

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

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

REVIEW OF TAMPA ELECTRIC COMPANY AND DOCKET NO. 010577-EI  
IMPACT OF ITS PARTICIPATION IN  
GRIDFLORIDA, A FLORIDA TRANSMISSION  
COMPANY, ON TECO'S RETAIL RATEPAYERS.

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PROCEEDINGS: HEARING

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

DATE: Wednesday, October 3, 2001

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

REPORTED BY: KORETTA E. FLEMING, RPR  
Official FPSC Reporter

APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DAT

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2 (Transcript continues in sequence from Volume 1.)

3 CHAIRMAN JACOBS: We'll go back on the record and  
4 resume cross examination. I believe, Mr. Howe, you completed?

5 MR. HOWE: Yes.

6 CHAIRMAN JACOBS: Mr. Twomey.

7 MR. TWOMEY: Thank you, Mr. Chairman.

8 MIKE NAEVE

9 continues his testimony under oath as from Volume 1:

10 CROSS EXAMINATION

11 BY MR. TWOMEY:

12 Q And good afternoon, Mr. Naeve.

13 A Good afternoon.

14 Q First of all, you tell me, are you representing just  
15 FP&L or all three of the utilities?

16 A I'm appearing on behalf of all three utilities.

17 Q Okay. And who are you being compensated by, all  
18 three or FPL?

19 A FPL.

20 Q Okay. Mr. Naeve, in your testimony earlier I think,  
21 you started out in part by rebutting my opening statement to  
22 the effect that no witnesses would tell you that FERC had the  
23 authority to mandate the RTO.

24 A Mm-hmm.

25 Q And let me ask you this: Did you say in doing that

1 that the -- one, that the FERC has the authority to mandate  
2 these utilities participation in an RTO?

3 A I believe, FERC has the authority to mandate any  
4 public utility participating in an RTO, and these utilities are  
5 public utilities under the Federal Power Act.

6 Q Okay, good. Now, irrespective of whether or not they  
7 have that --

8 COMMISSIONER JABER: Excuse me. That would be a  
9 public utility under FERC's --

10 THE WITNESS: That's right under the Federal Power  
11 Act.

12 BY MR. TWOMEY:

13 Q Now, is it your testimony that the FERC has, in fact,  
14 in Order 2000, exercised that authority that you say they have  
15 and mandated the participation of these utilities in an RTO?

16 A No, that's not my testimony.

17 Q Okay. So, they have not mandated the participation  
18 of these three utilities in an RTO; is that correct?

19 A They have not yet mandated it, but it's my testimony  
20 that it is our view that if we do not participate, eventually,  
21 we will be required to participate in an RTO.

22 Q Is it your testimony, Mr. Naeve, that the FERC has  
23 the authority to directly mandate the participation of these  
24 three utilities in an RTO or is it, instead, that the FERC has  
25 the ability to coerce or compel their participation in an RTO

1 through some type of re-examination, punitive re-examination of  
2 tariffs that they have approved now? Which was it?

3 A It's both.

4 Q Okay. You're saying that they do have the authority  
5 and they could -- did you not testify to, I think, it was the  
6 Chairman or one of the Commissioners that you thought Chairman  
7 Wood's comments in the Exhibit 5 that you sponsored were, in a  
8 sense, an efficiency measure because it would be easier to  
9 compel compliance through those measures than going back and  
10 amending Order 2000; did you say that?

11 A I did.

12 Q Okay. And what you're saying, if I understand you,  
13 is that they could go back and amend Order 2000 to compel or  
14 mandate participation because they have that authority.

15 A They have that authority.

16 Q Okay. Now, you sponsored Volume 1 of the exhibits  
17 which includes Order 2000; is that correct?

18 A That's correct.

19 Q And isn't it not true also that your testimony, in  
20 large part or in some part, relies upon your interpretation of  
21 Order 2000?

22 A That may be right.

23 Q I mean, you've read Order 2000.

24 A I have read it.

25 Q Now, isn't it true, Mr. Naeve, that the FERC, in this

1 proceeding leading up to the publication of Order 2000  
2 undertook a rather extensive examination on the issue of  
3 whether or not it would mandate participation in an RTO or make  
4 such participation voluntary?

5 A Well, I may be just quibbling with your phrasing  
6 here. FERC undertook an extensive examination through notice  
7 and comment rulemaking as to what the features of Order 2000  
8 should be and as to the conditions that exist in the  
9 marketplace that may make such changes appropriate.

10 Q Okay. Do you have Volume 1 of your exhibit?

11 A I believe, I do. Let's see -- oh, Volume 1.

12 Q Yes, sir. It's titled, "Volume 1, July 30, 2001."

13 A You know, I apologize. I do not have Volume 1 here.

14 Q I'm sure someone has a copy to give you in a few  
15 minutes here.

16 A Okay. All right. I now have Volume 1.

17 Q There are two page numbers on each page and, I think,  
18 for ease of the record I would refer to the record page which  
19 is at the bottom center of each page, if yours is so numbered.

20 A There's a number in the bottom there.

21 Q Okay. Would you turn to Page 108 of Volume 1,  
22 please?

23 MR. CHILDS: Is that 108 or 180?

24 MR. TWOMEY: Beg your pardon.

25 MR. CHILDS: What was the page number again, please?

1 MR. TWOMEY: 108.

2 MR. CHILDS: Thank you.

3 BY MR. TWOMEY:

4 Q Okay. Mr. Naeve, you see at the bottom of Page 108  
5 subheading C, "Commission's approach to RTO formation"?

6 A That's correct.

7 Q Instead of asking you to read this, I'm going to read  
8 just a sentence or so. It says, "The NOPR proposed an approach  
9 to RTO formation that embraces several general principles;  
10 first, as a matter of policy, we should strongly encourage  
11 transmission owners to participate voluntarily in RTOs." Now,  
12 did I read that correctly?

13 A Yes.

14 Q Okay. How do you interpret that word voluntarily,  
15 Mr. Naeve?

16 A How do I interpret the word voluntarily?

17 Q Yes, do you have a definition?

18 A I interpret to it be voluntary.

19 Q Okay. The -- on Page 110, it says, "One, Voluntary  
20 Approach." And it goes on again and it says -- it discusses  
21 various things about how they should look at the formation of  
22 the participation in RTOs to include whether it should be  
23 mandatory or voluntary and other iterations of those two; is  
24 that correct? Do you see that? The five main categories?

25 A These are the categories of comments that they had



1 received.

2 Q Yes, sir, that they considered in making their rule,  
3 right; is that correct?

4 A Well, these are the -- these were -- they broke down  
5 the comments that were offered by the public into five  
6 categories, and these are the five categories that were  
7 summarized in those comments.

8 Q Okay. I'd ask you to go to Page 114. At the bottom  
9 of Page 114, it says, "Comments that formation of and  
10 participation in RTO that should be voluntary." And it says,  
11 and I quote, "The most extensive presentation of the argument  
12 that RTOs should and must be voluntary comes from Indianapolis  
13 P&L and FP&L, which make mostly legal arguments that are  
14 addressed below." Now, that's the same FP&L that's your  
15 client; is that correct?

16 A I suspect that it is, yes.

17 Q I'd ask you to turn to Page 119, Mr. Naeve.

18 A Okay.

19 Q And at top of the page under title, "Comments on  
20 Sanctions for Nonparticipation," it says -- and I'll read it  
21 briefly "Most vertically integrated public utilities oppose  
22 conditioning market-based rates and merger approval on RTO  
23 participation while most transmission customers favor the  
24 Commission using conditioning authority. A number of utilities  
25 express concern that the Commission may be exceeding its legal

1 authority and that conditioning would undermine the voluntary  
2 nature of the RTO initiative. Florida Power Corp. argues that  
3 the Commission cannot impose penalties for failure to  
4 participate voluntarily in an RTO in contravention of the FPA,  
5 which is the Federal Power Act"; is that correct?

6 A Mm-hmm.

7 Q Okay. Now, that Florida Power Corporation,  
8 presumably, is one of the other utilities who you're testifying  
9 on behalf of; is that correct?

10 A That's correct.

11 Q Mr. Naeve, does it sound to you like Florida Power  
12 Corporation is addressing a concern with the type of methods,  
13 the three methods of re-examination that Chairman Wood refers  
14 to in his September 26th memorandum?

15 A Well, it sounds to me that at the time Florida Power  
16 Corp. and Florida Power & Light filed comments on the RTO or on  
17 the Order 2000 document, they took the position at that time  
18 that the Commission should make it voluntary and that -- I  
19 guess, reading the language here that "Failure to -- the  
20 Commission cannot impose penalties for failure to participate  
21 voluntarily."

22 Q Well, that's precisely what Chairman Wood is  
23 recommending be considered by the FERC in his memorandum, your  
24 Exhibit 5; is it not?

25 A That is correct.

1 Q Okay. Now, I'd ask you to turn to Page 124 of Volume  
2 1, Mr. Naeve.

3 A 124?

4 Q Yes, sir, 124 at the bottom.

5 A Okay.

6 Q Now, isn't it true that after having considered the  
7 various five main categories the Commission reaches a  
8 conclusion, and I just want to -- again, I just want to read  
9 this and ask you what your interpretation is, if I may.

10 It says under the title, "Commission Conclusion,  
11 based on the record before us with respect to undue  
12 discrimination and market power, as well as with respect to  
13 economic and engineering issues affecting reliability,  
14 operational efficiency, and competition in the electric  
15 industry, it is clear that RTOs are needed to resolve  
16 impediments to fully-competitive markets. However, we continue  
17 to believe as we proposed in the NOPR, that at this time we  
18 should pursue a voluntary approach to participation in RTOs."

19 Now, that's clear, is it not, Mr. Naeve, that they  
20 are saying that it's voluntary?

21 MR. CHILDS: I'm going to object, and I'm going to  
22 object to this on the basis that I don't understand why this is  
23 cross examination. The witness addresses this in his direct  
24 testimony on Pages 6 and 7 as to what FERC said and what was  
25 the belief of the companies.

1           And to go back to another document and ask him about  
2 it, I think, is time consuming, particularly, when he already  
3 addresses it. He talks about guidance and encouragement that's  
4 in Order 2000 and that the GridFlorida companies did not  
5 believe RTO was voluntary in the long run, notwithstanding the  
6 FERC decline to make a generic finding.

7           I mean, he directly talks about it. I don't think  
8 this is cross examination at that point and would object.

9           MR. TWOMEY: Mr. Chairman, the witness' testimony is  
10 the foundation, in my view, for all three of these companies'  
11 assertion that they must form an RTO and participate therein;  
12 otherwise, they've got problems with FERC. And the foundation,  
13 the most recent foundation legally for that position that they  
14 take is Order 2000. That's the crux of this deal on whether  
15 the issue of participation is mandatory or in fact, voluntary.

16           Furthermore, I would submit to you that what I or any  
17 other attorney out here gets to cross examine a witness on  
18 isn't solely directed to what's in his direct testimony. By  
19 that, I mean, I think, it is fair game or should be fair game  
20 if a Commissioner asks a question and a witness takes the  
21 position asserting that something supports the position of his  
22 party, his client, that's fair game.

23           COMMISSIONER JABER: I'll allow the question --

24           MR. CHILDS: Well --

25           COMMISSIONER JABER: And here's the rationale. First

1 of all, it's an exhibit that's sponsored by this witness and I  
2 think that to question him about the contents of his own  
3 exhibit is within the scope of cross examination. Second of  
4 all, I think, it's within the scope of reasonable cross.

5 MR. TWOMEY: Thank you, Mr. Chairman.

6 BY MR. TWOMEY:

7 Q Now, Mr. Naeve, the -- I won't go through all this.  
8 I'll let -- strike that.

9 I won't go through this word by word, but the --  
10 isn't it true, if you recall from your reading of Order number  
11 2000 that the FERC addressed the ways, aside from mandatory RTO  
12 participation that it could cure perceived problems with the  
13 transmission companies in terms of discrimination and excessive  
14 rates and the like; do you recall that?

15 A I guess, I'm -- I apologize, because I was also  
16 looking at Order 2000 as you were saying a portion of that  
17 question. I'm not sure I fully caught the entire question.

18 Q Okay. Let me ask you just a few more questions,  
19 then, on Order 2000, and then I'll stop with that.

20 A Mm-hmm.

21 Q If you turn to Page 139 and 140 at the bottom where  
22 the FERC, in fact, addresses the legal authority for the  
23 actions that it's taking in this docket and I want to ask you,  
24 Mr. Naeve, at Page 140 -- again, I don't want you to read this,  
25 but it says in the middle of Page 140, "Further, we noted that

1 Section 202-A of the FPA authorizes and directs the  
2 Commission --

3 A I'm sorry, are you on 140?

4 Q 140.

5 A I was at the top number.

6 Q 1-4-0, at the bottom.

7 A Okay.

8 Q The first full paragraph. "Further, we note that  
9 Section 202-A of the FPA authorizes and directs the Commission,  
10 quote, to divide the country into regional districts for the  
11 voluntary interconnection and coordination of facilities for  
12 the generation and transmission and sale of electric energy,  
13 period," okay? That is, in fact, what the statute says; is it  
14 not, Mr. Naeve?

15 A Yes, it is.

16 Q Okay. And I want to ask you -- you are an attorney,  
17 right?

18 A I am.

19 Q Do you think it would not have been more clear for  
20 the Congress if they intended for the FERC to have mandatory  
21 authority to order interconnection in the form of an RTO to  
22 have stricken the word "voluntary," in that section of the  
23 statute and said, "to divide the country into regional  
24 districts for interconnection and coordination facilities."  
25 Wouldn't that be more clear than putting in the word

1 "voluntary" to modify the word interconnection?

2 A Well, I think, you're referring to two different  
3 topics.

4 Q Okay.

5 A This particular section of the Federal Power Act is  
6 the section that the Commission uses to form the regional  
7 reliability organizations, ECAR, SERC, NERC, and so forth, and  
8 this section was put in after the New York City blackout to  
9 direct FERC to try to get these reliability organizations up  
10 and running and established.

11 This is not the primary source of FERC's authority to  
12 implement RTOs. Its primary source of authority to implement  
13 RTOs is Sections 204 and 205 of the Federal Power Act, which  
14 give it the authority to -- it gives it the authority to  
15 approve rates and to -- under Section 205, to adopt tariffs and  
16 changes to operating procedures of utilities and require them  
17 to participate. So, I agree with you that it says what it  
18 says. I'm just taking the position that that's not the primary  
19 source of authority for the implementation of RTOs.

20 Q Okay. But it is, in fact, the section that the FERC  
21 quoted in the conclusion of its order on that section.

22 A It's one of many sections.

23 Q Okay. The --

24 A And by the way, I said 204 and 205 -- I meant 205 --  
25 I said 204 and 205. I meant 205 and 206.

1 Q Right. I'm going to ask you to go Page 151 briefly.

2 A Okay.

3 Q This purports to have the Commission conclusion on  
4 legal authority, and I'd ask you, Mr. Naeve, to read the  
5 several sentences that follow after the title, "Commission  
6 Conclusion," starting with "Much of..."

7 A You want me to read that paragraph?

8 Q Yes, sir.

9 A "Much of the discussion in the comments on the  
10 Commission's legal authority with respect to RTOs focuses on  
11 whether the Commission has the statutory authority to mandate  
12 that transmission owners participate in an RT0. As discussed  
13 elsewhere in this final rule, we have decided not mandate  
14 generically that all public utility transmission owners must  
15 join an RT0. We conclude that the Commission possesses both  
16 the general and specific authorities to advanced voluntary RT0  
17 formation. We also conclude that the Commission possesses the  
18 authority to order RT0 participation on a case-by-case basis,  
19 if necessary, to remedy undue discrimination or anticompetitive  
20 facts first supported by the record. Of course, RT0  
21 participation is not the only remedy the Commission might  
22 employ to address these problems."

23 COMMISSIONER DEASON: Mr. -- I'm sorry. I was going  
24 to ask you to slow down, but you're finished.

25



1 BY MR. TWOMEY:

2 Q Okay. Thank you, Mr. Naeve. The section you read,  
3 on a case-by-case basis, is that -- do you think that  
4 encompasses what Chairman Wood was addressing on those three  
5 avenues to re-examine utilities that don't participate?

6 A That's not what he's speaking to in this memorandum,  
7 but it is clear that the Commission has used Section 206  
8 authority and 205 authority to remedy undue discrimination,  
9 both on a case-by-case basis and on a generic basis.

10 For example, that was precisely the authority they  
11 used in Order 888 to require all transmission owners adopt the  
12 pro forma transmission tariffs. And they could use exactly  
13 that same authority here to compel compliance with an RTO. And  
14 as I mentioned earlier, and this was a case decided after the  
15 filings by the utilities you made reference to, but in the D.C.  
16 Circuit opinion, when they decided the 888 appeal, the  
17 Commission spoke with very -- you know, broad terms about the  
18 extent of the Commission's authority to comply -- I mean, to  
19 compel transmission solutions in situations where they make the  
20 appropriate findings.

21 Q Okay. Now, I want to ask you just a few questions on  
22 Exhibit 5 and, let me see, on Page 2 of 3 of Exhibit 5, the  
23 numbers are at the top of the page --

24 A Is this the Pat Wood?

25 Q Yes, sir, Pat Wood's memorandum.

1 A Okay.

2 Q Okay. The -- I forget whether you read this before  
3 or just summarized it, but -- a few sentences, it says, "What  
4 to do about December 15th, 2001, date in Order Number 2000. I  
5 recommend that this be changed to be the date by which all  
6 jurisdictional utilities must either elect to join an  
7 approved-RTO organization or have all market-based rate  
8 privileges by any corporate affiliate be prospectively revoked  
9 following a Section 206 hearing investigation. I would also  
10 recommend that no merger be approved relating to entities who  
11 did not become part of an operational RTO and for --" I guess,  
12 that would be a sic in there, "And for an public utility that  
13 chooses not to be part of an RTO, I believe, we would need to  
14 take a hard look at the transmission rates they are permitted  
15 to charge to ensure that they are just and reasonable and  
16 recognize the interdependence of the power grid."

17 My first question to you on this is if the FERC had  
18 the first time around properly made a decision on market-based  
19 rate privileges, there wouldn't be any cause, would there,  
20 Mr. Naeve, absent changed circumstances to go back and  
21 re-examine a previous decision of the FERC, would there?

22 A I'm not sure I follow your point.

23 Q Well, I mean, these things -- you even concede, do  
24 you not, they have the tone of a bit of a threat; do they not?

25 A Oh, clearly, they have the tone of a threat.

1 Q That was your point in bringing us this memo, right?

2 A That's right. I don't know if that's the point, but  
3 it's to inform the Commission of the content of the memo, but  
4 they clearly are -- it does take the tone of a threat to the  
5 utilities, that's right.

6 Q Yes, and I want to try and figure out whether what  
7 he's proposing here makes sense or if it's legal or what, but  
8 with respect to the first of the three, does a utility, one of  
9 these utilities, for example, have to come to the FERC and get  
10 market-based rate privileged authority?

11 A Yes. Now, each of these utilities, if they haven't  
12 today, has already approached the FERC and asked for  
13 market-based rate authority for itself or in certain  
14 circumstances, their affiliates have approached the FERC and  
15 have asked for market-based rate authority and, in many cases,  
16 it's been previously granted.

17 A couple of points are worth noting, though. First  
18 is when FERC grants market-based rate authority, it's good for  
19 three years. It has to be renewed at the end of three years.  
20 So, each of these utilities, depending on when their three-year  
21 cycle runs out, they would have to go back and ask for renewed  
22 market-based rate authority. Secondly, the Commission has  
23 ongoing jurisdiction under Section 206 to revisit market-based  
24 rates previously granted as they did in California.

25 Q Yes, sir, but let me ask you, are there standards

1 that the FERC follows in determining whether a utility is  
2 entitled to market-based rate privileges or do they just do it  
3 willy-nilly?

4 A Well, obviously, they have standards. What I will  
5 tell you, though, is that the standards are in a constant state  
6 of change. The Commission previously had a methodology  
7 well-known as the hub and smoke methodology which they applied.  
8 It was a methodology which was easy to apply and wasn't too  
9 costly, because they didn't want there to be a barrier to entry  
10 by making this methodology real expensive and consequently have  
11 people not be able to participate in the markets, because they  
12 couldn't afford to do the study to show they didn't have market  
13 power, but they subsequently have determined early in the  
14 process of determining that that particular methodology, they  
15 refined it over the years, case by case, but more recently --  
16 in fact, at the same meeting they issued this memorandum, they  
17 also issued another memorandum in which they are questioning  
18 the methodology that they've historically have used and their  
19 suggesting that they revise it.

20 Q It strikes me that on this first point, Chairman Wood  
21 is saying, Hey, if they don't play ball -- you tell me if I'm  
22 wrong in this -- if they don't play ball and join an approved  
23 RT0, we're going to go back and look at their market-based rate  
24 privileges, and it's not that they may be, may be eliminated or  
25 revoked, it says, "essentially, will be prospectively revoked

1 following a hearing." Does that strike you as fair?

