have point-to-point service, on the other
19 hand, it is a specific payment for that particular service. So
20 normally a customer that is taking network service, they would
21 choose themselves to pay for the transmission service because
22 it is prepaid in a way.

23 COMMISSIONER DEASON: It is allocated based upon the
24 loads which that distribution company places upon the
25 transmission system?

1 THE WITNESS: Relative to all other loads, that's
2 right.

3 COMMISSIONER DEASON: So, for example, Florida Power
4 and Light distribution company, I assume that they would
5 require network service, and they -- what the percentage would
6 be just for, say it's 60 percent. If they are 60 percent of
7 the load they would be responsible for 60 percent of total RTO
8 cost as approved by FERC?

9 THE WITNESS: That is correct.

10 COMMISSIONER DEASON: Is that reviewed on a yearly
11 basis, or is it trued up, is RTO then guaranteed a certain
12 revenue stream, or is there a requirement for them to operate
13 efficiently such that they have rates and they have -- our
14 utilities we regulate, we don't guarantee them, we set rates
15 and they have the ability to earn within a rate of return based
16 upon their own efficiencies. How would it work for the RTO?

17 THE WITNESS: It is very similar. FERC generally
18 requires transmission companies to file a rate and that rate
19 remains in effect until they file a rate change. And while
20 that rate remains in effect they have the incentive to operate
21 more efficiently to try to increase earnings, and if events
22 occur so that they need a rate increase, they can file for a
23 rate increase. If the customers think that they are earning
24 too much, they have rights under Section 206 of the Federal
25 Power Act to file a petition to initiate a rate case

1 themselves, or the FERC itself could initiate a rate case. So
2 it is, I think, probably very similar to the way you operate
3 here.

4 FERC, as I expect you do, has the flexibility to
5 develop other forms of ratemaking, incentive ratemaking and so
6 forth, and has suggested possibly with RTOs they may do that
7 but there is no specific proposal as to how that would work.

8 COMMISSIONER DEASON: Now, point-to-point service and
9 the revenues that are derived from that by the RTO, does that
10 go into their overall earnings review?

11 THE WITNESS: It does. And the revenues from
12 point-to-point service, those revenues are credited against the
13 total revenue requirement so when you calculate the rates for
14 the network customers they get credit for the point-to-point
15 revenues.

16 COMMISSIONER DEASON: So to the extent that a market
17 develops and there is more point-to-point transactions, that
18 would tend to mitigate or lessen the amount of total cost which
19 has to be allocated to network service customers?

20 THE WITNESS: That's right. That is generally the
21 way it works today.

22 COMMISSIONER PALECKI: Mr. Naeve, I have a couple of
23 other questions I would like to ask you about the Pat Wood
24 memorandum.

25 THE WITNESS: Okay.

1 COMMISSIONER PALECKI: And specifically turning to
2 Page 2, I call it the second paragraph, it is actually the
3 first full paragraph.

4 THE WITNESS: Uh-huh.

5 COMMISSIONER PALECKI: Where Pat Wood outlines what
6 actions he will take by utilities that do not elect to join an
7 approved RTO. The first option was to have all market-based
8 rate privileges by any corporate affiliate be prospectively
9 revoked. I'm trying to figure out what these factors, what
10 effect they would have on the Florida utilities and their
11 ratepayers. Do you have any -- could you give me any insight
12 on what would happen to one of our utilities if that occurred?

13 THE WITNESS: It could effect the utilities in a
14 couple of ways, and I think it could effect the ratepayers in
15 one way. The way in which it would affect the ratepayers, as I
16 understand it today, when Florida Power and Light, for example,
17 makes sales at market-based rates outside of Florida, that a
18 portion of those revenues that are earned from the sale at
19 market-based rates out of Florida are shared with ratepayers of
20 Florida Power and Light. And to the extent they are limited in
21 their ability to make sales outside of Florida at market-based
22 rates then there would be a reduction, a corresponding
23 reduction in revenues that would be shared. And I can't claim
24 to be an expert on how that mechanism works, but that is an
25 understanding that I have.

1 COMMISSIONER PALECKI: So basically their sales then
2 would have to be made as cost-based rates as far as the
3 transmission component is concerned?

4 THE WITNESS: Well, the transmission component in
5 either case would be cost-based. This would be the generation
6 component, could they get a market-based --

7 COMMISSIONER PALECKI: The entire sale.

8 THE WITNESS: And currently Florida Power and Light
9 has no authorization to sell at market-based rates inside
10 Florida, but outside Florida the utility can make sales at
11 market-based rates because they have demonstrated to FERC that
12 outside of Florida they don't have market power. And there
13 have been in the recent future (sic) situations where prices
14 outside of Florida became rather high and they were able to
15 sell at market-based rates and earn revenues that were higher
16 than they could have earned if they sold at cost-based rates,
17 so this would limit the revenues they would earn on those
18 off-system sales.

19 The other way that it would -- I said there were two
20 ways it affects the utilities and that is one of the two. The
21 other way it would affect the utilities is that the utilities,
22 I suspect, all have operations outside of Florida through
23 subsidiaries. They own generating plants that are EWGs that
24 sell at market-based rates in various markets throughout the
25 United States. They probably also have affiliates that are

1 power marketers that operate outside of Florida at market-based
2 rates, and if they were denied the ability to engage in sales
3 at market-based rates, if they were a power marketer I think
4 that would, in effect, put them out of business. If they were
5 a generation company, it could cause them to incur a
6 substantial loss in revenue.

7 COMMISSIONER PALECKI: Going further down on that
8 second paragraph, he talks about recommendation that no mergers
9 be approved. I don't really need you to go into that one. The
10 final sentence, he says he would take a hard look at the
11 transmission rates they are permitted to charge to ensure that
12 they are just and reasonable and recognize the interdependence
13 of the power grid. What is he saying there? Is he going to
14 move those rates up or down?

15 THE WITNESS: I think that is a code for we ought to
16 really cut their transmission rates, and the net effect of that
17 would be today jurisdictional utilities provide wholesale
18 transmission service, they earn revenues from that, and if I
19 understand your state ratemaking revenues that are earned off
20 of those assets are credited towards the revenue requirement
21 for setting retail rates. So you would have fewer revenues
22 from wholesale service that would be available to credit
23 against retail rates in the next rate proceeding, and in
24 between the rate proceedings I think it would mean that the
25 Florida utilities simply earn less money.

1 COMMISSIONER DEASON: You indicated that there are
2 FERC approved transmission rates which help offset retail
3 rates?

4 THE WITNESS: I just assume. That is the way it
5 works in many states. I'm not an expert on Florida ratemaking,
6 but in many states in establishing the revenue requirement for
7 transmission assets in retail rates, to the extent those assets
8 are also being used for wholesale service and they earn
9 revenues for wholesale service, frequently the revenues that
10 are earned from wholesale service are credited against the
11 revenue requirement for purposes of setting retail rates. And
12 I don't --

13 COMMISSIONER DEASON: I thought we used a
14 jurisdictional allocation factor, but I may be mistaken. It
15 has been a long time since we have had a rate case.

16 THE WITNESS: And I'm not an expert on Florida
17 ratemaking, so you may do it with a jurisdictional allocation
18 factor in Florida.

19 COMMISSIONER PALECKI: Well, let me ask you this.
20 When the Office of Public Counsel in the State of Florida looks
21 at this paragraph, should they have reason to cheer that retail
22 rates are actually going to go down as a result of the FERC's
23 activities which are outlined in this paragraph?

24 THE WITNESS: No, I don't think this would have any
25 effect on retail rates. It would have the effect, potentially,

1 of having fewer wholesale transmission revenues to the extent
2 that there is any sharing of those with retail customers. I'm
3 not so sure this would have any effect on retail rates.

4 COMMISSIONER PALECKI: Well, wouldn't that last
5 sentence about taking a long hard look -- actually I thought
6 you had answered that it might result in a reduction in
7 transmission rates that could result in --

8 THE WITNESS: Well, it depends. Keep in mind, this
9 is what would happen to companies that do not participate in
10 RTOs. If a company does not participate in an RTO then it is
11 not required to take transmission service from the RTO. It
12 doesn't take transmission service from the RTO, that portion of
13 its transmission assets that are used for retail service will
14 not be affected by FERC and wouldn't be affected by this
15 paragraph.