2 A Does it strike me as fair?

3 Q Yes.

4 A Well, let me phrase it -- let me try to make this  
5 easy for you because, I think, I know what you would like me to  
6 address.

7 Certainly Florida Power Corp. and the cite you made  
8 earlier took the position that that's not appropriate. And I  
9 am sure that if they attempted to modify market-based rate  
10 authority for each of these utilities they would do their best  
11 to fight it. The question is could they prevail? Would the  
12 utilities prevail or would FERC prevail?

13 And what I can tell you is that in the past the  
14 Commission has done this on a number of occasions and they have  
15 prevailed, FERC. Maybe in this circumstance they would not. I  
16 would -- I'm sure I would be in a position to argue that it's  
17 not appropriate, but I can tell you from experience that over  
18 the years they have succeeded in doing this many times.

19 Q Okay. And would the same thing be true, Mr. Naeve,  
20 to make it easy for me, on the mergers, would it be your  
21 testimony that despite the fact that there probably are  
22 standards that should be followed normally in the FERC  
23 approving or disapproving mergers, that your fear would be that  
24 mergers could be looked at from the perspective of the RTO and  
25 denied unfairly there?

1           A     I think, the Commission, if they took the position  
2 that they would deny a merger because you're not in an RTO, the  
3 effect of that would be to deny the merger. And I'll also tell  
4 you as a practical matter, if anybody receives a disapproval of  
5 a merger, there's really no practical appeal of the basis upon  
6 which the merger was disapproved, because mergers don't hang  
7 together that long. They break apart. And when they break  
8 apart, you don't have the opportunity go back and seek  
9 appellate review of the Commission's disapproval, because the  
10 merger simply will fall apart, and it's not practical to appeal  
11 the decision, so there is virtually never an appeal of a merger  
12 disapproval at FERC.

13           Q     So, it may not be fair, but this represents a real  
14 threat to these utilities?

15           A     That's correct.

16           Q     Okay. You don't -- if I recall your direct filed  
17 testimony correctly, Mr. Naeve, you don't purport to tell this  
18 Commission that there are any economically quantifiable  
19 benefits to be obtained by the formation and operation of this  
20 RTO, do you?

21           A     What I testify is that there are a number of benefits  
22 cited by FERC, cited in Order 2000, and also discussed by  
23 former Chairman Hoecker which, I believe, do produce positive  
24 economic benefits. I also testify, though, that those benefits  
25 are very difficult to quantify with any precision so that the

1 results would be results that you would find sufficiently  
2 reliable to make a decision on.

3 Q In your testimony I had a question related to that.  
4 You say right at the beginning of your testimony, Page 2,  
5 starting at Line 19, you say, "When I discussed the, quote,  
6 unquote, prudence of the GridFlorida company's decisions, I'm  
7 addressing this issue from the perspective of the GridFlorida  
8 company's ratepayers."

9 And my question there is are you referring to  
10 ratepayers as to the retail jurisdictional customers that this  
11 Commission has jurisdiction of or are you referring to the  
12 wholesale customers that the FERC has jurisdiction of or both?

13 A I was referring to the retail customers.

14 Q Okay. Do you have -- lastly, Mr. Naeve, do you have  
15 an opinion on whether the retail customers of these utilities  
16 would receive greater benefits or lesser benefits or perhaps  
17 the same as compared to the benefits that might be obtained by  
18 the wholesale customers and merchant participants by the  
19 formation of the RT0? Do you follow my question?

20 A I follow your question. I think, the answer is this,  
21 that ultimately, of course, our focus has to be on the retail  
22 customer, and there are various benefits here that go towards  
23 the wholesale marketplace that are designed to make the use of  
24 the transmission system for wholesale transactions more  
25 efficient.

1           When those transactions are more efficient, when  
2 generation is dispatched more efficiently, then that  
3 beneficiary that ultimately leaves the retail customer, that's  
4 why you try to get those efficiencies. You don't try to get  
5 the efficiencies merely for the sake of getting efficiencies.

6           Q     But isn't it possible that with the formation of an  
7 RTO that you could have a merchant plant, assuming that they  
8 are eventually allowed to operate in Florida, on the west coast  
9 of Florida, and making a sale to a municipal utility, a TDU, on  
10 the east coast of Florida that would benefit by their  
11 elimination of pancake rates and by the ease of accomplishing  
12 the transaction with fewer players and that kind of thing; and  
13 if that transaction, although it would benefit the merchant  
14 plant, presumably, and the purchaser, the municipal system,  
15 it's possible, is it not, that that wouldn't necessarily  
16 benefit the jurisdictional customers of the utility involved  
17 here?

18           A     In a wholesale market where there are hundreds of  
19 transactions, if you stepped back and looked at any single  
20 transaction, you may find that for that particular transaction  
21 the purchaser made a choice to buy from a particular seller  
22 based on the transmission cost and generation cost and that for  
23 that purchaser that was made more efficient because of the  
24 de-pancaking of the transmission system and that that purchaser  
25 benefitted and, I would assume, the generator benefitted



1 because it's now making a sale where it would not have perhaps  
2 otherwise been economic.

3 And if you assume that's the only transaction  
4 occurring on the system, then one might draw the conclusion you  
5 did, that other parties haven't benefitted. But the advantage  
6 of de-pancaking is that all purchasers and all sellers have  
7 access to the entire system and can dispatch generation  
8 throughout the entire system based on the -- you know, the more  
9 efficient dispatch of all units. So, one would assume over  
10 time with these hundreds and hundreds, maybe thousands of  
11 transactions that occur, that all parties will, at one point,  
12 be a buyer or a seller and benefit from it.

13 MR. TWOMEY: Okay, thank you. That's all.

14 COMMISSIONER JABER: Any other cross from any  
15 intervenors?

16 MR. FRANK: Thank you, Mr. Chairman.

17 CROSS EXAMINATION

18 BY MR. FRANK:

19 Q Mr. Naeve, my name is Dan Frank. I was hoping to  
20 follow-up on a line of question that Mr. Howe had started and  
21 hopefully close a loop there.

22 In response to a question from Mr. Howe, you had said  
23 that in the context of a state-ordered retail access program,  
24 the unbundled retail transmission down to the wires or  
25 distribution company would be subject to FERC's exclusive

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1 jurisdiction?

2 A In retail access?

3 Q Right.

4 A It would be -- yes, the transmission service down to  
5 the retail customer would be subject to FERC jurisdiction.

6 Q Now, in that context, that unbundled retail wheeling  
7 also would involve -- the retail wheeling to the end user would  
8 involve an element of local distribution; isn't that correct?

9 A Well, the -- FERC has said in Order 888 that even  
10 though in a retail wheeling environment where the state has  
11 made the choice to have retail wheeling, and even though they  
12 have jurisdiction down to the -- for the transmission service  
13 down to the end use customer, they've said that they believe in  
14 almost all con-- in all context, there will be an element of  
15 distribution service as well, and they didn't make it clear,  
16 you know, how much distribution service there would be. In  
17 some cases, they said it may only be the meter.

18 Q Right. And to the extent there is local distribution  
19 service, that's subject to the state Commission's jurisdiction?

20 A That's correct.

21 Q And if it involved local distribution facilities,  
22 those also would be subject to the state Commission's  
23 jurisdiction?

24 A The charge for local distribution service would be  
25 subject to the state jurisdiction.

1 Q And to determine if any particular facility is a  
2 transmission facility subject to FERC's jurisdiction or a local  
3 distribution facility, FERC would look at the functional and  
4 technical characters of the facility involved?

5 A That's correct.

6 Q Some of the technical characteristics, for example,  
7 would include the voltage level of the facility?

8 A That's right, that's one of the factors they look at.

9 Q Another might be the proximity of the facility to the  
10 retail customer?

11 A That's correct.

12 Q Again, just to -- I guess, another factor would be  
13 whether power flows into or not into the distribution system,  
14 that would be a factor --

15 A That would be a factor.

16 Q And if based on these and other relevant  
17 characteristics, if it was determined that it was a local  
18 distribution facility, that would be subject to the state  
19 Commission's jurisdiction?

20 A That is correct.

21 MR. FRANK: Okay. Thank you. Thank you,  
22 Mr. Chairman.

23 COMMISSIONER JABER: Very well. Staff?

24 MR. KEATING: Thank you.

25

## CROSS EXAMINATION

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BY MR. KEATING:

Q Mr. Naeve, I'm Cochran Keating with the Commission Staff. I believe, you stated earlier, and this goes back before the lunch break, and correct me if I'm wrong, you characterized this proceeding as, I guess, sort of a last shot for GridFlorida or are essential to keep GridFlorida --

A That is my view, yes.

Q -- as a viable proposal; is that correct?

A That is my view, yes.

Q Okay. How would this Commission's approval or disapproval of the utility's participation in GridFlorida affect the outcome of FERC's review of GridFlorida?

A I believe, the Commission, as I stated, is moving towards what they call a floor RTO solution, one that would combine PJM, New England, and New York; another one that would combine ECAR, Midwest, and the southwest power pool, and a third that would be the southeast, and then the fourth would be the western interconnect.

In a for-RTO solution, Florida's not a separate RTO. Florida's a part of the southeast RTO. The Commission, however, has approved GridFlorida, the Commission has shown deference to the fact that GridFlorida has received prior approval; they did not order, but they encouraged the GridFlorida companies to participate in the southeast

1 mediation.

2           And my view is that the Commission is sensitive to  
3 the concerns of the state regulators. And if the Florida  
4 regulators indicated a strong preference or support for  
5 GridFlorida, that would be significant to them in their  
6 decision whether or not to require the Florida companies to  
7 participate in the southeast RTO.

8           If, on the other hand, the Florida Commissioners did  
9 not appear to be particularly enamored or supportive of  
10 GridFlorida then, I think, in the Commission's mind that would  
11 significantly increase their willingness to require GridFlorida  
12 to become a part of the southeast RTO or the Florida companies.

13           COMMISSIONER DEASON: Let me interrupt at this point.  
14 Do you have an opinion as to what would be best for the state  
15 of Florida, to be part of the Florida-only RTO or to be part of  
16 a southeastern RTO?

17           THE WITNESS: I don't think -- I think, it's too  
18 early to answer that question. I think, what's best for  
19 Florida right now is to save GridFlorida as an option. I don't  
20 think you want to lose it as an option, but I do think you  
21 probably want to look at the southeast RTO as it is structured  
22 to see and to compare the two and see which is better for  
23 Florida.

24           There'd be a lot of factors, I'm sure, that you would  
25 want to look at; costs being one of them, cost shifting between

1 the regions would be another one, the structure itself and the  
2 governance of the RTO, there are a variety of factors. And, I  
3 think, it's really too early to do that kind of comparison at  
4 this stage, but I think --

5 COMMISSIONER DEASON: We should maintain that as an  
6 option?

7 THE WITNESS: I think, you should.

8 COMMISSIONER DEASON: And can we do that -- if this  
9 Commission, as Mr. Willis indicated earlier, ratifies,  
10 unequivocally, the GridFlorida proposal and we later determine  
11 that the southeastern RTO has better strategic advantages for  
12 Florida or reduces cost or whatever the criteria may be, we  
13 still would have that option, do you think?

14 THE WITNESS: Well, I think, it's a basic choice you  
15 have to make today. I mean, I think, there are three options.  
16 One option is to not support GridFlorida; in which case, I  
17 think, we automatically make the decision that we'll be in the  
18 southeast RTO. I think, FERC would require that. Another  
19 option is to choose GridFlorida, find it prudent, and not only  
20 find it prudent, but say go forth and start it up as fast as  
21 you can.

22 There's some risk with that. One risk is merely that  
23 you'll form GridFlorida, the southeast RTO will also be formed  
24 and we'll -- over time, we'll look at the southeast RTO and  
25 conclude maybe it was a better model. The bigger risk,

1 however, is that you form GridFlorida, you incur all the  
2 start-up costs, and then three years later FERC says join the  
3 southeast RTO and you will have all those start-up costs that  
4 would have gone into GridFlorida, so there are some risks to  
5 saying go forward right now with GridFlorida.

6           The third option is to approve GridFlorida, and I  
7 think, that's important to preserve it as an option, find it  
8 prudent, and show the FERC that you support GridFlorida.  
9 Perhaps you would want to attach a condition to your approval  
10 that says, "We approve GridFlorida, we find it prudent"; on the  
11 other hand, we encourage the companies to participate in the  
12 southeast RTO, and we would like to -- before you move forward  
13 GridFlorida would like you to come back and explain to us which  
14 of the two is the better solution.

15           I think, those are the three options.

16           COMMISSIONER DEASON: Do you think if we determine  
17 that GridFlorida is a prudent course of action -- maybe not the  
18 optimal course of action, but a prudent course of action, do  
19 you believe, then, that the IOUs that are represented here  
20 would then be obligated to go forward to continue to make  
21 expenditures to effectuate GridFlorida or would they be in a  
22 position to take that determination by this Commission, but  
23 still wait and see what FERC is going to do with the southeast  
24 RTO?

25           THE WITNESS: I think, it depends in part on what

1 your Order says, but I think they could have the flexibility to  
2 take that determination and use it as a basis for preserving  
3 the GridFlorida option. And then, also participating in the  
4 southeast RTO and trying to make that as strong an RTO as  
5 possible. And then, once the details are known making a choice  
6 between the two and making a recommendation to the Commission.

7 BY MR. KEATING:

8 Q Mr. Naeve, you indicated in response to my first,  
9 question that FERC would be sensitive to the Commission's  
10 decision here?

11 A Yes, I think, they would be.

12 Q Okay. But would the Commission's decision carry any  
13 legal weight with FERC?

14 A I'm afraid I don't think that it would. You mean,  
15 with respect to whether they choose a southeast RTO? I guess,  
16 I should ask you legal weight in what sense?

17 Q With the clarifica -- well, with respect to how they  
18 would -- whether or not they would approve GridFlorida as it's  
19 proposed or choose the southeastern RTO that would include the  
20 GridFlorida companies?

21 A Well, I think, there are legal consequences to  
22 finding GridFlorida prudent, but as a general rule, I think,  
23 with respect to the policy issues decided by FERC I don't think  
24 it carries legal weight. I think, it carries persuasive  
25 effect.



1           COMMISSIONER JABER: Are they legally required to  
2 consider Florida's decision?

3           THE WITNESS: I don't think that they are. I think,  
4 quite frankly, they have -- they're increasingly sensitive to  
5 what the various state Commissions think, as they appropriately  
6 should be, but I don't think it carries legal weight in that  
7 sense.

8 BY MR. KEATING:

9           Q     And I believe you also mentioned before the break,  
10 you refer to some inefficiencies in transmission that currently  
11 exist. Do you recall that?

12          A     Not precisely, but that's all right.

13          Q     Do you believe that inefficiencies currently exist  
14 and the transmission system for peninsular Florida?

15          A     I think, the transmission system of peninsular  
16 Florida is run in a very efficient and constructive way. I do  
17 think there are probably some benefits that come from having a  
18 single entity, provide one-stop shopping for transmission  
19 service, for example, to have planning done on a -- by a single  
20 entity statewide with a single entity involved in the direction  
21 of the planning, to calculate ATC.

22                 So, for example, if a utility receives a request for  
23 transmission service, if there is an entity that looks at the  
24 effects of that service on all systems in the entire state and  
25 makes that determination of available capacity that would

1 probably be beneficial.

2           And, for example, in the area of generation in  
3 interconnections, sometimes a generation project can impose  
4 effects on all the utilities in the state. And today a  
5 generator has to go to each of the separate useless and ask for  
6 studies of the effects, to have a single entity do those  
7 studies, I think, would be beneficial. So, I think, there are  
8 ways that you could get improvements.

9           Q     Based on your understanding, if the participants of  
10 the GridFlorida companies are required by the FERC to  
11 participate in the southeastern RT0, would each utility's  
12 participation be the same as it is in GridFlorida and,  
13 specifically, with respect to whether they've divested assets  
14 or just given up operational control?

15           A     I think, you simply can't tell at this stage. Among  
16 other things, we don't know what the structure of the southeast  
17 RT0 would look like, whether it would be a Transco or an ISO or  
18 whatever, so the terms and conditions under which divestiture  
19 would take place, there are just too many unknowns to make that  
20 decision.

21           Q     Under what conditions do you believe it would be  
22 appropriate for the GridFlorida companies to abandon the  
23 GridFlorida proposal and seek to join the southeastern RT0?

24           A     Well, I think, the GridFlorida companies would need  
25 to do a careful assessment of these alternative approaches and

1 make a determination how it would effect the efficiency of the  
2 grid, the long-term reliability, the effect on their  
3 ratepayers. There'd be a variety of factors they would have to  
4 look at and make a decision which is the most appropriate  
5 alternative.

6 Q Are there any factors or aspects of GridFlorida that  
7 make it more favorable, that provides more benefits than a  
8 regional southeastern RTO would provide?

9 A Well, I think, there are a lot of aspects to  
10 GridFlorida that make it a very favorable option, period,  
11 compared to all the other RTOs that are out there. And indeed,  
12 when you read the FERC Orders in the GridFlorida case and you  
13 read the FERC Orders in a variety of the other cases, it's  
14 clear that in FERC's view, the GridFlorida filing, it's a very  
15 good filing and it's well-structured, but as to say what makes  
16 it better than the southeast, you can't compare the two,  
17 because you don't know what the southeast is going to look like  
18 yet.

19 Q Are there -- generally speaking, are there benefits  
20 to having a larger regional RTO than the smaller, more limited  
21 GridFlorida proposal?

22 A Certainly FERC has found that there are benefits to  
23 larger organizations. FERC's view is larger is better, and  
24 clearly, there are benefits that come from being larger; for  
25 example, the elimination of pancaked rates over a larger region

1 does prevent more efficient usage generation over the entire  
2 region.

3           You run into fewer seam problems when you attempt to  
4 move power from one geographic area to another geographic area.  
5 There are reliability benefits, there are benefits. There are  
6 also potential detriments; for example, there are always  
7 cost-shifting issues when you start creating transmission rates  
8 that cover very broad regions. And cost shifting, if Florida  
9 were to become a part of a larger RTO, it is conceivable that  
10 there would be costs that belong outside the state of Florida  
11 that are shifted into Florida, so there are both -- there are  
12 issues on both sides of the equation, and one would have to  
13 just balance those issues.

14           Q     Do you believe that there would be substantial cost  
15 shifting and in the situation that we have in Florida where  
16 there's limited interconnection to bordering states?

17           A     It's purely a function of how they design the rates,  
18 and one could design the rates where there is substantial cost  
19 shifting, one could design the rates in a way where there is  
20 not, and it's just -- I wish I could give you a better answer,  
21 but that's -- it's too early to tell.

22           Q     I believe, you mentioned also that one of the  
23 benefits of a larger regional RTO is that you could be  
24 interconnected with more states in a larger area, and would  
25 Florida be able to benefit as well as other states might be

1 able to?

2 A Well, with the limited interties with the rest of the  
3 region, the net benefits to Florida may not be as great as the  
4 net benefits to customers on the other side of the intertie in  
5 areas where they have better interconnections; that's not to  
6 say there would be no benefits, but for example, start-up costs  
7 for a much larger RTO may be very close to the start-up costs  
8 for GridFlorida stand-alone. And if you spread those costs  
9 over a larger region, that could be a benefit. So, again, it  
10 depends on the magnitude of those start-up costs, are they  
11 efficiently incurred, is at a well-designed one, how are they  
12 spread, those types of issues.

13 COMMISSIONER DEASON: Let me ask the question at this  
14 point. First of all, and I don't know what the case is, but  
15 assume that it's economically viable for the current  
16 transmission interconnect between Florida and Georgia to be  
17 increased.

18 THE WITNESS: Mm-hmm.

19 COMMISSIONER DEASON: Is it more likely to happen  
20 with a GridFlorida or with a southeastern RTO?

21 THE WITNESS: Some people would argue that it's more  
22 likely to happen with a southeast RTO, because you have the  
23 same entity planning both sides of the interface. And to  
24 expand it, you need to make sure that there's delivery capacity  
25 as well as take-away capacity so, therefore, the argument would

1 go that it's more likely to happen.

2 Other people would argue that there will be seams  
3 committees to study integrated RTO operations and the seams  
4 committee for Florida and the seams committee for the southeast  
5 RTO would achieve the same result, but I'm not sure I know the  
6 right answer to that one, but those are the two arguments.

7 BY MR. KEATING:

8 Q Are there any particular advantages to GridFlorida  
9 versus a regional southeastern RTO in terms of the governance  
10 structure?

11 A Well, I think, a GridFlorida organization stand-alone  
12 would be headquartered in Florida, its focus would be Florida,  
13 its facilities would be based in Florida, its employees would  
14 be based in Florida, and one might assume that for that reason  
15 the GridFlorida organization is going to focus more of its  
16 attention and resources on issues in Florida than outside of  
17 Florida.

18 Q In terms of pricing, do you see any advantage to the  
19 GridFlorida model versus a regional southeastern RTO or any  
20 advantages to the southeastern RTO?

21 A I'm afraid I can't answer the question, because what  
22 I would say is this, that we have a pricing methodology in  
23 Florida where eliminate pancake rates immediately, except for  
24 grandfathered transactions, we phase out pancake rates for  
25 those grandfathered transactions and we incur some

1 cost-shifting because of that and we have a process for phasing  
2 out -- for mitigating the cost shift over a period of time, and  
3 I think that works well for Florida utilities and their  
4 customers.

5           Whether there is an equally beneficial rate design  
6 outside of Florida, I just don't know what it will be. It's  
7 conceivable that you would have a single transmission rate that  
8 had the effect of shifting cost into Florida. It's also  
9 conceivable you'd have a single transmission rate that had the  
10 cost of shifting Florida cost into the southeast, so but until  
11 we know what that rate is, it's very hard to say.

12           CHAIRMAN JACOBS: Let me ask a question. The  
13 transition period that had been initially proposed, the  
14 transition over ten years away from pancake, that is no longer  
15 proposed?

16           THE WITNESS: It's still proposed.

17           CHAIRMAN JACOBS: I thought I heard you say a moment  
18 ago --

19           THE WITNESS: Oh, I said the rate structure had the  
20 effect -- and this should be more for the rate witness than for  
21 me, but there's an elimination of pancaked rates for new  
22 transactions, day one; for grandfathered existing transactions  
23 they phase out on the ten-year period.

24 BY MR. KEATING:

25           Q     Are you familiar with the ALJ's report that came out

1 of the southeastern RTO mediation sessions?

2 A Familiar. I can't tell you I've read the whole  
3 thing, but I have seen it. I have a copy in my office.

4 Q Okay. Staff's going to hand out an exhibit that is  
5 simply a table, it's my understanding is what the ALJ has  
6 proposed as the structure of a southeastern RTO.

7 CHAIRMAN JACOBS: Do you want to mark this  
8 Mr. Cochran or Mr. Keating?

9 MR. KEATING: I'm sorry?

10 CHAIRMAN JACOBS: Do you want to mark this as an  
11 exhibit?

12 MR. KEATING: Yes, I believe, that would be Exhibit  
13 6.

14 (Exhibit 6 marked for identification.)

15 BY MR. KEATING:

16 Q Are you familiar with that chart?

17 A I've seen this chart, yes.

18 Q Okay. And would you agree that this chart shows the  
19 organizational structure for a southeastern RTO that's been  
20 recommended by the ALJ to FERC?

21 A That's my understanding.

22 Q Okay. How is this structure different from the  
23 GridFlorida structure?

24 A It is very similar to the GridFlorida structure. It  
25 appears to be with maybe two exceptions, and the first



1 exception is that you'll see a box in the lower right here  
2 called ITCs, Independent Transmission Companies, and  
3 GridFlorida does not specifically address the issue of  
4 Independent Transmission Companies.

5 An Independent Transmission Company is a for-profit  
6 transmission company that has a board of directors or a  
7 governance that satisfies all the FERC independence  
8 requirements, and this is something that had been proposed by  
9 -- I shouldn't discuss it, because that's covered by the  
10 confidentiality agreement, but that's what an ITC is.

11 The other difference --

12 COMMISSIONER JABER: What did you just say about a  
13 confidentiality agreement? You can't discuss what?

14 THE WITNESS: This is the result of a mediation among  
15 the parties --

16 COMMISSIONER JABER: Right.

17 THE WITNESS: -- in the southeast RTO mediation.  
18 That mediation was covered by FERC's confidentiality  
19 regulations. The parties are precluded from discussing  
20 positions taken by parties in that mediation, and I was about  
21 to discuss a position of one of the parties and I decided not  
22 to do that, because I'd be in violation of that confidentiality  
23 obligation.

24 BY MR. KEATING:

25 Q Yeah, and I'm going to try to avoid getting into any

1 of the confidential material. Since there hasn't been an  
2 objection, I take it that I'm on safe ground so far.

3 MR. CHILDS: Well, my only concern -- I understand  
4 you doing that and trying to do that. My only concern about  
5 the questions in that area is that whether a question is going  
6 to potentially arguably open up something for other questions,  
7 so I'm a little bit anxious about that.

8 MR. KEATING: Okay. Well, I will try be careful in  
9 this line.

10 CHAIRMAN JACOBS: Tread lightly.

11 BY MR. KEATING:

12 Q As you understand this proposed structure, how would  
13 GridFlorida fit into this model?

14 A Well, as I was saying -- this -- how would  
15 GridFlorida fit into this model?

16 Q Yes.

17 A I think, in this model GridFlorida does not fit into  
18 this model, if that's in the sense that I think you mean it.

19 Q If GridFlorida were to exist separately from this  
20 model, where would it fit in in the structure? Would it be an  
21 ITC? Could it be?

22 A Well, I think, your assumption is that we form  
23 GridFlorida and then GridFlorida joins the southeast RTO; is  
24 that your assumption? Because GridFlorida is set up as a  
25 stand-alone RTO. They would not be a part of the southeast

1 RTO, so it would not be in this picture.

2 COMMISSIONER JABER: Let's say that GridFlorida did  
3 get formed and FERC somehow allowed GridFlorida to transition  
4 itself into another RTO. How is it that FERC and/or the  
5 parties envisioned that that sort of transition would occur?

6 THE WITNESS: Actually, that was not discussed in the  
7 mediation.

8 CHAIRMAN JACOBS: In the filing, though, there was  
9 some discussion of it; was there not?

10 THE WITNESS: I don't think so. I think, there was a  
11 discussion of the GridFlorida utilities joining the southeast  
12 RTO --

13 CHAIRMAN JACOBS: Right.

14 THE WITNESS: -- instead of GridFlorida.

15 CHAIRMAN JACOBS: Right, I'm sorry, you're right. It  
16 was to what extent it could join the southeast --

17 THE WITNESS: Right.

18 CHAIRMAN JACOBS: -- in a merger of some sort.

19 THE WITNESS: Right. In which case if the  
20 GridFlorida utilities were to join the southeast, it would be  
21 much like the GridFlorida structure; they would either transfer  
22 ownership of their assets to the Transco or they would sign an  
23 operating contract where the Transco operated their assets.

24 COMMISSIONER JABER: Wait. So, on that latter note  
25 GridFlorida would just enter into an agreement -- could

1 possibly enter into an agreement with the southeast RT0 in sort  
2 of a leasing relationship?

3 THE WITNESS: Well, one could do that. I guess, the  
4 disadvantage of doing that is the GridFlorida companies and  
5 GridFlorida would have little influence on the policies and the  
6 creation of the southeast RT0. They'd have to take it as they  
7 found it as opposed to being a part of the original formation  
8 of the southeast RT0.

9 COMMISSIONER DEASON: Wouldn't there also be  
10 duplicative costs incurred in a sense?

11 THE WITNESS: One would assume so, because we  
12 would -- as I mentioned earlier, you would incur all the  
13 start-up costs of GridFlorida and then perhaps transferred a  
14 lot of those functions to the southeast RT0 and the money you  
15 will have spent for software facilities would be obsolete,  
16 potentially.

17 COMMISSIONER DEASON: Looking at Exhibit 6, I see  
18 that there is a box entitled, "Independent Market  
19 Administrator." Is there something similar to that in  
20 GridFlorida?

21 THE WITNESS: No, there's not. In GridFlorida the  
22 functions carried out by the independent market administrator  
23 in this structure are carried out by GridFlorida.

24 COMMISSIONER DEASON: So, there's not a separate  
25 independent market administrator?

1 THE WITNESS: No, there's not. There is an  
2 independent market monitor, as you see at the very top up here,  
3 the independent market monitor sits above all of this and  
4 monitors the activities of the market and each of the market  
5 participants, and that is the same in GridFlorida as is the  
6 advisory committee.

7 COMMISSIONER DEASON: So, whatever functions that  
8 this particular proposal -- whatever functions the independent  
9 market administrator would fulfill under GridFlorida, that  
10 would be -- the Transco itself would fill those functions,  
11 correct?

12 THE WITNESS: That's right. Under this proposal, the  
13 Transco enters into a contract with another entity to provide  
14 -- to do certain services. And under the GridFlorida model,  
15 they would simply provide -- do those services themselves.  
16 They wouldn't contract them out. They're not precluded from  
17 contracting out certain of those services, but they're not  
18 required to.

19 COMMISSIONER DEASON: Do you have an opinion as to  
20 which of those is more efficient?

21 THE WITNESS: My preference is to not contract out  
22 those services, because the more entities you create, the more  
23 opportunities for inefficiency and add cost, but it's debatable  
24 as to whether -- other people will argue with you that the  
25 other is more efficient.

1           COMMISSIONER DEASON: Do you know -- under this  
2 proposal -- and here again, I don't mean to be treading in  
3 anything that's confidential, and so if it is, please just tell  
4 me. What type of entity is envisioned as serving the role of  
5 independent market administrator?

6           THE WITNESS: I think, the type of entity they had in  
7 mind would be, for example, possibly a special purpose  
8 subsidiary created by one of the other RTOs is a possibility,  
9 you know, a PJM subsidiary or somebody else is one possibility.  
10 Another possibility could just simply be a subsidiary of a  
11 company with significant transmission experience. It was,  
12 frankly, never that clearly stated what type of entity would  
13 actually fill that role.

14           COMMISSIONER DEASON: Is it a profitmaking entity?

15           THE WITNESS: Yes, it is profitmaking in the sense  
16 that they would charge for the service. And hopefully, one  
17 would bid it out -- if you can find enough parties that are  
18 capable of providing the service, you'd bid it out and try to  
19 get the lowest cost to do that.

20 BY MR. KEATING:

21           Q     Are there any benefits that you see in this structure  
22 that are non-GridFlorida, that would not be provided by the  
23 GridFlorida structure?

24           A     Well, I think, this structure, essentially, is  
25 GridFlorida. The primary change is this ITC organization, but

1 I don't think in Florida we're going to have any ITC, so I  
2 don't think that box is really applicable to Florida. And with  
3 respect to the independent market administrator, reasonable  
4 minds can differ on whether that is an improvement or not an  
5 improvement. My personal view is by splitting up some of the  
6 operations of the Transco and housing them in different  
7 organizations you incur more start-up costs and more  
8 inefficiency, but say reasonable minds can differ.

9 Q For clarification, what is an ITC in this structure?

10 A An ITC is an Independent Transmission Company. It's  
11 contemplated ITCs would be created by investor-owned utilities  
12 that form Independent Transmission Companies, much like our  
13 Transco, transfer their assets to that independent company, and  
14 then that independent company enters into an operating contract  
15 with the RTO as opposed to transferring its ownership of its  
16 assets to the RTO.

17 I, frankly, don't see why anybody would want to form  
18 an ITC and then turn over control of ratemaking, planning, and  
19 other key functions to the RTO, so I don't think as a practical  
20 matter anybody would do this.

21 Q Well, could GridFlorida become an ITC in this  
22 structure?

23 A It could, yes.

24 Q I believe, you said earlier that RTOs must provide  
25 financial transmission rights to retail customers and others;

1 is that correct?

2 A No. What I said is Order 2000 requires that  
3 congestion management be accomplished in a manner that is  
4 economically efficient. I forget the exact term in Order 2000,  
5 but that's basically it.

6 Q Okay. And would you agree, based on your familiarity  
7 with the ALJ's recommendation that the ALJ recommended using  
8 financial transmission rights rather than physical transmission  
9 rights?

10 MR. CHILDS: I'm -- if we're talking about this  
11 document as to what is confidential, I would ask if there's a  
12 way to get your information without going into that report.

13 MR. KEATING: I guess, it was my understanding that  
14 the parties' positions that were stated in the report were to  
15 be treated confidentially and not necessarily the conclusions  
16 of the report itself.

17 MR. CHILDS: Let me explain the language that gives  
18 me some concern. I'm looking at 18 CFR, Section 385.606-B, and  
19 it talks about disclosing any information concerning any  
20 dispute resolution communication. And so, I'm a little  
21 concerned about going that far, because it arguably could be in  
22 disclosing information about a communication. I'm just asking  
23 if there's a way that you could perhaps get you information by  
24 framing your question differently.

25 CHAIRMAN JACOBS: Let me ask. The ALJ's report,



1 issued report, that's a public document, isn't it? Does  
2 anybody know?

3 MR. CHILDS: My understanding is that it is the --  
4 that the ALJ's report is, in part, a difficulty because of some  
5 of the information that is disclosed and that that is being  
6 pursued. And independent of that, what I'm trying to do is to  
7 avoid against the inadvertent disclosure here, which is in  
8 violation of this provision or operates as a waiver.

9 CHAIRMAN JACOBS: Staff, do you have anything else?

10 MR. KEATING: The only question that I have is the  
11 one that I asked on which form of transmission rights the ALJ  
12 recommended to FERC? And I --

13 MR. CHILDS: All right.

14 MR. KEATING: I'm not sure --

15 MR. CHILDS: Go ahead.

16 MR. KEATING: I'm not sure how to ask that.

17 MR. CHILDS: Why don't you restate the question and  
18 we'll just go ahead with it.

19 MR. KEATING: Okay.

20 BY MR. KEATING:

21 Q What form of transmission rights did the ALJ  
22 recommend to FERC?

23 A Again, I have to confess I haven't read this thing in  
24 great detail. It is my understanding that ALJ recommended a  
25 financial rights model as opposed to a physical rights model,

1 but I can't say that with certainty because I don't recall for  
2 certain, having not read the report in detail.

3 Q And what's the -- I guess, what's the distinction  
4 between the two, between the two types of transmission rights?

5 A Well, I guess, I should try to answer this, but I  
6 will tell we're getting further and further from my testimony,  
7 and I don't hold myself out to be an expert on transmission  
8 congestion procedures.

9 Essentially, the difference is one financial rights  
10 entitles the holder of the financial right to the difference in  
11 the value of energy in the two markets between the transmission  
12 service they hold, so if transmission service is from market A  
13 to market B and there's a difference in the value of  
14 electricity of those two markets, they're entitled to a pay  
15 that's equal to the difference in the value of electricity  
16 between those two markets. The physical rights model entitles  
17 the person to the right -- to the physical right to deliver  
18 electricity from point A to point B, so those are the basic  
19 differences, but...

20 Q The GridFlorida proposal uses physical transmission  
21 rights; is that correct?

22 A That's right. That's discussed in the panel  
23 testimony, but that's right.

24 Q And that is still GridFlorida's choice?

25 A That's right.

1 Q Do you believe that one or the other model is better  
2 than the other?

3 A You know, I -- I would prefer that we defer this to  
4 the panel discussion, because I'm not the expert on the  
5 congestion management features, if that's okay, but I can say  
6 GridFlorida has filed and still supports its physical rights  
7 model.

8 MR. KEATING: I can ask that to the panel.

9 CHAIRMAN JACOBS: I have a couple questions. Going  
10 to -- basically to some of the issues surrounding GridFlorida's  
11 proposal, and these may or may not be current, so if they're  
12 out of date, please correct me.

13 One of the important criteria that was set out for  
14 RTOs was the level of independence and that goes to the extent  
15 to which decisions and actions by the RTO can really  
16 legitimately be an assurance that there be market opening  
17 actions. And one of the concerns that was raised with regard  
18 to the GridFlorida application goes to the interim operations;  
19 i.e., the start-up operations, and there was going to be a  
20 temporary organization established to essentially start up the  
21 shop. Is that still anticipated?

22 THE WITNESS: Yes, it is.

23 CHAIRMAN JACOBS: Okay. And the concern was the  
24 independence of that interim organization and that it would  
25 essentially establish a lot of the fundamental beginnings of

1 the RTO that could not perhaps be changed as easily later. And  
2 that was going to be an ongoing point of discussions. Have  
3 those discussions proven to come to fruition yet or is there  
4 some final result on that yet?

5 THE WITNESS: Well, the FERC has laid down guidelines  
6 by which the interim -- which restrict the activities of the  
7 interim management, and I'm not sure I can recall all those  
8 guidelines, but essentially the interim management was  
9 precluded from procuring software, because to the extent that  
10 the software was associated with market design or would lock us  
11 into a particular market design, it was precluded from  
12 expending significant amounts of money without the approval of  
13 the advisory committee.

14 And there are -- and actually, with respect -- with  
15 respect to the procurement of software they could not do that  
16 until their independent board was seated and had control.  
17 There might have been a couple of other limitations on them as  
18 well, but these issues were raised by FERC, and FERC  
19 established a set of guidelines which would preclude the  
20 interim board from -- essentially, what the guidelines  
21 attempted to do is allow the interim board to do all the  
22 necessary things that had to be done to get the RTO up and  
23 running in a timely way, but it precluded them from taking  
24 actions that would lock in the RTO once commercial operations  
25 began, because the key to independence is that it has to be

1 independent when it begins commercial operations. And the  
2 concern was they would make decisions before the date of  
3 commercial operations that bound the RT0 after commercial  
4 operations, and FERC established guidelines to, in effect,  
5 preclude that from happening.

6 CHAIRMAN JACOBS: Under those FERC guidelines, isn't  
7 it the case that FERC will actually wind up giving approval to  
8 most of those expenditures, start-up expenditures?

9 THE WITNESS: Well, under the -- yes, under the FERC  
10 guidelines they pointed out that the start-up expenditures  
11 would have to be reviewed by FERC, even the expenditures  
12 incurred by the interim board before they could be included in  
13 rates.

14 CHAIRMAN JACOBS: So -- and if that does, indeed,  
15 prove to be the way it works out, the projections of costs that  
16 we're seeing coming forward in the testimony of this docket,  
17 that portion of those start-up costs that would have come under  
18 the interim board would have, indeed, been pre-approved by or  
19 been approved by FERC.

20 THE WITNESS: That's correct.

21 CHAIRMAN JACOBS: In that event, our authority to  
22 review that review is non-existent; would you agree?

23 THE WITNESS: I think, that's right.

24 CHAIRMAN JACOBS: Okay. The -- excuse me just a  
25 moment. Oh, I remember. One of the concerns that was raised

1 with regard to the format of a Transco, particularly, for  
2 for-profit Transco is that there might be a natural and  
3 reasonable incentive for that Transco to seek out transmissions  
4 solutions to congestion over generation solutions, and there  
5 was going to be continuing work on that. What's the status of  
6 that?

7 THE WITNESS: This issue was raised by FERC. The  
8 applicants at GridFlorida heard that issue when it was raised  
9 in the stakeholder process and worked with all the stakeholders  
10 to incorporate into GridFlorida an open planning process in  
11 which, among other things, GridFlorida is required to evaluate  
12 both transmission solutions and generation solutions that the  
13 planning process is open to participation by the generators as  
14 well as by other parties.

15 There is an arbitration provision in the planning  
16 process if, in fact, the decision of the RTO is one which a  
17 generator or other parties feel disadvantages, then, so there  
18 are other checks and balances included in the proposal to  
19 preclude that from happening.

20 CHAIRMAN JACOBS: Okay.

21 THE WITNESS: I just might add one thing, too. The  
22 hypothesis is they were going to go around and build too much  
23 transmission.

24 CHAIRMAN JACOBS: Mm-hmm.

25 THE WITNESS: And it's not easy to build

1 transmission. And, I think, the likelihood of us being  
2 confronted with a situation where we're building too much  
3 transmission is probably not too great.

4 CHAIRMAN JACOBS: Well, actually that goes exactly to  
5 the point I was going to raise is that there are -- and you  
6 essentially stated my point, is that there are inherent  
7 limitations to building transmission. And so, if the inertia  
8 of the Transco is to go that route and you're encountering  
9 those kinds of obstacles, and here's a concern that there would  
10 be a small voice saying, well, let's look at generation  
11 operations, what would be the means of dealing with that -- to  
12 deal with that inertia to try and pursue these transmission  
13 options, and you've stated, I think, what was proposed.

14 One of the concerns had to do with the role of FRCC  
15 as it relates to independence, as I understand it, and feel  
16 free to correct me, is that FRCC is still going to have a  
17 significant role under GridFlorida; is that correct?

18 THE WITNESS: If you don't mind, I'd like to defer  
19 that question to the panel, because we have a number of members  
20 of the FRCC who can speak with a lot more expertise than I can  
21 on their role.

22 CHAIRMAN JACOBS: That's fine.

23 And this would probably be better for them. This has  
24 to do with reliability in GridFlorida stuff. Thank you.

25 COMMISSIONER JABER: I had some questions,

1 Mr. Chairman.

2 MR. KEATING: I'm sorry, I have a few more questions.

3 CHAIRMAN JACOBS: Oh, I thought you were done, I'm  
4 sorry.

5 MR. KEATING: Just a few, thank you.

6 BY MR. KEATING:

7 Q GridFlorida will be a monopoly provider of  
8 transmission services within peninsular Florida, correct?

9 A Well, it will be a -- it won't be the only supplier  
10 of transmission service in GridFlorida, unless, for example,  
11 Jacksonville may or may not be a part of GridFlorida, other  
12 companies may or may not choose to participate in GridFlorida,  
13 so it won't be the exclusive supplier, potentially.