16 COMMISSIONER PALECKI: Well, I think what I am
17 hearing, though, overall is that these factors would definitely
18 have a negative effect on both the Florida utilities and
19 perhaps on the retail ratepayers if this Commission did not
20 move forward with GridFlorida.

21 THE WITNESS: That is correct. And I would just add
22 that this is a familiar pattern to me, because the Federal
23 Energy Regulatory Commission on a number of occasions has
24 announced major policies that upon announcement are voluntary
25 but with strong incentives to participate, and then over time

1 they make them -- they increase the incentives and then finally
2 they make them mandatory. And that's what FERC did with Order
3 436, which was transmission service to interstate pipelines,
4 open access transmission service. Initially it was described
5 as a voluntary program, within no time they issued Order 500
6 and Order 636 and it was mandatory.

7 Likewise with open access transmission service.
8 Initially it was a voluntary thing. If you wanted to get a
9 merger approved you had to offer it up, but it was voluntary in
10 a sense. There was some compulsion there, but before long they
11 issued Order 888 and it was mandatory. The D.C. Circuit --
12 Order 888 was appealed to the D.C. Circuit, parties alleged
13 that FERC didn't have the authority to compel transmission.
14 This is at about the same time they issued Order 2000.

15 The D.C. Circuit decided its appeal of Order 888
16 within a month or two after FERC had already issued Order 2000,
17 but in that opinion the D.C. Circuit said that when the
18 Commission makes findings of undue discrimination their power
19 is at its zenith and that they clearly had the power to compel
20 transmission service in 888. And for that reason I also
21 believe they have clearly the power to compel compliance with
22 RTOs.

23 COMMISSIONER PALECKI: In any of those circumstances
24 that you have outlined have you seen FERC impose punitive
25 measures on a utility company such as those outlined in this

1 memorandum?

2 THE WITNESS: Yes. For example, when FERC wanted
3 utilities to provide open access transmission service, they
4 would not approve mergers unless they agreed to provide open
5 access transmission service. In addition to that, a utility
6 that wanted market-based rates for itself or for its
7 affiliates, the Commission refused to grant market-based rate
8 authority unless they provided open access transmission
9 service. This is a very familiar story.

10 COMMISSIONER PALECKI: Thank you.

11 CHAIRMAN JACOBS: Ms. Paugh, were you --

12 MS. PAUGH: No further questions. Thank you.

13 CHAIRMAN JACOBS: Mr. Howe, do you have a time?

14 MR. HOWE: I would say ten minutes.

15 CHAIRMAN JACOBS: Okay. I may break in if we get
16 much longer than that.

17 MR. HOWE: All right, Chairman Jacobs.

18 CHAIRMAN JACOBS: Go right ahead.

19 CROSS EXAMINATION

20 BY MR. HOWE:

21 Q Hello, Mr. Naeve. I'm Roger Howe with the Public
22 Counsel's Office. Did I understand you correctly when you were
23 giving your summary that when you referred to how the
24 Commission should view bundling versus unbundling it was from a
25 perspective of a distribution company?

1 A Yes. I mean electric distribution company. Well,
2 I'm not sure I know what you mean "by from the perspective of."

3 Q Well, you used the phrase distribution.

4 A You can bundle or unbundle at any level, at the
5 wholesale level, the retail level, and so forth. I was
6 speaking to the retail level at that point, because that is the
7 focus of this Commission.

8 Q Would you agree that FERC's view when it determines
9 bundling versus unbundling is looking at the transmission
10 provided?

11 A Not exclusively. I think FERC has looked at bundling
12 and unbundling over the years with respect to a lot of issues,
13 transmission, generation, and so forth.

14 Q Would you agree that FERC, though, doesn't have any
15 jurisdiction over distribution, does it?

16 A That is correct.

17 Q And it doesn't have any direct jurisdiction over
18 generation, does it?

19 A Well, I think they do have jurisdiction over
20 generation. The Federal Power Act says FERC does not have
21 jurisdiction over generation under certain sections, but I must
22 tell you if, for example, a generating plant sells electricity,
23 FERC has jurisdiction over it if they sell at wholesale. If
24 they have a rate schedule on file and they make those sales, if
25 they want to sell the assets, they are now a public utility,

1 they have to get FERC approval for that.