14 Q But it would cover the bulk of the transmission  
15 system?

16 A That's right.

17 Q And GridFlorida will have its rates set by FERC,  
18 correct?

19 A That's correct.

20 Q When those rates are set, the PSC can determine how  
21 those costs should be collected, correct?

22 A That's correct.

23 Q Okay. Now, with wholesale --

24 A Well, that's right. When those rates are set by --  
25 they will determine how they're collected at the retail level.



1 Q Now, with wholesale generation purchases, the rate is  
2 set by FERC and the PSC can also determine how those costs  
3 should be collected, correct?

4 A To the extent that a utility incurs those costs by  
5 purchasing power under FERC-set rates, the utility has to go to  
6 the PSC to determine how they're collected from retail  
7 customers.

8 Q With respect to generation purchases, the PSC can  
9 review the prudence of entering into a generation purchase and  
10 deny cost recovery if it determines it was imprudently -- an  
11 imprudently-incurred expense; is that correct, to your  
12 understand me?

13 A That's correct, the so called Pike County exception  
14 to the Narragansett doctrine.

15 Q That ongoing prudence review at the Public Service  
16 Commission will not take place with respect to GridFlorida; is  
17 that correct?

18 A That's correct.

19 Q And is that because a company has --

20 A There's only one supplier.

21 Q -- no other choice for a transmission service.

22 A That's right.

23 Q Okay. So, this is our only one opportunity to review  
24 the prudence of GridFlorida?

25 A I think, that's correct.

1 Q In your opinion?

2 A Yeah.

3 Q Okay. Just one other question, and there were  
4 several questions about FERC jurisdiction that were asked  
5 earlier, and you stated it's your opinion that FERC has the  
6 authority to order an RTO or to order public utilities under  
7 its jurisdiction to join an RTO?

8 A That's correct.

9 Q Okay. To date are you aware of any FERC order or the  
10 order of any court that states that FERC has that authority?

11 A No, but there are several court decisions in which  
12 the courts have said that in circumstances where FERC, based on  
13 the record, finds undue discrimination, its powers are to order  
14 transmission service in the case of Order 888 and other  
15 services are at their zenith. And I believe that the courts  
16 would find that that power includes the power to order  
17 participation in an RTO.

18 Q And I don't expect you to have these on the tip of  
19 your tongue, and they may be more appropriate for briefs, but  
20 can you point out any of those particular decisions?

21 A Well, the most recent decision is the TAPS decision,  
22 Transmission Access Policy Study group decision by the D.C.  
23 Circuit, which is the decision in which the Commission -- the  
24 D.C. Circuit approved FERC's issue as an Order 888.

25 MR. KEATING: Thank you. That's all the questions I

1 have.

2 COMMISSIONER DEASON: Commissioners?

3 COMMISSIONER JABER: Mr. Naeve, through all the  
4 workshops and, obviously, the start of this hearing, you know  
5 one of my concerns is trying to get our hands around the impact  
6 to the retail ratepayers. And in that regard, would you look  
7 at Page 25 of your testimony and answer a couple of questions  
8 for me, if you can.

9 I thought the question related on Line 7, Page 25,  
10 and your answer went to the point of regardless of whether the  
11 IOU leases its assets to the Transco or contributes its assets,  
12 there will be some effect on retail rates, is the first point.  
13 And the second point is that you didn't envision, necessarily,  
14 that that effect on retail rates would take away some authority  
15 from the PSC to look at the retail rate issue.

16 THE WITNESS: Well, what I -- let me see if I can  
17 explain in this in more clear English. The first point is that  
18 the rate treatment is the same whether the current owners  
19 transfer ownership of the transmission facilities to the RTO or  
20 whether the RTO acquires control through contract.

21 Under either of those circumstances, the former  
22 transmission owners, now it's called the distribution  
23 companies, have to procure transmission service for their  
24 retail service from the RTO. They have to pay the  
25 FERC-approved rate.

1           So, on a going-forward basis, once you establish an  
2 RTO, the cost of transmission service to the utility for retail  
3 service is covered by the RTO rate, which is the FERC-approved  
4 rate, not a state-approved rate. Once the utility incurs that  
5 rate, it now has to recover that cost from its retail customer.  
6 The manner in which it recovers that cost from the retail  
7 customer is subject to the jurisdiction of the state.

8           Whether it can recover those costs, there is probably  
9 a preemption on that issue. I think, the state cannot say even  
10 though FERC has approved these costs as just and reasonable,  
11 we're not going to allow you to recover them. I think, in that  
12 situation the state has to permit recovery of the cost. The  
13 manner in which recovery is done is up to the state.

14           COMMISSIONER JABER: All right. And in that regard  
15 let's focus on Florida Power Corporation as an example. If  
16 nothing has changed since our workshops, it's my understanding  
17 that Florida Power was going to lease its assets to the RTO  
18 LLC.

19           THE WITNESS: Not exactly lease. They were going to  
20 enter into a contract under which the RTO would operate the  
21 assets. It's a little bit like a lease, but it's not actually  
22 a lease.

23           COMMISSIONER JABER: Okay. An arrangement where the  
24 RTO would operate its assets and Florida Power Corporation  
25 would maintain ownership of the assets.

1 THE WITNESS: That's correct.

2 COMMISSIONER JABER: So, the RTO limited corporation  
3 would also be responsible for maintaining those assets?

4 THE WITNESS: Order 2000 requires that the RTO have  
5 ultimate responsibility for O&M of the assets.

6 COMMISSIONER JABER: Okay.

7 THE WITNESS: However, under the contract that  
8 transfers control to the RTO, the contract provides that the  
9 RTO would rely on the original asset owner -- or it would rely  
10 on Florida Power Corp., in this situation, for many of the  
11 maintenance services and operations of certain of the assets.

12 COMMISSIONER JABER: All right. Well, then, let me  
13 be clear on what Florida Power Corporation, just to use them as  
14 an example, would pay the RTO. What services would Florida  
15 Power Corporation be paying for?

16 THE WITNESS: Transmission services.

17 COMMISSIONER JABER: Not maintenance, not operation?

18 THE WITNESS: Well, the -- and again, we should  
19 probably direct this to the panel, because they've spent more  
20 time on these contracts than I have, but the RTO has ultimate  
21 responsibility for operation and maintenance. They can either  
22 perform that service themselves or they can contract with other  
23 parties to do it.

24 To the extent they contract with other parties to  
25 provide that service, I assume that they pay for those

1 services, they don't receive the services free. So, the cost  
2 of the O&M, as well as the cost of the annual revenue  
3 requirement associated with those services all are included as  
4 part of the total revenue requirement of the RT0.

5 It takes that total revenue requirement to FERC, it  
6 gets a rate approved, so the rate would recover O&M cost, you  
7 know, cost of the facilities it owns in a depreciation and  
8 return and so forth, and then also the revenue requirement that  
9 is associated with the facilities owned by Florida Power Corp.  
10 that is transferred to the RT0 by contract.

11 COMMISSIONER JABER: All right. So, the company  
12 would enter into an arrangement that allows for the company to  
13 pay for the use of the transmission services; obviously, they'd  
14 be buying transmission, they perhaps would be entering into a  
15 contract for the operation and maintenance of those services,  
16 and that would be a cost that they legitimately incurred and  
17 that would get passed through, you would expect, to the Florida  
18 Power Corporation, just to use them as an example, their retail  
19 end users.

20 THE WITNESS: That's correct.

21 COMMISSIONER JABER: All right. Would it be possible  
22 that those retail end users would be paying for those  
23 transmission assets and the operation and the maintenance of  
24 those assets twice?

25 THE WITNESS: I don't think so.

1 COMMISSIONER JABER: Okay. Tell me why.

2 THE WITNESS: The -- I guess, it depends in part on  
3 how you set state rates, but these are assets that are now  
4 under the control of the RTO. The RTO has a revenue  
5 requirement. The cost of these assets are, in the case of  
6 Florida Power Corp.'s assets, they have an annual revenue  
7 requirement associated with their ownership of the assets.

8 In the contract that transfers control to the RTO,  
9 they will also transfer responsibility for recouping that  
10 revenue requirement to the RTO. Likewise, -- so, one would  
11 assume that now that these assets are transferred by contract  
12 to the RTO where the revenue requirement is for purposes of  
13 setting the state rates, you would not include those assets in  
14 state rates, and the revenue requirement associated with the  
15 assets.

16 COMMISSIONER JABER: Okay. Now, that's perhaps  
17 correct with a situation where the company has clearly  
18 transferred its assets to the RTO, right?

19 THE WITNESS: Or where they've transferred control  
20 and the revenue requirement.

21 COMMISSIONER JABER: Wouldn't the assets -- if a  
22 company -- and let me tell you why I'm asking these questions.  
23 One of the things I'm also looking at is to the degree we agree  
24 that some form of RTO is prudent, I also want to look at how a  
25 companies should participate in the RTO.

1           So, to the degree a company chooses to allow the RT0  
2 to use those assets but maintain the ownership on its books,  
3 then those assets are still part of the IOU's rate base and  
4 part of the IOU's revenue requirement that they'll use in a  
5 state proceeding.

6           THE WITNESS: Well, I'm not an expert on Florida law,  
7 but I would assume that if they have transferred control to the  
8 RT0 and they've also transferred to the RT0 the obligation to  
9 recover the cost of those assets when they file a retail case  
10 with you, you would not include those costs in your retail  
11 rates.

12           COMMISSIONER JABER: Okay.

13           MR. CHILDS: Commissioner, Mr. Ashburn might be able  
14 to answer that more directly.

15           THE WITNESS: That's probably fair. Somebody who is  
16 more of an expert on rates than me.

17           COMMISSIONER JABER: Mr. Naeve, one of the benefits  
18 that you identified is related to the formation of the RT0  
19 would be an expansion of the size and the scope of the  
20 wholesale competitive market. And, as I recall, you all were  
21 having some trouble getting the municipalities and the co-ops  
22 to agree to participate in GridFlorida.

23           THE WITNESS: I think, at this stage we really can't  
24 tell whether the municipals and the co-ops will participate.  
25 It's my hope that they will. Actually, it's to their financial



1 advantage to participate, because under the proposal they will  
2 receive credit on a phased-in basis for facilities for which  
3 they currently don't receive credit.

4 They're unhappy with the proposal, because they don't  
5 want to have a phasing in of that crediting. They'd like to  
6 receive it day one, but I think they are still financially  
7 better off participating in GridFlorida than they would be if  
8 they did not participate.

9 So, it would be my expectation that they will choose  
10 to participate. If I were in their shoes, I would do what  
11 they're doing, and that is work as hard as I can to get as much  
12 credit as I can before the commencement date, but then I would  
13 evaluate my options, and if it's more economical for know  
14 participate than to not participate, I would participate.

15 And I really shouldn't speak for them, but I believe  
16 the structure we have makes it more economical for them to  
17 participate than to not participate.

18 COMMISSIONER JABER: So, here's my question: Without  
19 a requirement that they participate, how effective can a  
20 Florida-specific RTO be?

21 THE WITNESS: Well, I think, even if they don't  
22 participate you'll still have, by far, the vast majority of the  
23 transmission facilities in Florida included in GridFlorida.  
24 And I think, you know, most of the transmission service  
25 provided in Florida is provided by the investor-owned utility

1 facilities and not by the facilities of the public power  
2 entities, so I think it would still be quite effective.

3 COMMISSIONER JABER: Do you know what portion of  
4 transmission is provided by JEA?

5 THE WITNESS: I'm afraid I can't say.

6 COMMISSIONER JABER: Now, but looking at this chart  
7 that Staff passed out it looks like the municipalities and  
8 co-ops have agreed to participate in the southeast RT0; is that  
9 correct?

10 THE WITNESS: No, I don't think that's correct at  
11 all. In the southeast RT0, it's probably best to  
12 characterize -- I want to make sure I don't violate  
13 confidentiality here.

14 There were no commitments by any part in the  
15 southeast RT0 to participate in any RT0. The parties expressed  
16 their preference for one model versus another model, but no one  
17 was committed to participate. And, indeed, a number of the  
18 parties who expressed a preference for one of the models, for  
19 example, could -- we think a number of these parties may never  
20 actually participate. They may prefer one model over the  
21 other. It doesn't mean that they will actually transfer  
22 control of their assets to the RT0.

23 COMMISSIONER JABER: Okay. But in an effort to  
24 promote a complete wholesale market and to make sure that all  
25 the requirements of Order 2000 to provide an open system are

1 met, I should give some weight to whether all transmission  
2 companies -- which RT0 all transmission companies would want to  
3 participate in, shouldn't I?

4 THE WITNESS: That may be a factor you look at. I  
5 think, you also have to look at how important are those  
6 facilities to transmission service and the region and you also  
7 have to look at what is the cost of that participation to  
8 retail customers.

9 COMMISSIONER JABER: Okay. Educate me; as a former  
10 FERC Commissioner, you would know what enforcement powers FERC  
11 has. In Florida, if a company doesn't comply with one of our  
12 Orders, we have actually great authority to enforce our Orders  
13 and to penalize companies via fines. Does FERC not have that  
14 sort of authority?

15 THE WITNESS: No. They have substantial authority  
16 when they issue an Order and the Order is violated. The scope  
17 of their authority depends, in large part, on the  
18 circumstances, but in situations where they're issued an order  
19 and there's a direct violation of their order, they have very  
20 broad powers, very broad remedial powers.

21 COMMISSIONER JABER: They can actually fine a company  
22 for not complying with an order?

23 THE WITNESS: They can mandate that they comply, they  
24 can seek restitution of any ill-gotten gains by virtue of their  
25 failure to comply. They have a lot of power. Sometimes the

1 restitution remedy can be very expensive for the company. They  
2 also can deny them services in the future, open market-based  
3 rate authority, a variety of things for failure to comply.

4 COMMISSIONER JABER: So, if FERC mandated the  
5 formation of RTOs, they could have enforced their Order by  
6 penalizing the companies for not quickly complying with that  
7 Order?

8 THE WITNESS: They could have, yes.

9 COMMISSIONER JABER: One might reach the conclusion  
10 that because they thought they didn't have the authority to  
11 mandate RTOs, they felt like they needed to threaten the  
12 companies with the removal of market-based rates?

13 THE WITNESS: Again, I think, the reason they're  
14 taking this step is because it's easier than going with the  
15 rulemaking. If they wanted, at this stage, to require to  
16 mandate compliance, they would have to have a notice and  
17 comment rulemaking to amend Order 2000.

18 Whereas, if they simply on a prospective basis,  
19 withdraw on a case-by-case basis market-based rate authority,  
20 not approve mergers, things like that, it can be implemented a  
21 lot more quickly than a rulemaking. So, I think, they're  
22 turning up the ratchet, but it doesn't mean it's the end of  
23 their authority.

24 COMMISSIONER JABER: One of the things I'm trying to  
25 also evaluate is the risk that companies are really in, if we

1 go forward and approve a GridFlorida as opposed to waiting and  
2 allowing FERC to implement some sort of regional approach.  
3 Tell me how long, in your experience, appeals of FERC Orders  
4 take.

5 THE WITNESS: As a general rule, I would say it's a  
6 12-month, 15-month process; sometimes longer, sometimes  
7 shorter, but that's a general ground rule.

8 COMMISSIONER JABER: So, assume the Commission --  
9 this Commission went forward with some sort of approval of  
10 GridFlorida, could GridFlorida be implemented and fully running  
11 by the conclusion of an appeal on a regional approach that  
12 they've decided to take?

13 THE WITNESS: Let me see if I understand your  
14 question. Is your question that if we decided go forward with  
15 GridFlorida and at the same time they ordered us into a  
16 southeast RTO, could we complete and get GridFlorida up and  
17 running before the appeal on the order to --

18 COMMISSIONER JABER: Yes.

19 THE WITNESS: First, just on the timing issue, I  
20 think, it would be a close call, because we have go back and  
21 restart the process of picking a board of directors. There are  
22 a number of issues that are still pending before FERC on  
23 approval. We made a compliance filing. They haven't acted on  
24 that compliance filing. And we would be, in some ways, moving  
25 without authorization from FERC, as they will not have

1 responded to compliance filing, they would probably not  
2 respond. Or if they did respond, they would say we no longer  
3 authorize this due to southeast RTO.

4 So, on a timing tissue though, getting the board up  
5 and running and making all the decisions that you have to make  
6 to get it running strikes me -- it would be a close call as to  
7 whether you could get there in time.

8 There's another --

9 COMMISSIONER JABER: Let me make sure I understand  
10 what you just said. So, logistically, even if we wanted to say  
11 a GridFlorida is a better option than a regional approach,  
12 logistically, the companies could not implement GridFlorida  
13 before FERC acts on the regional approach.

14 THE WITNESS: Well, there's a lot that has to be done  
15 to get GridFlorida up and running, not the least of which is  
16 getting the board selected and up and running, but frankly we  
17 would have to get FERC approval to transfer control of the  
18 facilities.

19 And even though FERC has approved the structure of  
20 GridFlorida, they haven't approved the final transfer of  
21 control, so, you know, technically could you implement  
22 GridFlorida without FERC approval? Probably not, because  
23 Section 203 says you need prior approval from the Commission  
24 before you can transfer control of these assets, so you'd be  
25 doing all of this outside of the scope of federal law.

1           And then, the second question would be -- I think,  
2 there's an assumption in your question that the courts wouldn't  
3 -- and FERC would not impose sanctions on you pending appeal,  
4 and I don't think that is a valid assumption, either. I think,  
5 they would begin imposing sanctions on you immediately and you  
6 would be incurring sanctions during the appeal process.

7           COMMISSIONER JABER: We should think about that here.

8           Let me ask you one final question. You were talking  
9 about the subsidies earlier. Under what situation with a  
10 regional approach could Florida be in a position of subsidizing  
11 another state? What would cause the subsidies to occur?

12           THE WITNESS: Well, let's say hypothetically they  
13 decided -- and Commissioner Wood has indicated a strong  
14 preference for rolled-in rates. So, let's say hypothetically  
15 the regional RTO had a single transmission rate based on the  
16 rolled-in costs and loads of all the utilities in the region.

17           And if it turns out that on average today  
18 transmission facilities are less expensive in Florida than they  
19 are in the rest of the region on average, then such a rolled-in  
20 rate could have the effect of making rates in Florida go up, if  
21 it's an average rate for the entire region.

22           In addition to that, they could have transition  
23 mechanisms that have the effect of causing costs to go up.  
24 Transmission mechanisms for crediting for municipal and co-op  
25 facilities, for example, if the phase-out was less than five

1 years, it would drive rates up in Florida. There are other  
2 mechanisms that could have that effect.

3 COMMISSIONER DEASON: I have a question. Under  
4 FERC's ratemaking authority and the way they have implemented  
5 that, in the case of an RT0, at what value do they place on the  
6 assets for determining revenue requirement when there's a  
7 transfer? Is it net book value or is it market value or is it  
8 replacement value? What value is it?

9 THE WITNESS: The tradition at FERC has been when  
10 assets that previously were in rate base are transferred to a  
11 new entity, they -- and the new entity files for rates, those  
12 assets are included in the rate base of the new entity at the  
13 previous net book value. And in our case, we are transferring  
14 the net book value, so there'd be no argument to try to  
15 increase them to include them at rates at a higher value.

16 There are very limited circumstances where in cases  
17 where parties paid above book where a utility will purchase an  
18 asset from another utility at a price that's above book. And  
19 then they'll ask FERC to allow them to include in rates that  
20 asset not at its original depreciated net book value, but at  
21 the higher value that they paid for it. And the general rule  
22 is that you're normally not allowed to do that, unless you can  
23 show that there's some net gain to customers. Those are the  
24 general rules under which FERC operates.

25 COMMISSIONER DEASON: But specifically for

FLORIDA PUBLIC SERVICE COMMISSION



1 GridFlorida, it's contemplated that the transfer would take  
2 place at net book value?

3 THE WITNESS: That's right. I guess, what I'm saying  
4 is it's contemplated the transfer would take place at net book  
5 value. If we paid more than net book value, there's still a  
6 good chance that rates would be set at net book value anyway.

7 CHAIRMAN JACOBS: Redirect.

8 MR. CHILDS: I have no redirect, and I'd like to move  
9 Exhibits 4 and 5 into evidence.

10 CHAIRMAN JACOBS: Without objection, show Exhibits 4  
11 and 5 are admitted.

12 (Exhibits 4 and 5 admitted into the record.)

13 MR. KEATING: And Staff would like to move Exhibit 6.

14 CHAIRMAN JACOBS: Without objection, show Exhibit 6  
15 is admitted.

16 (Exhibit 6 admitted into the record.)

17 CHAIRMAN JACOBS: Thank you, Mr. Naeve. I believe,  
18 you'll be back for the panel, correct?

19 THE WITNESS: I will.

20 CHAIRMAN JACOBS: We should take a break for ten  
21 minutes and come back.

22 (Recess taken.)

23 CHAIRMAN JACOBS: We're on the next witness. You may  
24 proceed.

25 MR. FAMA: The GridFlorida companies call Mr. James

1 Hoecker to the stand.

2 JAMES J. HOECKER

3 was called as a witness on behalf of Florida Power & Light  
4 Company, Florida Power Corporation, and Tampa Electric Company  
5 and, having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FAMA:

8 Q Could you please state your name and address?

9 A My names is James J. Hoecker. My address is 3000 K.  
10 Street N.W., Washington, D.C. 20007.

11 Q Who is your employer and what is your position,  
12 Mr. Hoecker?

13 A I am a partner in Swidler Berlin Shereff Friedman law  
14 firm.

15 Q And on whose behalf are you appearing today?

16 A I'm appearing on behalf of the GridFlorida applicant  
17 companies.

18 Q Are you the same James J. Hoecker that prefiled  
19 testimony in these dockets in August of this year?

20 A Yes, I am.

21 Q Was this testimony prepared under your direction and  
22 control?

23 A It was.

24 Q Do you have any corrections to make to your  
25 testimony?

1 A No.

2 Q If I were to ask you the questions today that appear  
3 in your prefiled testimony, would you give the same answers  
4 that appear there?

5 A Yes.

6 Q Mr. Hoecker, do you have a statement summarizing the  
7 testimony that you'd like to give at this time?

8 A I do. Thank you very much.

9 Mr. Chairman, Commissioners --

10 CHAIRMAN JACOBS: We can do this at the end in terms  
11 of entering his testimony into the record, but normally we just  
12 do it before he does the summary, but if nobody has an  
13 objection, we'll just do that at end of the summary, that's  
14 fine.

15 THE WITNESS: I'm sorry, I didn't hear.

16 CHAIRMAN JACOBS: It's a technical, totally  
17 procedural issue that I brought up. I just want to make sure  
18 that the parties are aware that we will enter testimony into  
19 the record at the end of the summary as opposed to the  
20 beginning, no problem.

21 THE WITNESS: Okay.

22 CHAIRMAN JACOBS: I'm sorry for interrupting.

23 THE WITNESS: No problem. Thank you.

24 A The purpose of my testimony today is to provide some  
25 federal regulatory background here for consideration of the

1 GridFlorida application. I would say that I recognize that  
2 there are matters of state and local interests involved here  
3 that are, to use Commissioner Palecki's word, momentous, and  
4 that as a former FERC Chairman, I understand how difficult some  
5 of these decisions can be, and change and progress can often be  
6 very different things.

7           But having said that, it is my testimony that FERC in  
8 Order 2000 promoted and may yet decide to compel development of  
9 Regional Transmission Organizations by all transmission owners  
10 in the country. It will or has promoted or has proposed to do  
11 that in order to obtain greater liquidity in competition in  
12 wholesale markets, in order to lower barriers to entry, to  
13 enhance and preserve reliability, gain operational and economic  
14 efficiency and, ultimately, I believe, to lower rates to  
15 consumers. These are benefits or the outcomes of benefits that  
16 I talk about in my testimony.

17           Did the FERC show, beyond a reasonable doubt, when  
18 and where and how those benefits will be forthcoming and in  
19 what quantities? Well, not really. The Commission  
20 acknowledged that the results will vary from region to region,  
21 perhaps company to company.

22           This is, after all, a national program. It believed  
23 that the benefits, however, would be universal and, I think, it  
24 says that expressly in Order 2000. The Commission believed  
25 and, I believe, continues to believe that those benefits can be

1 realized and realized in Florida and elsewhere.

2 I would conclude by noting, as I have earlier in my  
3 testimony, that the Commission appears to me to be more  
4 resolute than ever to make RTOs happen. And so, in my view,  
5 this horse is out of the barn. I am, however, very, very  
6 appreciative of the fact that the Florida Commission's taking  
7 such a hard look at this matter.

8 I'll stop there.

9 CHAIRMAN JACOBS: Without objection, we will enter  
10 Chairman Hoecker's testimony into the record as though read.

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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

<b>In re: Review of Florida Power &amp; 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.</b>	<b>DOCKET NO. 001148-EI</b>
<b>In re: Review of Tampa Electric Company and impact of its participation in GridFlorida, a Florida Transmission Company, on TECO's retail ratepayers.</b>	<b>DOCKET NO. 010577-EI</b>
<b>In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power &amp; Light.</b>	<b>DOCKET NO. 000824-EI</b> <b>FILED: August 15, 2001</b>

**TESTIMONY OF  
JAMES J. HOECKER**

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

2 A. My name is James J. Hoecker. I am a partner in the law firm of Swidler Berlin  
3 Shereff Friedman, LLP.

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

6 A. I was a Commissioner at the Federal Energy Regulatory Commission ("FERC" or  
7 "the Commission") from 1993-2001. I was Chairman of FERC from June 1997 to  
8 until January 2001, and I was Chairman of FERC at the time of the issuance of  
9 Order No. 2000. (FERC Stats & Regs. ¶ 31,089 (2000)). I was also a  
10 Commissioner when FERC issued Order No. 888, which requires open and non-  
11 discriminatory access to electric transmission facilities and services. (FERC  
12 Stats. & Regs. ¶ 31,036 (1996)). Although adopted before I joined the  
13 Commission, Order No. 636, which required interstate natural gas pipelines to  
14 provide open and non-discriminatory access to transportation facilities and

1 services, was largely implemented during the early months of my tenure at FERC.  
2 I am the first former Commission staff member to serve as a Commissioner and as  
3 Chairman. In the early 1980s, I served as Assistant General Counsel for  
4 Rulemaking and Legislative Analysis, Assistant General Counsel for Gas and Oil  
5 Litigation, a personal advisor to two Commissioners, and in other posts. My  
6 career in energy regulatory law, both in and out of government, extends back to  
7 1979.

8  
9 **I. INTRODUCTION**

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

11 A. I am presenting testimony on behalf of Florida Power and Light Company  
12 (“FPL”), Florida Power Corporation (“FPC”), and Tampa Electric Company  
13 (“TECO”) (the "Joint Applicants") with respect to two issues. First, I explain that  
14 it is FERC's clearly stated policy that all transmission-owning utilities should join  
15 a Regional Transmission Organization (“RTO”), and that FERC is prepared to  
16 take significant actions to enforce that policy. Second, I describe the various  
17 benefits that FERC anticipates will result from the formation of RTOs in every  
18 region of the country and the operation of transmission systems independent from  
19 the interests of market participants in the business.

20  
21 I wish to make clear that, given my prior position at FERC, restrictions under  
22 Federal law and the District of Columbia Rules of Professional Responsibility  
23 necessarily limit the scope of my testimony. I will not testify on any aspect of the  
24 Joint Applicant’s Grid Florida filing before the Commission. (Docket Nos. RT01-  
25 67-000 and RT01-67-001).

1 **II. FERC'S POLICY RATIONALE FOR RTOs**

2 **A. BACKGROUND**

3 **Q. What were the reasons for FERC's issuance of Order No. 2000?**

4 A. Order No. 2000 was the next logical step to achieving the policy goals that the  
5 Commission set in 1996 when it issued Order No. 888, which required all FERC-  
6 jurisdictional transmission owners to file open access transmission tariffs to  
7 improve efficiency and promote competition among energy suppliers. In  
8 implementing the Energy Policy Act of 1992 ("EPAAct"), the Commission had  
9 made its overall approach clear: "Our goal is to facilitate the development of  
10 competitively priced generation supply options, and to ensure the wholesale  
11 purchasers of electric energy can reach alternative power suppliers and vice  
12 versa." (Recovery of Stranded Costs by Public Utilities and Transmitting  
13 Utilities, FERC Stats. and Regs. ¶ 32,507 at 32,866 [Order No. 888 NOPR]). In  
14 handing down Order No. 888, I believe FERC was responding to the pro-  
15 competitive spirit of EPAAct and to the major changes that were taking place in the  
16 electric industry both as a result of the Public Utility Regulatory Policy Act of  
17 1978 and new market realities. Those changes include the advent of independent  
18 or non-utility generation, the growing number of bulk power transactions, and the  
19 increased use of gas turbine technology. Moreover, I believe the Commission was  
20 responding to what it believed was a growing public policy and industry  
21 preference for more energy competition and less regulatory intrusion into energy  
22 markets. Order No. 888 was a recognition that more efficient use of existing



1 transmission assets would be critically important to the operational and financial  
2 health of the industry and consequently to consumers.

3  
4 In addition, there was important FERC precedent for the 1996 open access policy  
5 initiative. FERC had already issued Order Nos. 436, 500, and 636, paving the  
6 way for open-access and competition in the natural gas pipeline industry. Both  
7 pipelines and transmission wires form networks of facilities that are essential to  
8 the interstate commerce in energy. As I later describe more fully, by 1996 the  
9 Commission had separated the suppliers of gas transportation services from the  
10 sellers and traders of the commodity. It had already dealt with many of the  
11 market power, stranded costs, and transparency issues that arise as an energy  
12 industry moves towards greater competition. Prior to No. 888, reform of the gas  
13 pipeline industry had been successfully completed.

14  
15 Order No. 888 was intended, in part, to address the fact that some transmission-  
16 owning utilities could either deny service to third party users or treat third party  
17 users of transmission differently than when those utilities transmitted their own  
18 generation, a source of discrimination FERC had until then addressed on a case-  
19 by-case basis. (See *e.g.*, *American Electric Power*, 64 FERC ¶ 61,279, *reh'g*  
20 *granted*, 67 FERC ¶ 61,168, *clarified*, 67 FERC ¶ 61,317). By requiring all  
21 utilities to separately offer and price transmission services, so-called “functional  
22 unbundling,” announcing that transmission owners would have to receive service  
23 on the same terms as they offered to others, and issuing a standardized *pro forma*

1 OATT establishing non-discriminatory terms and conditions of service, FERC  
2 was showing its determination to bring fundamental change to the wholesale  
3 portion of the power industry. FERC was persuaded that competitive generation  
4 markets would bring tangible benefits to consumers. In 1996, FERC estimated  
5 those benefits to be between \$3.76 billion and \$5.37 billion per year, nationally.  
6 (Order No. 888 at 31,652).

7  
8 FERC became disappointed with the results of Order No. 888, however. In 1999,  
9 FERC concluded that remedies and guidance established in Order No. 888 were  
10 not sufficient, in and of themselves, to create the more competitive markets that  
11 FERC had anticipated. In formulating Order No. 2000, FERC reviewed evidence  
12 that open access to the transmission grid, as owned and managed by vertically  
13 integrated utilities, as a whole was not attaining the kind of efficiency, fairness,  
14 and reliable operation of the system that was contemplated. (Order No. 2000 at  
15 30,992).

16  
17 FERC found that there were two broad categories of transmission-related  
18 impediments to a more competitive wholesale electric market: (1) engineering  
19 and economic inefficiencies inherent in the current operation and expansion of the  
20 transmission grid, and (2) continuing opportunities for transmission owners to  
21 unduly discriminate in the operation of their transmission systems so as to favor  
22 their own or their affiliates' power marketing activities. (Order No. 2000 at  
23 31,003). Two prominently featured examples of the transmission related

1 impediments mentioned by FERC were the potential for vertical market power  
2 abuse and the existence of pancaked rates.

3  
4 FERC therefore concluded that new entities that would have the authority to  
5 control transmission operations within an entire region of the United States would  
6 “(1) improve efficiencies in transmission grid management; (2) improve grid  
7 reliability; (3) remove remaining opportunities for discriminatory transmission  
8 practices; (4) improve market performance; and (5) facilitate lighter handed  
9 regulation.” (Order No. 2000 at 30,993). These remain the objectives of the  
10 Commission in promoting RTOs.

11  
12 **Q. Why was FERC concerned about the potential for abuses of vertical market**  
13 **power?**

14 A. Many transmission owners not only provide transmission services, but also own  
15 generation and serve load. They therefore have incentives to participate in the  
16 bulk power markets in ways that primarily benefit their own power sales and  
17 native load customers over those of others. Even though Order No. 888 required  
18 every transmission owner to file an OATT with specified terms and conditions,  
19 transmission owners retained discretion as to how such service was to be  
20 provided. FERC noted in its Notice of Proposed Rulemaking (“NOPR”) for  
21 Order No. 2000 and in the Final Rule, that it is “[t]he inherent characteristic of  
22 monopolists” to act in their own self-interest when possible. (Order No. 2000 at  
23 31,004). FERC explained the shortcoming of Order No. 888 by stating that,

1 “functional unbundling does not change the incentives of vertically integrated  
2 utilities to use their transmission assets to favor their own generation... .” *Id.*

3  
4 FERC also noted that transmission owners make decisions that can have a  
5 significant impact on transmission service availability, such as the calculation of  
6 available transfer capability ("ATC") and total transfer capability ("TTC"). FERC  
7 explained that actual discrimination may not be detected in a what FERC called a  
8 “non-transparent” market and, even when possible instances of discrimination can  
9 be identified, it is difficult if not impossible to determine whether the behavior in  
10 question was motivated by competitive interests or was an impartial operating or  
11 technical requirement. (Order No. 2000 at 31,005). Such lack of transparency  
12 gave transmission customers reason to believe that, whenever they were denied  
13 transmission service, capacity was probably being used to transmit the energy of  
14 the transmission owning utility. FERC soon received complaints from third party  
15 generators in unprecedented numbers, alleging that transmission owners were  
16 discriminating in favor of their own bulk power sales. These complaints were  
17 difficult for FERC to evaluate, irrespective of the merits. Furthermore, even if  
18 there was no actual discrimination, FERC was concerned that the perception that  
19 transmission owners were favoring themselves would foster distrust of markets,  
20 discourage investment in electric markets, and reduce the benefits of competition.  
21 The various comments that FERC received in response to the NOPR confirmed a  
22 widespread perception of discrimination.

23

1 **Q. Was Order No. 2000 based on findings of actual discrimination by**  
2 **transmission owners against other users of their transmission assets? To**  
3 **apply such generic policies, must FERC find discrimination in fact?**

4 A. FERC's actions in Order Nos. 888 and 2000 were based on its broad  
5 understanding of developments in the electric power business as well as specific  
6 instances where discrimination occurred or was alleged to have occurred. In  
7 addition to promoting economic efficiency and increasing supply options, the  
8 Commission wanted to diminish the opportunities for discrimination in the  
9 increasingly competitive wholesale power market. As I mentioned, it had done  
10 something similar in Order No. 436, by "unbundling" all interstate pipeline  
11 services with the expectation that this would promote the interest of competitors  
12 who had to rely on existing pipelines for transportation to reach end use markets.  
13 In approving FERC's actions, the Court of Appeals noted that the Natural Gas Act  
14 – a statute very similar to and contemporaneous with the Federal Power Act –  
15 "fairly bristles with concern for undue discrimination." (*Associated Gas*  
16 *Distributors v. F.E.R.C.*, 824 F.2d 981, 998 (D.C.Cir. 1987) ("Associated Gas")).  
17 In other words, the Commission has broad discretion to address undue  
18 discrimination, provided it engages in reasoned decision making.

19

20 **Q. What was FERC's concern about pancaked rates?**

21 A. Under Order No. 888, each transmission owner established its own transmission  
22 rates. If a buyer and seller of power are far apart and the transmission component  
23 of the transaction involves using the systems of more than one transmission

1 owner, the transmission customer typically pays an additional transmission rate  
2 for each system the transaction crosses. When more than one transmission rate is  
3 paid for a single bulk power transaction, it is said that the rates are “pancaked.”  
4

5 The problem arises because transmission system ownership is tied to historic  
6 utility service territories. The result is a patchwork of different rates and  
7 requirements for systems located in a single state or region. As a consequence, a  
8 regional transaction that otherwise would be economic can be rendered  
9 uneconomic, not to mention less efficient, by the imposition of pancaked rates. It  
10 follows, on the other hand, that if a single transmission rate were developed for an  
11 entire region, the resulting rate could be significantly lower than the combination  
12 of the pancaked rates of the individual system owners of that region. To the  
13 extent that this difference in transmission rates makes a transaction more or less  
14 attractive, it will seriously affect whether purchasers of power have real  
15 competitive supply options or not. Consequently, the elimination of pancaked  
16 rates could lead to greater access to the generation resources in a region.  
17

18 **Q. Are there any other reasons listed by FERC for the issuance of Order No.**  
19 **2000?**

20 A. There are several other reasons and anticipated benefits in addition to curbing  
21 market power and eliminating pancaked rates, including: (1) more efficient  
22 planning on a regional basis; (2) the ability to improve regional reliability through  
23 regional operations; (3) improved emergency response; and (4) more efficient

1 treatment of loop flows. (Order No. 2000 at 31,003 – 31,028). I describe these  
2 benefits in greater detail later in this testimony.

3

4 **Q. Can you identify any other factors that contributed to the issuance of Order**  
5 **No. 2000, which are not specifically mentioned by FERC in that Order?**

6 A. Since the 1980s, the Commission has been a catalyst for reform in another  
7 network industry. The interstate pipeline system suffered from inefficiencies  
8 similar to those I described as affecting electric transmission. The Commission  
9 “unbundled” the gas transportation function from the sales of gas itself in an  
10 effort create a competitive gas market to flow through to customers the benefits of  
11 wellhead price decontrol. A series of FERC orders in this area created an open,  
12 transparent, liquid, and commercially fair interstate gas market place.

13

14 The first such order was Order No. 436, issued in 1985. It established an open  
15 access regime that allowed each interstate natural gas pipeline to develop its own  
16 open access tariff. Compliance with this order was voluntary. Not surprisingly,  
17 each pipeline filed a tariff with provisions that were usually inconsistent with  
18 other pipeline tariffs, which failed to enhance the ability to move natural gas over  
19 multiple pipelines. Order No. 436 was therefore followed by a series of  
20 subsequent orders that established standard practices across multiple systems,  
21 making transactions more competitive and driving down prices of the commodity.  
22 Although Order No. 436 was voluntary, the industry recognized the  
23 Commission’s direction and swiftly implemented the Order. The process of

1 market and policy evolution has nevertheless continued through Orders Nos. 636  
2 and 637, the latter issued in 2000.

3  
4 The Commission's decision in Order No. 888 to develop a *pro forma* OATT for  
5 all transmission owners to apply was a response to the various kinds of problems  
6 and the lack of uniformity that it encountered in reforming the pipeline industry.  
7 However, the electric transmission grid is even more highly interconnected than  
8 the interstate pipeline system and FERC was therefore correctly concerned that  
9 variations in utility tariffs would make it extremely difficult for market  
10 participants to engage in transactions using more than one system. The OATT  
11 was a way to minimize those variations and deviations, which were permitted  
12 only for terms of service that were deemed superior to the OATT. On the other  
13 hand, such uniformity may have come at the expense of innovation, locking in  
14 approaches to issues such as congestion management, capacity allocation and  
15 rates that were often not optimal. In my view, RTOs can once again unlock the  
16 creative process and give stakeholders a way to find the most efficient and  
17 appropriate solutions for each region, while still maintaining efficiency and non-  
18 discrimination.

19  
20 Under Order No. 2000, RTOs will provide transmission service over a large  
21 region. On that basis, the Commission has said it will allow RTOs to develop  
22 their own innovative solutions to various problems rather than either mandating a  
23 single approach or locking in the initial RTO characteristics and functions for the



1 future. Even if different RTOs have different approaches to the same issue, the  
2 regional scope of such RTOs will permit a uniform approach to transmission  
3 service within that region, thereby facilitating the development of large bulk  
4 power markets that address the new market realities which often prove hard to  
5 predict. This flexibility, in combination with the consolidation of transmission  
6 operations within a region, intended ultimately to benefit consumers, including  
7 those who reside in Florida.

8  
9 **III. FERC'S POLICY IS THAT ALL TRANSMISSION OWNERS IN THE**  
10 **UNITED STATES SHOULD JOIN AN RTO**

11 **Q. What is FERC's policy with respect to transmission owner participation in**  
12 **RTOs?**

13 A. FERC stated in Order No. 2000 that its "objective . . . is for all transmission-  
14 owning utilities to place their transmission facilities under the control of an RTO  
15 in a timely manner." (Order No. 2000 at 30,993)(emphasis added). In its Order  
16 on Rehearing of this issue , FERC was even more forceful, stating that its  
17 "objective in promulgating Order No. 2000 was to have all transmission-owning  
18 entities in the Nation, including non-public utilities, place their facilities under the  
19 control of appropriate RTOs in a timely manner." (Order No. 2000-A FERC  
20 Stats. & Regs. ¶ 31,092 at 31,355 (2000)) (emphasis added).