2 It's not a simple matter. But as a general rule, I
3 would say they have extensive jurisdiction over generation.

4 Q Well, let's perhaps address it this way. Let's take
5 Florida Power and Light as the example I was using. Would you
6 agree that FERC currently does not have any jurisdiction over
7 Florida Power and Light's provision of retail energy?

8 A You mean the sale to retail customers of energy?

9 Q Yes.

10 A They do not have jurisdiction over that.

11 Q I'm sorry, what was your answer?

12 A They do not have jurisdiction over that.

13 Q If Florida Power and Light were to start charging
14 separately for transmission service to their retail customers,
15 would FERC have jurisdiction over the retail component?

16 A No. If they merely separately unbundled the rate
17 charges, that would not give FERC jurisdiction.

18 Q All right. And then the next step. If FPL had some
19 other entity provide the transmission service, would that
20 effect an unbundling in FERC's view?

21 A You mean if there were retail wheeling, is that your
22 question?

23 Q No, I mean if, for example, FPL -- I mean, exclusive
24 of the RTO proposal, but if FPL just, for example, transferred
25 all of its transmission assets to Tampa Electric, for example,

1 and purchased transmission service from them such that another
2 entity was providing the transmission service that was --

3 A Well, FERC would have jurisdiction over the sale of
4 transmission service to FPL, but FERC would not have
5 jurisdiction over FPL's service to its retail customers
6 including, you know, its bundled rates.

7 Q I understand. Now from FERC's perspective and FERC's
8 perspective only, would FERC consider that sale in which Tampa
9 Electric provided the transmission service to be an unbundled
10 retail sale?

11 A No.

12 Q Would they consider it to be an unbundled
13 transmission service?

14 A Yes, I think so. An unbundled wholesale transmission
15 service.

16 Q Does FERC currently have jurisdiction over the
17 transmission component of electric energy sold at retail? That
18 may be the same question I had asked you earlier.

19 A Well, this is a -- the answer is in FERC's view if at
20 the state level the state unbundles service to retail customers
21 so that retail customers do not buy generation directly from
22 their utility supplier, but instead buy generation from
23 multiple generators, multiple sources, in that world in which
24 the state itself has chosen to unbundle, FERC has taken the
25 position that their jurisdiction over transmission service

1 extends down to the retail customer.

2 In a situation in which the state has chosen not to
3 unbundle, FERC takes the position that their jurisdiction
4 extends only to the provision of transmission service to the
5 distribution company. So, FERC has taken the position that
6 their jurisdiction kind of depends on what the state chooses to
7 do.

8 Q And would that necessarily imply that an action by
9 this Commission could place matters under FERC's jurisdiction
10 which are currently not -- currently not under FERC's
11 jurisdiction?

12 A Well, if this Commission or this -- I don't know if
13 this Commission has the authority to do it, but if this
14 Commission were to institute retail access, FERC's view is that
15 that would change its jurisdiction so that it would have
16 jurisdiction over the wire service down to the retail customer.

17 Q Mr. Naeve, are you familiar with any pending
18 legislation, in particular, I don't have much information, but
19 apparently the U.S. Senate Energy Chair Jeff Bingaman
20 (phonetic) has filed some legislation entitled the Electric
21 Restructuring Act of 2001?

22 A I am familiar that he has filed it. He has filed
23 several bills over the years, and there are hundreds of bills
24 that have been filed, but I know he came out with a new bill
25 recently.

1 Q Do you know whether that bill would specifically
2 amend the Federal Power Act to put jurisdiction of the
3 transmission component of electric energy sold at retail under
4 FERC?

5 A I do not know that.

6 MR. HOWE: I have no further questions. Thank you
7 very much.

8 CHAIRMAN JACOBS: Very well. We will take time now
9 to break for lunch. We will come back at 2:00 p.m. Thank you
10 all.

11 (Lunch recess.)
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STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 4th day of October, 2001.



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