21  
22 FERC established a mandatory process that all jurisdictional utilities were  
23 required to follow. Under 18 C.F.R. § 35.34(c), all utilities were required to make

1 a filing on October 16, 2000, in which they either submitted a proposal to join an  
2 RTO or made an "alternative filing" pursuant to 18 C.F.R. § 35.34(g), which  
3 requires the utility to provide:

4  
5 (1) A description of any efforts made by that public utility to participate  
6 in a Regional Transmission Organization;

7  
8 (2) A detailed explanation of the economic, operational, commercial,  
9 regulatory or other reasons the public utility has not made a filing to  
10 participate in a Regional Transmission Organization, including  
11 identification of any existing obstacles to participation in a Regional  
12 Transmission Organization; and

13  
14 (3) The specific plans, if any, the public utility has for further work  
15 toward participation in a Regional Transmission Organization, a proposed  
16 timetable for such activity, an explanation of efforts made to include  
17 public power entities in the proposed Regional Transmission  
18 Organization, and any factors (including any law, rule or regulation) that  
19 may affect the public utility's ability or decision to participate in a  
20 Regional Transmission Organization.

21  
22 As the above language makes clear, FERC did not intend for utilities to simply be  
23 able to decide to opt out of RTO participation. Instead, all utilities were required  
24 to describe the specific obstacles to their participation and their plans for

1 overcoming those obstacles. This requirement was clearly intended to further  
 2 FERC's policy goal that all transmission owners participate in an RTO.

3  
 4 To my knowledge, neither the Commission nor any individual Commissioner has  
 5 wavered from that fundamental message since the adoption of Order No. 2000  
 6 nearly two years ago. However, the Commission's continued, and perhaps  
 7 heightened, commitment to full transmission owner participation in RTOs is  
 8 reflected in the RTO orders issued on July 12, 2001 ("July Orders") in which  
 9 FERC reiterated its goal of establishing RTOs, and then went a step further by  
 10 deciding that there should be only a few large regional RTOs in the country.  
 11 (Docket Nos. RT01-35-001, RT01-95-000, RT01-2-000, RT01-34-000, et al.,  
 12 RT01-74-002, RT01-77-000, RT01-86-000, et al., RT01-88-000, et al., RT01-98-  
 13 000, RT01-99-000, RT01-100-000). For instance, an Order Initiating Mediation  
 14 states that it is necessary to form a single large southeastern RTO. (96 FERC ¶  
 15 61,066 at 61,285) ("Southeastern Mediation Order"). Commissioner William  
 16 Massey, in a concurring opinion notes that "...the Commission adopts as its firm  
 17 objective a single RTO for the Northeast, one for the Southeast, one for the  
 18 Midwest, and one for the West. We state this objective for four RTOs covering  
 19 the entire nation." *Id.*

20  
 21 **Q. But didn't FERC state in Order No. 2000 that it was adopting a "voluntary**  
 22 **approach to RTO formation"?**

23 A. Yes, and it did that. The question that FERC had to address was how best to  
 24 achieve its goal of putting all transmission facilities under the control of an RTO.  
 25 In the past, when FERC has mandated major industry restructuring --for example,

1 the requirement that both natural gas and electric companies provide open access  
2 to pipelines and transmission lines, respectively -- its authority to issue such a  
3 generic ruling has been challenged and the validity of the entire program,  
4 although later affirmed, left up in the air pending a ruling on appeal. Given that  
5 the Federal Power Act fails to specifically mention RTOs and that its RTO  
6 initiative would probably lead to litigation, the Commission decided to take a  
7 route other than a mandate. It stated: "we want the industry to focus its efforts on  
8 the potential benefits of RTO formation and how best to achieve them, rather than  
9 on a non-productive challenge to our legal authority to mandate RTO  
10 participation." (Order No. 2000 at 31,033). In Order No. 2000-A, however,  
11 FERC made clear that it did not think that its "voluntary approach" meant that  
12 utilities would not ultimately join an RTO, explaining "[t]hat we have not chosen  
13 to mandate RTO participation does not mean that we have avoided our obligation  
14 to address the impediments to competition that we have identified; it merely  
15 means that we have chosen a method to address those impediments that we  
16 believe will efficiently achieve the results we desire." (Order No. 2000-A at  
17 31,358) (emphasis added).

18  
19 **Q. If RTOs fail to form as the Commission expects or desires, do you believe the**  
20 **agency will change course, either by penalizing latecomers or simply**  
21 **mandating compliance with Order No. 2000?**

22 A. Yes. While I cannot predict what FERC will do in this regard, there are  
23 increasing indications that the Commission is growing impatient on this issue.  
24 The series of July Orders I mentioned previously strongly endorses the concept  
25 that as few as four RTOs should administer the Nation's transmission system,

1 even though no current proposal has that scope. These orders clearly suggest a  
2 more prescriptive attitude toward RTO formation and less willingness to defer to  
3 stakeholders and RTO proponents with regard to the structure, organization, or  
4 geographic scope of RTOs. Moreover, the Commission's orders signal that the  
5 flexibility associated with Order No. 2000 is diminishing, that rate incentives may  
6 meet with a cooler reception, at least until an acceptable RTO is formed, and that  
7 existing RTOs must get independent boards in place more quickly. The Orders  
8 also make clear that applicants might receive extra time to organize these large  
9 RTOs, past the December 15, 2001 deadline for operation set forth in Order No.  
10 2000.

11  
12 I think the Florida Public Service Commission staff hit the nail on the head in its  
13 September 2000 Policy Analysis Briefing Paper: The Viability of an RTO in  
14 Florida. At page 16, it states:

15  
16 While Order No. 2000 stated that RTO development is voluntary in  
17 nature, in reality FERC has made it clear that it expects all transmission-  
18 owning utilities to comply. Although the FERC lacks the direct legal  
19 authority to mandate participation in RTOs, it has stated its intent to use its  
20 regulatory authority in other areas ...to force compliance with Order No.  
21 2000.

22  
23 I agree with the Florida staff's view of FERC's intentions, even if I might  
24 disagree with its analysis of FERC's authority in this case. In any event, the  
25 consequences of refusal to comply with the Commission's policy and a reluctance

1 to participate in an RTO may go well beyond loss of the promised incentive rate  
2 treatments or reduction of the flexibility and deference that Order No. 2000 touted  
3 as part of RTO formation. Strategic transactions involving a utility that is not part  
4 of an RTO process will almost certainly face an uphill battle for approval at  
5 FERC, even if they do not involve RTO matters .

6  
7 It is a useful reminder that Order No. 2000 states that, notwithstanding the  
8 importance of voluntary RTO formation, FERC does not preclude “the exercise of  
9 any of our authorities under the FPA [Federal Power Act] to order remedies to  
10 address undue discrimination or the exercise of market power, including the  
11 remedy of requiring participation in an RTO, where supported by the record.”  
12 (Order No. 2000 at 31,028). Thus, FERC explicitly left open the possibility that it  
13 might order a utility to join an RTO if the utility declined to file its own proposal.  
14 Moreover, FERC indicated that it might resort to penalties on non-compliant  
15 utilities, including denial of Section 203 approval for dispositions of assets or  
16 revocation of market-based rate authority.

17  
18 **Q. Has FERC ever established such a voluntary program that ultimately**  
19 **became mandatory in effect or in law?**

20 A. Yes. Order No. 436, which I described briefly above was described as a  
21 “voluntary” program by FERC. In that Order, FERC made clear that if a pipeline  
22 wanted to take advantage of a blanket certification for transportation service and  
23 all the accompanying benefits like rate flexibility, it would have to commit to  
24 provide transportation on a non-discriminatory basis under the new, voluntary  
25 rules. The Court of Appeals for the District of Columbia Circuit noted that this

1 “voluntary” program was structured so that any company not receiving the  
2 blanket certificate would soon be uncompetitive and a candidate for bankruptcy.  
3 (*Associated Gas* at 1024). By the end of the decade, nearly all pipelines had filed  
4 for a blanket certificate.

5  
6 **Q. In advancing RTOs or similar policies, does the Commission take into**  
7 **account the different characteristics of individual utilities’ transmission**  
8 **systems, the geographic limits on transmission operations, or the nature and**  
9 **diversity generation in various states and regions?**

10 A. Yes. One of the goals of Order No. 2000 was to recognize and, if possible, to  
11 accommodate the differences among states, markets, and transmission systems.  
12 Both in its NOPR and in the Final Rule, the Commission rejected a “cookie  
13 cutter” approach to RTO formation. It stated that RTO boundaries should:

14 [F]acilitate essential RTO functions and goals, recognize trading patterns,  
15 mitigate the exercise of market power, ... not necessarily split existing  
16 control areas or existing regional transmission entities, encompass  
17 contiguous geographic areas and highly interconnected portions of the grid  
18 and take into account useful existing boundaries (such as NERC regions)  
19 and international boundaries.  
20  
21

22 (Order No. 2000 at 31,076-31,077). Recognizing that these factors would vary  
23 throughout the country, the Commission declined to adopt a one-size-fits-all  
24 approach regarding the necessary size and configuration of RTOs.

1 Having said that, I think the Commission believed, and still believes, that electric  
2 systems tend to be both highly integrated and operationally similar over several  
3 states, including some states that have unusual characteristics. I believe FERC  
4 has heard all of the conceivable arguments about the uniqueness of individual  
5 companies and regions and recognizes that all regulators, particularly at the  
6 federal level, must certainly take into account those differences in setting policy.  
7 However, FERC will also tend to favor relatively more uniform development of  
8 RTO characteristics and functions for all bulk power markets, at least across as  
9 many service territories as comprise a “natural market,” a prominent concept in  
10 the July Orders. Florida arguably constitutes such a market.

11

12 **Q. In your estimation, is FERC predisposed against single-state RTOs?**

13

14 A. FERC has made it clear that it favors RTOs encompassing large regions and is  
15 considering a Southeast RTO that eventually could include Florida. In its July  
16 Orders, it has reemphasized that bigger is better when it comes to RTOs.  
17 Nevertheless, FERC has already granted provisional approval to the GridFlorida  
18 RTO, which lies entirely within the state. Moreover, the July Orders encourage  
19 but do not require GridFlorida’s participation in the Southeastern RTO mediation  
20 process. Florida’s geographic circumstances and the degree of its  
21 interconnectedness with bulk power markets elsewhere in the Southeast will be  
22 important factors in any FERC decision to continue to support a single state RTO  
23 for Florida. However, I also believe that FERC’s continued receptivity to that  
24 final outcome will depend in part upon the prudence determination in this case



1 and the Florida Commission's interest and support in moving forward with RTO  
2 formation.

3

4 **Q. In light of FERC's desire to see RTOs administer all transmission assets,**  
5 **what benefits accrue to states and utilities that actively implement RTOs**  
6 **before they might otherwise be compelled to do so?**

7 A. In my view, FERC's policy is that the increased competition fostered by  
8 establishing RTOs will serve consumer interests everywhere, if these new  
9 institutions are properly implemented consistent with FERC guidelines. I have  
10 always viewed RTOs as a necessary basis for increasing wholesale electricity  
11 competition as well as an important contributor to efficient system operations. I  
12 think that the FERC still shares this view. The Commission is therefore likely to  
13 view any unnecessary delays in RTO formation as actually denying consumers  
14 the associated net benefits. It is difficult to predict whether FERC's impatience in  
15 such circumstances might incline it to be more prescriptive and less deferential to  
16 states and stakeholders, but that is a possibility.

17

18 As I stated before, delays in Order No. 2000 implementation may also create  
19 regulatory obstacles for utilities seeking FERC approvals. Moreover, delay may  
20 cost those companies the incentive ratemaking treatment the Commission  
21 promised transmission owners in Order No. 2000, which were designed to  
22 encourage new investment in the system and higher levels of efficiency and  
23 productivity.

1 **Q. How have public utilities responded to Order No. 2000?**

2 A. Based on a review of FERC filings, it appears that the only FERC-jurisdictional  
3 public utilities that have indicated that they do not intend to join an RTO are  
4 certain electric cooperatives and the Northern Maine Independent System  
5 Administrator, which administers the transmission systems of two utilities in  
6 northern Maine. The overwhelming majority of the investor-owned utilities have  
7 filed to join an RTO, however. As of this date, at least 97 initial RTO filings have  
8 been made with FERC. This is in addition to some early RTO filings made prior  
9 to the issuance of Order No. 2000. This response by transmission owning utilities  
10 is not surprising, given FERC's clearly articulated policy and the Order No. 2000  
11 framework, which prescribed dates for an initial filing with FERC and for final  
12 compliance with that Order.

13

14 **IV. BENEFITS OF RTO PARTICIPATION**

15 **Q. What benefits did FERC see resulting from RTO participation?**

16 A. As discussed above, one of the primary goals of Order No. 2000 was to put the  
17 control over transmission facilities into an entity that is independent of all market  
18 participants. FERC believed that this would eliminate even the perception that  
19 transmission is being operated in a discriminatory fashion. RTOs will support  
20 real wholesale competition by expanding the market and reducing barriers to  
21 economical transactions. That means more supply options and from that will  
22 come lower rates and sustained reliability at the bulk power level. Those benefits  
23 derive from a reduction of pancaked rates and limitations on the ability of

1 generators to exercise market power. In addition, RTOs mean more efficient  
2 planning on a regional basis, the ability to improve regional reliability through  
3 regional operations, improved emergency response, and more efficient treatment  
4 of loop flows.

5

6 **Q. What are the benefits of an RTO regarding transmission planning?**

7 A. FERC believes that a single entity coordinating transmission planning and  
8 expansion within a region will result in the least cost outcome for such planning  
9 and expansion. The rationale behind this position is that in a situation where there  
10 are multiple transmission systems, one system may make transmission  
11 investments without regard for the planned development or constraints in other  
12 systems. (Order No. 2000 at 31,164). A single entity charged with transmission  
13 in a Florida RTO, for example, would view transmission constraints in a much  
14 larger context and with more complete information. Whereas a single utility  
15 might determine that additional generation was needed to provide energy to a  
16 high-demand area, an RTO may look at the same situation and conclude that it is  
17 more cost-effective to build transmission from one locale with a surplus of  
18 generation to the area experiencing a deficit.

19

20 **Q. How does FERC perceive the benefits of RTOs regarding grid reliability?**

21 A. The reliability of the transmission grid is enhanced by RTOs in several ways.  
22 Short-term reliability will be enhanced by a centralization of several transmission  
23 functions. RTOs will have the exclusive authority for receiving, confirming, and

1 implementing all interchange schedules. RTOs will have the right to order  
2 redispatch of any generator if it is necessary for reliability purposes. In addition,  
3 RTOs will have the authority to approve or disapprove scheduled outages of all of  
4 the transmission that it operates. An RTO will assess whether NERC regional  
5 council standards affect reliability and be responsible for informing FERC.  
6 (Order No. 2000 at 31,092, 31,104-31,106).

7  
8 Short-term reliability will also benefit from an RTO's ability to move  
9 transmission anywhere on its system with greater ease and at a lower transaction  
10 cost than if several entities were involved. As I explained above, if one area of  
11 the state is experiencing an energy deficit, an RTO will in the short-term, more  
12 efficiently provide that load with energy. In the long-term, such loads will benefit  
13 from the greater scope of the RTO's transmission planning.

14  
15 **Q. How does FERC perceive the benefits of RTOs regarding emergency**  
16 **response?**

17 A. An RTO is better suited to responding to emergency outages due to the fact that it  
18 has responsibility for both short-term reliability and long-term planning. In  
19 addition, the RTO's role as provider of last resort of ancillary services, its role in  
20 designing programs to manage and eliminate congestion, and the scope of the  
21 RTO allow it to more effectively anticipate potential outages. For example, an  
22 RTO would foster a much easier and cost-effective transfer of power across the  
23 state from an area with surplus generation to an area experiencing an unexpected

1 outage. The RTO's role as transmission planner for an entire region and the  
2 RTO's role in assuring short-term reliability and ancillary services, as described  
3 above, will make it more likely that path constraints are addressed and that  
4 adequate reserves are scheduled and on-line, ensuring that transmission capacity  
5 is available to ensure that energy can get to areas that require it unexpectedly.

6

7 **Q. What are the benefits of RTOs with regard to efficient treatment of loop**  
8 **flows?**

9 A. While Florida's loop flow problems may not be as serious today as in other  
10 regions, control by a single entity of transmission over multiple service territories,  
11 for example the entire Florida transmission system, can eliminate the adverse  
12 effects of parallel path flows. (Order No. 2000 at 31,130). If all power flows  
13 within the system are centrally managed and controlled under a single set of  
14 protocols and there were no separate paths over which power could flow, loop  
15 flow problems created even by transactions outside the controlled system would  
16 be minimized or eliminated. As a general matter, central control and management  
17 power flows on the grid results in more reliable operations.

18

19 **Q. The benefits that you listed relate in part to creating competition among**  
20 **suppliers in the wholesale market. Can such benefits be obtained in Florida,**  
21 **given the effect of the Florida Electric Power Plant Siting Act on merchant**  
22 **plants?**

1 A. Although I am not an expert on Florida law, I understand that the Siting Act does  
2 not absolutely bar the construction of new non-utility generation plants in Florida.  
3 The Siting Act provides for a determination of need for the construction of  
4 generating plants with a steam cycle greater than 75 MW in capacity. Under the  
5 Siting Act, such plants must be fully committed to Florida consumers who  
6 purchase power at retail rates. However, as Mr. Naeve testifies, plants with a  
7 steam cycle below 75 MW in size and any size plant that does not have a steam  
8 cycle, such as a simple cycle peaking plant, are exempt from the requirement to  
9 obtain a need certificate under the Siting Act. Such plants, therefore, do not need  
10 to be owned by or dedicated to a load serving entity.

11

12 Even if it were correct that there may be fewer merchant plants in Florida due to  
13 the Siting Act, the creation of an RTO still would provide significant benefits in  
14 improving the efficiency of Florida wholesale markets. There are a large number  
15 of bulk power transactions in Florida today, involving not only the Joint  
16 Applicants but also cooperatives and municipal utilities. Currently in Florida,  
17 there are multiple transmission systems, operating within several NERC control  
18 areas. Administration of Florida's current patch-work transmission system by a  
19 single RTO will eliminate pancaked rates, and improve efficiency in congestion  
20 management and capacity allocation. More efficient transmission access will  
21 permit more efficient bulk power transactions, for both existing in-state  
22 generation and out-of-state producers, which should result in lower power costs  
23 for consumers. Administration of these systems by one independent entity will

1 also result in many of the RTO benefits I described above, which do not depend  
2 on the unlimited construction of merchant generation in the State of Florida to  
3 yield large benefits for consumers. For example, if the Florida grid were  
4 administered by an RTO, no longer would different companies be engaged in  
5 developing their own expansion plans for only discrete parts of the grid. Rather,  
6 an RTO will be able to look at the entire grid, and in cooperation with state  
7 officials, develop both short and long-term transmission planning solutions that  
8 result in the most efficient transmission and generation expansions. In turn,  
9 developers of new generation will be able to anticipate where in the state it would  
10 make the most sense to locate new generation projects. These RTO-related  
11 benefits are, in my view, entirely consistent with the supply adequacy, service  
12 reliability, and environmental mitigation purposes of the Siting Act, as described  
13 by the Florida Supreme Court. *Nassau Power Corp. v. Deason*, 641 S.2d 396,  
14 398-399 (Fla. 1994).

15  
16 Although there appears to be a significant amount of new generation planned or  
17 under construction in Florida, both by independent power producers and public  
18 utilities, the development of an RTO in Florida can also provide Florida  
19 consumers with greater access to out-of-state power sources. If a relatively large  
20 amount of economical surplus generation materializes elsewhere within the reach  
21 of the Florida system, RTOs can facilitate access to that competitive source of  
22 generation for Florida consumers.

23

1 **Q. Are there any other benefits that you see from an RTO?**

2 A. As I stated above, FERC has indicated that it will be much more receptive to  
3 special rate and service innovation from RTOs than it has been to deviations from  
4 the Order No. 888 *pro forma* tariff by individual transmission owners. I see no  
5 reason why innovation should be any less important for Florida than for other  
6 states and regions. It is difficult to foresee exactly what innovations will arise in  
7 the future, but the ability to seize the opportunities created by new technologies,  
8 rapidly changing economic realities and demographic shifts, or new industry  
9 requirements is an important benefit.

10

11 **Q. Have you, or has FERC, calculated the approximate dollar benefit to Florida**  
12 **from an RTO?**

13 A. Such benefits are extremely hard to predict and they ultimately depend on many  
14 variables, including how well the wholesale market is finally administered. The  
15 net benefits may also reach different levels in different states and regions. In  
16 addition, costs may exceed the benefits in the early months or years in some  
17 cases. So, there are many uncertainties and the FERC has acknowledged them.  
18 Overall, however, it envisioned in both Order Nos. 888 and 2000 a major  
19 efficiency gain of several billion dollars annually from competition, transmission  
20 access, and unbundling, according to Order Nos. 888 and 2000. RTOs are a  
21 sound way of achieving the anticipated end results, in my view.

22



1 **Q. Do the benefits that you have identified outweigh the costs of RTO**  
2 **formation?**

3 A. Although there is no denying that there can be significant costs to RTO formation  
4 in the short run, I believe that the benefits of RTOs should clearly outweigh these  
5 costs in the long run. I do not deny that these benefits can be very difficult to  
6 quantify. For example, it is difficult to predict what level of environmental  
7 benefit and what downward pressure on prices may result from better access to  
8 out-of-state generation supplies. Likewise, it is difficult to quantify the benefits  
9 of regional congestion management and elimination of rate pancaking. At the  
10 same time, the wholesale market that depends on an RTO should be more robust  
11 and better able to serve the power needs of the growing number of Floridians in  
12 the future. The success of any market reform, including RTOs, will require  
13 commitment and sustained effort, whether there is one Southeastern RTO of  
14 which Florida is a part or whether a Florida only RTO becomes operational. I  
15 think it is fair to say that FERC believes that efficiency benefits and the benefits  
16 of competitive supply options will be best realized by Floridians under an RTO.

17  
18 To recap, management of the transmission system by a single large RTO will  
19 reduce system costs by allowing the RTO to plan the most efficient transmission  
20 expansion and, will encourage efficient siting of generation throughout the State  
21 of Florida and the Southeastern United States. In addition, an RTO will focus on  
22 reliability by developing region-wide solutions. Greater transparency in the  
23 wholesale market will create confidence in the electric generation sector,

1 encourage sales to, and participation in, the Florida market. In sum, Florida can  
2 expect ever-greater demand for energy over the next few years. If sufficient  
3 economical capacity can be encouraged to develop both in and outside the State  
4 of Florida, Florida consumers stand to benefit from lower rates and greater  
5 reliability. RTOs are a major component of making this happen.

6

7 **Q. California's experience with high prices, blackouts, and state bailouts are an**  
8 **indication of what can happen under a deregulated wholesale power market**  
9 **administered by a FERC-approved grid administrator. Why should Florida**  
10 **open itself to the possibility of such problems?**

11 A. Of course, Florida should not open itself to the kinds of problems experienced in  
12 California since May 2000. It should not select a power market design that relies  
13 exclusively on spot transactions. It should not discourage risk management by  
14 prohibiting bilateral transactions and long-term contracts. Florida needs to be  
15 more vigilant than California when it comes to identifying and meeting the  
16 challenges of demand growth. It should not trap its utilities between a retail rate  
17 freeze, including the obligation to serve, and the price movements in the  
18 wholesale markets. It should not mandate or otherwise sanction generation asset  
19 divestiture without ensuring that utilities have access to capacity adequate to serve  
20 loads. Florida does not seem inclined to implement stakeholder governance of the  
21 kind that proved a serious problem for the California ISO. Of course, California  
22 does not yet participate in a FERC-approved RTO and Florida may therefore  
23 achieve Order No. 2000 compliance before California.

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I believe events in California are distinguishable from what we can expect in Florida and I am sure that the lessons of California are being learned and applied elsewhere. I do not think that California's problems were caused by measures promoted by Order No. 2000.

One final point. Whenever I am asked about what will help make for an effective transition to a restructured electric power industry, I always mention the importance of coordinating state and federal interests, a task that has been especially difficult with respect to California. In my 1996 concurring opinion on Order No. 888, I said something that is still germane: "Perhaps no single issue will influence the success or failure of restructuring as will the capacity of the FERC and state regulators to reach meaningful accommodations as the electric utility industry becomes increasingly subject to market forces."

**V. SUMMARY AND CONCLUSION**

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

A. Yes. There are two main points that I would like for the Florida Commission to take from my testimony.

First, Order No. 2000 established a federal policy that all transmission owners join an RTO. Although Order No. 2000 stops short of mandating that every electric utility join an RTO, all transmission-owing utilities face the substantial

1 likelihood that, if they refuse to affirmatively propose an RTO, they ultimately  
2 would be forced to do so by FERC, either directly or through penalties and  
3 possibly without the flexibility Order No. 2000 allows.

4 Second, there are important benefits from RTO participation that should apply to  
5 the Florida region as a result of the Joint Applicants' decision to propose  
6 GridFlorida. While these benefits are difficult to quantify and will depend in part  
7 on how well any RTO is structured and operated. The Commission views its  
8 experiences in regulating wholesale markets as highly supportive of RTOs.  
9 RTOs, it believes, will provide substantial advances and benefits over the current  
10 balkanized transmission system.

11

12 **Q. Does that conclude your testimony?**

13 A. Yes it does.

1 CHAIRMAN JACOBS: The exhibit was sponsored by  
2 Mr. Naeve, so with that he's available for -- any of the  
3 aligned parties have any cross?

4 MR. LONG: We have no questions, Commissioner.

5 CHAIRMAN JACOBS: Mr. McGlothlin.

6 MR. MCGLOTHLIN: No questions.

7 CHAIRMAN JACOBS: Ms. Paugh.

8 MS. PAUGH: No questions.

9 CHAIRMAN JACOBS: Mr. Howe?

10 MR. HOWE: No questions.

11 CHAIRMAN JACOBS: Mr. Twomey?

12 MR. TWOMEY: Sure, Mr. Chairman. Thank you.

13 CHAIRMAN JACOBS: We were waiting anxiously there.

14 COMMISSIONER JABER: Mr. Twomey, can I ask one  
15 foundation question in the event you and Staff have follow-up  
16 questions?

17 MR. TWOMEY: You can ask as many as you'd like, Madam  
18 Chair.

19 COMMISSIONER JABER: Chairman Hoecker, first, thanks  
20 for being here. I don't know if we should give you credit or  
21 make you take the blame, I'm not sure, but I really am  
22 appreciative that you're here.

23 THE WITNESS: You're welcome on both counts.

24 COMMISSIONER JABER: One of the things that's  
25 weighing on my mind, in addition to what I said earlier, is the

1 notion that if the formation of an RTO is beneficial to the  
2 state, then we're in an awkward position promoting and allowing  
3 GridFlorida because FERC, number one, has actively and publicly  
4 said they want regional RTOs.

5           It's awkward in the sense that the state may be in a  
6 position to move quicker than FERC and implement some form of  
7 RTO, and you would think FERC would give the states that sort  
8 of leeway, because it may be that we're in a better posture in  
9 allowing the implementation of a state RTO.

10           Could you give me some guidance on what to do? I  
11 feel like our work might go for not if we agree that some form  
12 of RTO for Florida is appropriate.

13           THE WITNESS: I don't underestimate for a moment how  
14 awkward this is, both for this Commission and for the  
15 GridFlorida applicants. The FERC, in hindsight, perhaps should  
16 have moved more quickly and earlier, but it finds itself now  
17 with a new vision in terms of what kinds of timing it might  
18 want RTOs to develop in. The Commission, as you know, has not  
19 been particularly specific in its reason in the July orders  
20 about what it believes the future of the southeast RTO is or  
21 Florida's role in that RTO.

22           I think that it's important that in recognition of  
23 the fact that the companies, in this case, stepped to the plate  
24 and began forming an RTO. I think that is something that the  
25 Commission will understand and appreciate and recognize in its

1 considerations of how big and what the composition of the  
2 southeast RTO ought to be, whether there ought to be a  
3 peninsular Florida RTO and a south RTO.

4           The Commission will, in my estimation, be more  
5 receptive to GridFlorida with this Commission support in some  
6 form or prudent finding or something that indicates that the  
7 state believes this to be a viable future institution.

8           I think that from the perspective of Florida that  
9 having a viable option for the Commission to consider as it  
10 contemplates dividing the country into four or five or six or  
11 whatever the number ends up being, RTOs, I think that having  
12 that option there and viable and supported by the state  
13 Commission could be very important. If this Commission were to  
14 find that this effort were imprudent, I think, the chances of  
15 FERC including Florida in a southeast RTO increase enormously.

16           CHAIRMAN JACOBS: Before you begin, I neglected to  
17 announce that we will go late today and we'll vary it according  
18 to how we proceed on the witnesses. Looks like things are  
19 going very well. I would anticipate no later than 6:30 to 7:00  
20 that we will work tonight, perhaps earlier, it appears.

21           I'd like to begin early in the morning and, I think,  
22 we have agreement that 8:30 would be a good starting time in  
23 the morning. And then one brief question -- having said all  
24 that, my question went away. I'll have to come back to it. Go  
25 ahead, Mr. Twomey.

## CROSS EXAMINATION

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BY MR. TWOMEY:

Q Good afternoon, sir. You testified that you're representing or you're testifying on behalf of all the utilities; is that correct?

A Correct.

Q Who is your client?

A All the utilities.

Q All of them are paying you?

A Yes.

Q Okay. And you are here, in large part, to explain, I guess, the Commission's; that is, the FERC's logic in entering its Order 2000?

A In part, the logic in entering the Order 2000, what the Commission expected to come out of it, and what the Commission's current posture might be.

Q Okay, but with respect to testifying on what was intended by 2000 you in fact, were the -- were you the Chairman or just the Commissioner?

A I was the Chairman, yes.

Q At Page 12 of your prefiled testimony, Commissioner, you say at Lines 22, FERC established the mandatory process that all jurisdictional utilities were required to follow under the statute -- and I won't cite it -- all the utilities were required to make a filing on October 16th, 2000, in which they



1 either submitted a proposal to join an RTO or made an  
2 alternative filing pursuant to another, and you go on.

3 Now -- is that correct?

4 A Yes, sir.

5 Q Okay. Now, that is not to say, is it, that the FERC  
6 mandated RTO participation by either of your three clients?

7 A The statement to which you refer relates to the  
8 requirement that the Commission posed on transmission owners to  
9 file by the specific deadlines and what to file.

10 Q Yes, sir, but my point is there was -- if I  
11 understand your testimony correctly, there was either/or  
12 mandatory requirement; one, they file their plans to  
13 participate or join an RTO or alternatively; two, explain why  
14 they were not or what impediments there were to that; is that  
15 correct?

16 A They were mandated to do one or the other, yes.

17 Q Right. But is it not at least technically correct,  
18 sir, that they were not mandated to join an RTO?

19 A We said at the time that RTOs, the filing of RTOs  
20 was -- or the formation for RTOs is voluntary.

21 Q Okay, thank you.

22 Now, on Page 16 of your prefiled testimony starting  
23 at Line 12, you say, "I think, the Florida Public Service  
24 Commission Staff hit the nail on the head in its September 2000  
25 policy analysis briefing paper, "The Viability of an RTO in

1 Florida." And you go on to say on Page 16 it states, "While  
2 Order Number 2000 stated that RTO development is voluntary in  
3 nature, in reality FERC has made it clear that it expects all  
4 transmission-owning utilities to comply. Although the FERC  
5 lacks the direct legal authority to mandate participation in  
6 RTOs, it has stated its intent to use its regulatory authority  
7 in other areas to force compliance with Order Number 2000."

8           You go on and say at 23, "I agree with the Florida  
9 Staff's view of FERC's intentions, even if I might disagree  
10 with its analysis of FERC's authority in this case." And my  
11 question to you is when you say might disagree, do you agree or  
12 do you not agree with the Florida Commission's Staff that the  
13 FERC lacks the direct legal authority to mandate participation  
14 in RTOs?

15           A     My statement is that I agree with their statement  
16 that FERC intended, ultimately, to make all transmission owners  
17 join an RTO, but I disagree with their statement that FERC --  
18 what do they say here -- lacks the direct legal authority. I'm  
19 not even sure I know what that means, but I disagree with it  
20 to the extent I understand it.

21           Q     I'm sorry. Let me try to ask it this way. When you  
22 were the Chairman of the Commission and considered this issue  
23 at the FERC and issued Order 2000, was it your belief, as a  
24 Commissioner, that the FERC had the direct legal authority to  
25 mandate the participation of these three utilities in an RTO?

1 A Yes.

2 Q Okay. Now, let me ask you first where do you find  
3 that statutory authority?

4 A I find it -- I agree with Mr. Naeve. The Federal  
5 Power Act at Sections 205 and 206 require -- in fact, impose a  
6 duty upon the Commission to ensure that rates, terms, and  
7 conditions of service are just and reasonable and are not  
8 unduly discriminatory or preferential.

9 And if you look at prior precedent, he referred to  
10 the TAPS case, I would go back to sort of the wellhead of this  
11 particular theory and that is associated gas distributors. The  
12 Commission required unbundling and open access in natural gas  
13 pipelines based on that very proposition.

14 Q And don't you quote with approval some place the  
15 language of the Court of Appeals for the District of Columbia  
16 that in that gas case that although it was said it was  
17 voluntary that, basically, it wasn't because the FERC had  
18 marked noncomplying utilities for bankruptcy or words to that  
19 effect?

20 A You'll find that at the bottom of Page 17 and the top  
21 of 18.

22 Q Isn't that what you said?

23 A What I said is that -- or what I paraphrased the  
24 Court as saying is that even though 436 was an open access --  
25 was a voluntary open access rulemaking that the Commission

1 decided, in that case, to withhold certain regulatory  
2 authorizations from companies that did not comply, and that  
3 that would make them uncompetitive.

4 Q Okay. So, do I understand that to say that they had  
5 a choice; that is, there was some volition, but that they would  
6 be hurt economically, perhaps critically economically, if they  
7 didn't go the right way and comply with the FERC's directives?  
8 Is that what it is in a nutshell?

9 A I think, if you call that a choice, then they had a  
10 choice.

11 Q Okay. Now, on Page 17 of your testimony at Line 7,  
12 you say, "It is a useful reminder that Order Number 2000 states  
13 that notwithstanding the importance of voluntary RTO formation  
14 FERC does not preclude, quote, the exercise of any of our  
15 authorities under the FPA, Federal Power Act, to order remedies  
16 to address undue discrimination or the exercise of market  
17 power, including the remedy of requiring participation in an  
18 RTO, where supported by the record."

19 And I want to ask you when you say any of our  
20 authority, don't you generally mean any other authorities that  
21 are specifically designed to address undue discrimination and  
22 improper exercise of market power?

23 A Well, I meant any other authorities, and I'm sure it  
24 would encompass that.

25 Q I mean, don't you have specific sections of the Power

1 Act that address undue discrimination and the exercise of  
2 market power?

3 A Yes.

4 Q Okay. And further in the quotation, "were supported  
5 by the record," doesn't that again evidence that there would be  
6 something in the record that would warrant the FERC in denying  
7 a requested tariff or market-based service or a merger?

8 A Well, the Commission makes all its decisions based on  
9 our records.

10 Q Well, yes, sir. And doesn't it mean -- I assume, it  
11 observes notions of equal protection and due process, right?

12 A Yes, sir.

13 Q Okay. So, this is just to say, is it not, that the  
14 FERC would only deny -- let me start over -- that the FERC  
15 would only force participation in an RTO from a utility that,  
16 otherwise, declined to accept the voluntary invitation where it  
17 could find evidence in the record to support that utility's  
18 undue discrimination or some improper exercise of market power;  
19 is that correct?

20 A If I understand your question correctly, I think,  
21 what you're saying is that at the time Order 2000 was adopted  
22 that the Commission contemplated only requiring adjoining an  
23 RTO, in those cases, where it found specific violations of the  
24 statute or anticompetitive behavior and, I think, that's  
25 probably true in 1999.

1           Q     Okay. Finally, on this point, you're not suggesting  
2 for a moment, are you, that if some utility chooses not to join  
3 an RTO that FERC, in the absence of some demonstrable  
4 discrimination on the part of that utility, some demonstrable  
5 exercise of undo market power or something else that is  
6 contrary to FERC's rules and procedures is going to fabricate  
7 some type of a record to punish these people for their  
8 noncompliance with an RTO?

9           A     No, I'm suggesting something entirely different.  
10 What I'm suggesting is that we look at the context within which  
11 Order 2000 was adopted. It was voluntary because the  
12 Commission wanted to give the industry, as well as state  
13 Commissions and other parties, an opportunity to develop and  
14 fashion these things and to begin to explore getting them up in  
15 operating within the time frame that the Commission had spelled  
16 out. And that time frame, which concludes on December 15th,  
17 there was nothing voluntary or flexible about it, but the  
18 Commission may well have, in that period of time, found some  
19 specific instances of undue discrimination.

20                     I think, they're in a different position now,  
21 however. I think, the Pat Wood memo, I think that the July  
22 Orders all speak that the atmosphere has changed and that the  
23 Commission understands that its original voluntary approach did  
24 not work.

25           Q     On Page 20 of your testimony, you address generally,

1 I think, the notion of consumers receiving associated net  
2 benefits; do you see that? You state on Line --

3 A What Line?

4 Q I'm sorry, go ahead. At Line 12, you say, "The  
5 Commission is, therefore, unlikely to review any unnecessary  
6 delays in RTO formation is actually denying consumers the  
7 associated net benefits." And my question is what -- are you  
8 able to quantify, not at the FERC level, but for the purposes  
9 of the Florida Commission, any economic net benefits to be  
10 received by the retail ratepayers of these three utilities?

11 A I think, the Commission, as I stated earlier, is --  
12 was persuaded in 1999, is even more persuaded today, that there  
13 are a number of benefits that will accrue to all electricity  
14 markets from the formation of RTOs. Those specific benefits,  
15 however, were difficult or impossible to quantify in 1999, and  
16 until these organizations begin to form and operate, will  
17 remain difficult to quantify. I don't believe there was ever a  
18 study of the specific benefits to Florida ratepayers, if that's  
19 your question.

20 Q Do you think it's fair, sir, for the Florida Public  
21 Service Commission to undertake an analysis of whether or not  
22 the formation of this RTO and its operation, thereafter, will  
23 result in net benefits to be received by the retail customers  
24 of these utilities? Is that a reasonable thing for them to do?

25 A That's something they'll have to decide.

1 Q Can you imagine them approving the recovery of these  
2 costs without making such an examination?

3 A Well, I think, that the question hinges on the  
4 persuasiveness of the FERC's case and the particular nature of  
5 this GridFlorida application and what it offers for modernizing  
6 and improving the efficiency of the bulk power market. I think  
7 that that's an exercise in reason decisionmaking, not  
8 necessarily number crunching.

9 Q Okay. One last question. Mr. Naeve, I think, in  
10 response to a question by Commissioner Jaber, said something to  
11 the effect that in determining whether to approve merger  
12 requests at the FERC level that absent certain circumstances --  
13 I guess, certain special circumstances, the Commission wouldn't  
14 approve what we call acquisition adjustments down here, but  
15 would look at mergers where plants, so forth, were purchased at  
16 the book value and that, I think, he said the test generally  
17 would be for approval or not, was whether or not the customers  
18 received net benefits from the merger or at least were held  
19 harmless. Is that generally the test?

20 A Well, I think, this had to do with the disposition of  
21 particular utility assets and, I think, what he said was that  
22 the Commission would not endorse putting an acquisition premium  
23 in rates unless there was some demonstrable benefit to  
24 customers. I think, he's right about that. And, I think,  
25 there's some recent cases at the Commission.



1 Q Would it not be fair for these Commissioners to use  
2 that same general test in determining whether to approve the  
3 RTO-related cost for recovery from retail customers; that is,  
4 allow it if there's a demonstration that the retail customers  
5 receive net benefits from the transaction or at least -- or at  
6 worst, they're held harmless?

7 A Well, I'm talking about transfer of assets above book  
8 value, and I don't know if that's what we're talking about here  
9 today, but I think it's a reasonable test. I think, it's  
10 something that someone more expert in Florida law is going to  
11 have to consider.

12 Q Thank you.

13 A Someone more expert than me.

14 MR. TWOMEY: Yes, sir, thank you very much.

15 CHAIRMAN JACOBS: Very well. Any other intervenors  
16 have cross? Staff?

17 CROSS EXAMINATION

18 BY MR. KEATING:

19 Q Good afternoon, Mr. Hoecker. I'm Cochran Keating  
20 with the Commission Staff.

21 A Hello.

22 Q I'm going to follow-up and hopefully not repeat too  
23 much of what Mr. Twomey asked. I just have a few questions  
24 that may cover the same areas.

25 Absent a showing of discrimination or an exercise of

1 market power in a particular case, is it your opinion that  
2 FERC's authority allows it to order a FERC jurisdictional  
3 public utility to join an RTO?

4 A Yes.

5 Q Are any of the cases that -- I know Mr. Naeve  
6 referenced a TAPS case and you referenced one other case.

7 A Yes, Associated Gas Distributors vs. FERC. It's a  
8 D.C. Circuit case.

9 Q In either of those cases -- well, in either case, was  
10 there any utility that was ordered to join an RTO where there  
11 was no showing of discrimination or exercise of market power?

12 A Those cases didn't deal with RTOs, you're right.  
13 What they dealt with is some fundamental changes in utility  
14 functions and operations that are gas pipelines in the earlier  
15 case where the Commission used its authority under 205 and 206  
16 to prospectively remedy potential discriminatory and  
17 anticompetitive situations and to promote greater efficiency in  
18 these two network industries and, I think, it's sound precedent  
19 for this situation.

20 Q But those cases did rely on some sort of showing of  
21 discrimination or potential discrimination?

22 A What they relied on is a generic rulemaking record  
23 that showed certain conditions in the industry to exist and the  
24 potential for discrimination. There were not specific findings  
25 of discrimination by particular companies and, I think, I

1 addressed this question, to some extent, in my direct  
2 testimony.

3 Q We'll me move on to Page 5 of your direct testimony.  
4 And again, this may cover some ground that Mr. Twomey covered.

5 At Lines 3 through 5, you provide some numbers that  
6 are apparently a FERC estimates of benefits to consumers from  
7 competitive generation markets; is that correct?

8 A Yes.

9 Q And those benefits were estimated to be between 3.76  
10 and 5.37 billion dollars per year?

11 A Yes.

12 Q Okay. What's the source of those numbers?

13 A The source of those numbers -- and, I think, I  
14 explain it, at least in part, in my response to Interrogatory  
15 Number 66, is a Commission study -- a Staff study that was done  
16 as part of the environmental review process for Order Number  
17 888. And what Staff did was to get a fairly widely used  
18 modeling vehicle called the -- you know, I'm having trouble  
19 finding it here, but called the coal and electric utilities  
20 model, and it cranked in a couple of scenarios with various  
21 favoring competition favoring coal and competition favoring gas  
22 and it looked at a number of -- it looked at all markets in the  
23 United States. And you can tell from the range of benefits  
24 that this was a -- to some extent, a highly-speculative  
25 exercise. This was done in 1996, and the Commission, I think,

1 in Order 2000 did something similar with a different model.

2 Q Did the Commission -- did FERC attempt to distinguish  
3 what portion of those benefits would be specifically related to  
4 any particular state?

5 A Not to my recollection. I think, this was a very  
6 broad modeling exercise, and I don't think there are any  
7 Florida-specific data associated with that or outcomes  
8 associated with that.

9 Q Are you aware of any analyses that have been done  
10 that would describe the specific benefits to particular states?

11 A I am not.

12 Q In that sentence you indicate that --

13 A Can I add to that answer?

14 Q Certainly.

15 A I am aware and, I think, Commissioner Palecki  
16 mentioned this earlier, of a study that was done by Mirant that  
17 discusses a loss of over \$400 million in benefits because of  
18 the operational problems at the bulk power level in the  
19 northeast; that is, as a result of uneconomic flows that it  
20 found in transfers of power between New York and New England or  
21 between New York and PJM. And that is one of the few studies,  
22 and it's very limited in its scope and time frame, but you can  
23 find that in the September -- or at least an article on it in  
24 the September 1st Public Utilities Fortnightly.

25 Q Based on your knowledge, do you believe that the

1 problems are inefficiencies that are discussed in that report  
2 are present in Florida?

3 A I don't know.

4 Q Okay. Again, at Line 3 on Page 5, you state that,  
5 "FERC was persuaded that competitive generation markets would  
6 bring tangible benefits to consumers." Is it your opinion that  
7 a competitive generation market exists in Florida?

8 A I'm sorry, I didn't hear your question.

9 Q Is it your opinion that a competitive generation  
10 market exists in Florida?

11 A That's very difficult for me to answer without a  
12 whole lot of explanation as to what you mean by that. I  
13 certainly hope it does.

14 Q I'll move on from that one and refer to Page 9 at  
15 Line 20 of the testimony through Page 10, Line 1. And in that  
16 portion of the testimony, you list reasons and benefits other  
17 than curbing market power and eliminating pancaked rates that  
18 FERC -- well, reasons other than those two, for the issuance of  
19 Order 2000; is that correct?

20 A Yes.

21 Q Okay. And those reasons -- there were four, I  
22 believe, more efficient planning on a regional basis, ability  
23 to improve regional reliability through regional operations,  
24 improved emergency response and more efficient treatment of  
25 loop flows; is that correct?

1 A Yes.

2 Q Okay. And this -- I assume these benefits were  
3 considered on a national level; is that correct?

4 A That's correct. They were considered in a very  
5 lengthy rulemaking process that included hearings all over the  
6 country and several hundred sets of initial and reply comments,  
7 so it was pretty extensive.

8 CHAIRMAN JACOBS: Can I ask a question? One of the  
9 concerns that's been raised in the FERC process is so far there  
10 seems to be little qualitative -- in fact, quantitative  
11 analysis of these kinds of issues, particularly, loop flows and  
12 that sort of thing to document that the scope of the regional  
13 RTOs isn't accurate. What's your assessment of that?

14 THE WITNESS: Well, you're right. There has been  
15 very little quantitative evidence produced and, I think, the  
16 reasons for that are manifold, but when you think about where  
17 the Commission was in 1999 and, in fact, where it remains  
18 today, not knowing what the scope of RTOs is going to be, what  
19 transmission systems are going to be embraced by it, how the  
20 markets are going to be designed, what the protocols are for  
21 re-dispatch or what kinds of benefits these particular  
22 institutions are going to produce in the future, you begin to  
23 get the feeling that a cost benefit analysis would have been  
24 almost a religious experience.

25 I mean, it's completely hypothetical and speculative.

1 And I can tell you that I would love to be able to sit here and  
2 lay it all out for you in dollars and cents, but I think that  
3 would have been difficult then and, I think, still remain  
4 somewhat difficult. When you look at studies like Mirant's,  
5 they're looking at a number of data that they got by operation  
6 of the northeast markets which were up and running in 2000,  
7 they took a six-month period, and they plotted all these  
8 transactions on a bunch of graphs, and you can kind of get a  
9 sense of what was going right and what was going wrong.

10 And, I think, as we move along we're going to get  
11 more of these studies and a deeper sense -- a deeper  
12 appreciation for the -- for the economic benefits and costs,  
13 but I think we're at a very uncomfortable juncture and, I  
14 think, you're at the same juncture that the Commission found  
15 itself at knowing that there was a lot of good policy and good  
16 reasons for doing some things, but not being able to, you know,  
17 to gavel it down saying now we know exactly what's going to  
18 happen.

19 This is all a work in progress, and we need -- that  
20 is, the applicant companies need, you know, the oversight and  
21 cooperation of regulators, you know, just as much now as they  
22 did back then to help make these things really beneficial  
23 institutions.

24 CHAIRMAN JACOBS: Thank you.

25 THE WITNESS: Okay.

1 BY MR. KEATING:

2 Q Getting back to the benefits that are listed on the  
3 bottom of Page 9 and the top of Page 10 in your testimony, you  
4 indicated that there were hearings held around the country; is  
5 that correct?

6 A That what's around the country?

7 Q That there hearings conducted?

8 A There were, yes. Before the NOPR and during the  
9 comment period.

10 Q Okay. Was there any evidence offered during those  
11 hearings concerning any state-specific benefits that RTOs could  
12 provide?

13 A Oh, boy. I can tell you this, that the state  
14 Commissions, including this Commission, were active  
15 participants in those hearings and in filing comments before  
16 the Commission and if there were, you know, concrete  
17 information that would have benefited the Commission's  
18 decisionmaking process, I'm confident that we would have gotten  
19 it. What the precise nature of it would have been, I'm afraid  
20 you're exceeding my short-term memory.

21 Q Lately mine goes back about two hours, so I  
22 understand.

23 Well, I guess -- and maybe to get more to the point,  
24 of the benefits that are listed in that portion of your  
25 testimony, given the conditions in Florida in the manner that



1 transmission is currently in planning and pricing currently  
2 occur, will Florida see any of these benefits from GridFlorida?  
3 And if so, which?

4 A I'm in a little bit of a difficult position in  
5 responding to your question. I was at the Commission when  
6 GridFlorida was filed, and I have made a decision not to try to  
7 analyze GridFlorida per se, and I'd like to stick with that.

8 Q Okay. Well, then I'll step back and ask are there  
9 benefits to be gained from an RTO in peninsular Florida in the  
10 area of planning efficiencies?

11 A I think, there are benefits to be gained in all parts  
12 of the country from planning efficiencies on a regional basis  
13 and in -- I know of no reason why peninsular Florida would be  
14 any different.

15 Q And do you believe that peninsular Florida is a large  
16 enough region to obtain those benefits?

17 A I think, I'd have to know more about precisely how  
18 those planning mechanisms would work to really answer that  
19 question. My gut says yes, but I'm not sure that's a very  
20 informed response.

21 COMMISSIONER JABER: Chairman Hoecker, as it relates  
22 to those efficiencies and the possibility that they are  
23 realized to their maximum amount, does it require that you have  
24 as many participants as possible in a wholesale market?

25 THE WITNESS: I think, you have to have a competitive

1 market, I think, you have to have low barriers to entry and, I  
2 think, it helps to have a viably competitive market, a  
3 competition between sources of generation. And I think that  
4 there may be out there some economist who can tell you when  
5 enough is enough. I don't happen to be able to do that, but I  
6 think that the benefits of RTOs are, in many ways, associated  
7 with competition among generators and, I think, the more of  
8 them, you know, all things being equal in terms of how they're  
9 regulated or not regulated and what kind of access they have in  
10 the market and so forth, the more of them generally the better.

11 COMMISSIONER JABER: Okay. And as it relates to  
12 efficiencies gained through the creation of an RTO and  
13 participants in an RTO, we would again, by analogy, want to  
14 make sure that there were as many participants in the RTO?

15 THE WITNESS: Well, I'd answer that this way, that an  
16 RTO needs to comprehend all transmission -- all of that network  
17 infrastructure. I think that's the only way that it makes any  
18 sense an economic point of view.

19 There's always been some difficulty with that. You  
20 all talked about some of those jurisdictional questions with  
21 Mr. Naeve. There is also a question associated with other  
22 kinds of transmission that are not -- that are owned by FERC  
23 nonjurisdictional entities, like co-ops and municipals and  
24 federal power marketing agencies.

25 In the final analysis, when the FERC talks about open

1 access on the whole grid, nationally speaking, it really is  
2 only talking about 67% of the transmission wires in the  
3 country. Even if you extend its jurisdiction as ambitiously as  
4 possible, absent Congress dealing with public power entities  
5 and federal power marketing administrations or those entities  
6 volunteering to donate their transmission to an RTO, open  
7 access has some real limits.

8 COMMISSIONER JABER: Okay. So, said a little bit  
9 differently, on that is why I'm asking, because of the concern  
10 related to municipalities and co-ops not participating, if we  
11 have in a Florida-specific RTO at least 67% participation of  
12 transmission facilities it would be your opinion that those  
13 efficiencies that you were trying to achieve in Order 2000  
14 would be realized?

15 THE WITNESS: I don't know. And I think that  
16 percentage, you know, since it's a national percentage, may be  
17 quite different in Florida. I think that the GridFlorida  
18 companies, my understanding is anyway, own by far and away the  
19 majority of transmission here, and that may be more than enough  
20 to attain the efficiencies you're talking about.

21 BY MR. KEATING:

22 Q I was going to ask some similar questions to my last  
23 question about what benefits Florida would receive or what  
24 benefits Florida would see of the benefits that you've listed  
25 on Pages 9 and 10 of your testimony. I guess, before I do

1 that, it may be fair to ask you first if you're familiar with  
2 the way Florida utilities currently plan for reliability, how  
3 emergency response is handled, and how loop flows are treated?

4 A I am not particularly familiar with that.

5 Q Okay. Would it be fair to say that you couldn't  
6 really speak to specific benefits of an RTO to GridFlorida -- I  
7 mean, to peninsular Florida, if you didn't have a basis -- that  
8 basis to compare the expected benefits to?

9 A I think that that information's available from the  
10 panel and other witnesses that are here.

11 Q Okay. Yeah, I believe, that's something that I do  
12 plan to address with them, so...

13 In your testimony at Page 18, Lines 23 to 24 --

14 A Yes.

15 Q -- you state that FERC has declined to adopt a  
16 one-size-fits-all approach regarding the necessary size and  
17 configuration of RTOs; correct?

18 A Well, it says FERC declined. I think, I was  
19 referring to Order 2000. I'm not sure how much longer that's  
20 all going to be applicable, but...

21 Q Could not for-profit RTO have fulfilled the  
22 requirements for an RTO as outlined in Order 2000?

23 A A not-for-profit? An Independent System Operator?  
24 Is that what you mean?

25 Q Well, could an Independent System Operator -- I don't

1 know the answer to this -- be for-profit or not for-profit or  
2 would it necessarily be not for-profit?

3 A I think, an Independent System Operator would likely  
4 be not for-profit.

5 Q Okay. So, I guess, in rewording the question, could  
6 an Independent System Operator have fulfilled the requirements  
7 of Order 2000?

8 A I certainly can conceive of that. I don't think  
9 we've -- I don't think that the FERC has decided that in any  
10 case.

11 Q Do you believe that there are any differences in the  
12 benefits that could be achieved by a for-profit Transco versus  
13 a not for-profit ISO?

14 A I think, there are important benefits to be gained  
15 from either method of organization. I think, it's pretty clear  
16 looking at the history of RTO formation over the last couple of  
17 years that ISOs were capable of forming more quickly, because  
18 it didn't involve divestiture and where they did form, they  
19 were based on previous type pool arrangements, for the most  
20 part.

21 Transcos are somewhat more difficult as a legal and  
22 practical matter to organize, but I do think that, in my view  
23 for-profit Transcos are becoming more -- I don't know if  
24 popular is the word. I think, there are more proponents of  
25 for-profit Transcos, and I think that the proposals to have a

1 for-profit RTO is now more likely than it was two or three  
2 years ago.

3 Q Are there any FERC-approved ISOs currently operating  
4 in the U.S.?

5 A Sure.

6 Q Okay. Did any of those receive approval under Order  
7 2000 yet?

8 A No.

9 Q The RTOs?

10 A No.

11 COMMISSIONER JABER: Let me make sure I understood  
12 what you just said. They are operating, but they didn't  
13 receive approval through FERC 2000? They didn't need to?

14 THE WITNESS: Well, here's what -- how this evolved.  
15 Independent System Operators were first discussed and proposed  
16 sort of as a policy matter in Order 888 back in 1996, and you  
17 recall that was the year that California's legislation, AB-1890  
18 established a California ISO, PJM, New England, and later the  
19 New York ISO began to form up and there were a lot of these  
20 ISOs that were approved by FERC as sort of consistent with the  
21 prevailing principles that were enunciated in Order 888 and  
22 FERC's general policies.

23 And there has been a lot of ink spilled by the  
24 Commission in getting these organizations up and running. But  
25 none of them, to my recollection, have been acted on by the

1 Commission under Order 2000, per se. Most of them had to file,  
2 of course, for approval as an RTO or -- for approval as an RTO  
3 last fall when our deadline required them to file.

4 BY MR. KEATING:

5 Q Are there any FERC-approved Transcos that are  
6 currently operating in the U.S.? And let me -- let me qualify  
7 that by saying a Transco that has received all the approvals  
8 required.

9 A I can't think of one.

10 Q If peninsular Florida participated in a larger  
11 southeast regional RTO, how responsive do you think that the  
12 regional southeastern RTO would be Florida's unique  
13 situation? And in particular -- and, I think, we touched on  
14 this, with Mr. Naeve briefly -- considering that Florida has  
15 limited interconnections outside of the state and there are a  
16 couple of points that I'll get you to address one by one, but  
17 considering first the limited interconnections out of state, do  
18 you believe that a larger southeastern RTO would be -- would  
19 provide anymore benefit to Florida than GridFlorida?

20 A I think, it would depend, of course, both on how the  
21 GridFlorida process evolves and, I think, it would depend on  
22 all the things we don't know yet about the southeast RTO, how  
23 the two would integrate, how whether their markets would be  
24 designed in some synchronous fashion, whether the  
25 interconnection would be strengthened or not. I mean, there

1 are an awful lot of factors that I really have trouble  
2 speculating about.

3 Q Do you think that the interconnections would need to  
4 be increased for Florida to achieve some benefit from a larger  
5 regional RTO?

6 A Well, 3,500-megawatt interconnection is not slight.  
7 I just don't know relative to what -- it depends on where  
8 generation is going to be situated -- how integral the markets  
9 need to be. I take it you're talking about a hypothetical  
10 where Florida would be part of the southeastern region; is that  
11 correct?

12 Q Yes.

13 A Yeah. I think, you're asking something I just don't  
14 know. As a matter of fact, I would say that what we need is a  
15 good RTO planning process to make that decision.

16 Q Are you familiar with any of the efforts in Florida  
17 made in the early 1990s to build an additional interconnect  
18 line?

19 A I'm aware that there were proposals in the past to do  
20 that. That's about as much as I know.

21 Q Are you aware of the outcome of those proposals?

22 A No.

23 MR. KEATING: Okay. Thank you. That's all the  
24 questions I have.

25 CHAIRMAN JACOBS: You mentioned MUNIs and co-ops in



1 terms of their role. One of the concerns that, I think,  
2 expressed too often is their participation in both GridFlorida  
3 and the southeast. That -- the level and extent of that seems  
4 to be still unsettled. Is that your assessment?

5 THE WITNESS: While I'm not as familiar with Florida  
6 as you all are. I think, it's very unsettled across the  
7 country.

8 CHAIRMAN JACOBS: If we proceed with the designs as  
9 we have them now, are we opening ourselves up to challenge on  
10 -- I'm not necessarily thinking of a legal challenge, but  
11 certainly a practical and logistical challenges if we  
12 basically, don't resolve the idea that the substantial body of  
13 trans-- first of all, transmission of infrastructure, but  
14 second of all interconnection with very heavy users of a  
15 transmission grid, if we don't resolve that, what kind of  
16 challenges are we looking at there?

17 THE WITNESS: Well, I think, the challenges are  
18 economic as well as practical. I think that RTOs -- and I say  
19 this in the absence of any change in federal legislation, but I  
20 think that RTOs can offer benefits to public power entities. I  
21 think that both as TDUs, but also as transmission owners, I  
22 think that if the grid were -- if any RTO were to be operating  
23 without complete control of all the transmission in a region,  
24 and some of that transmission was strategic or critically  
25 important backbone transmission, I think, it would effect, to

1 some extent, the efficiencies that Commissioner Jaber was  
2 talking about earlier.

3 This is one of those issues that requires a lot of  
4 collaboration and a lot of analyzing of benefits by people who  
5 are actually involved in trying to develop one of these things,  
6 and it's a net loss for everyone, in my view, if some kind of  
7 an agreement can't be worked out.

8 But I have a lot of confidence that it can be. I  
9 mean, I think, if you look at the pacific northwest, RTO  
10 northwest has public power entities in it and a federal power  
11 administration, and as well as investor-owns who have formed a  
12 Transco and somehow or another they've gotten this whole  
13 structure to work.

14 There was a filing at FERC the other day, something  
15 called Translink, which spans part of the midwest. And one of  
16 the participants in that RTO is the Nebraska public power  
17 districts. And there you not only have their unique legal and  
18 tax problems to deal with, you've got a big statutory problem  
19 in Nebraska.

20 So, I think, these kinds of things can be overcome.  
21 And my own personal experience at the FERC was that there are  
22 many public power transmission owners who would love very much  
23 to participate in these organizations. And, I think, it's  
24 important, both from a FERC perspective and from your  
25 perspective that they do that.

1 CHAIRMAN JACOBS: Thank you. Questions?

2 COMMISSIONER JABER: Chairman Hoecker, I'm going to  
3 ask a not so bright question, but I'm going to ask it anyway.  
4 Can a regional RTO ever create a problem for a state to deal  
5 with weather-related or natural disaster kinds of issues?

6 THE WITNESS: That's an interesting question, and it  
7 goes sort of beyond reliability to the unfortunate  
8 circumstances that we've been dealing with in the last month  
9 here in the country. And people are beginning to wonder about  
10 the kind of centralization that RTOs represent and whether that  
11 has some adverse consequences for the security of the  
12 infrastructure.

13 I think that debate is just sort of beginning and, I  
14 think, there are probably all kinds of different views about  
15 that. I think that, in fact, RTOs could be a tremendous -- can  
16 make a tremendous contribution, not only to reliability, as you  
17 and I understand that term, but to security of the  
18 infrastructure and the ability of the infrastructure to repair  
19 itself in the event of some man-made event, like we saw in New  
20 York. I think that's something states should be able to work  
21 with and that it shouldn't really create a problem.

22 COMMISSIONER JABER: Okay. So, but to the degree  
23 Florida being a peninsular state and having as many hurricanes  
24 and weather-related issues that we have, there is some merit to  
25 taking a look at reliability in terms of benefits for having a

1 single state RTO versus a regional RTO or are you saying you  
2 should know about it, but take that into account in the  
3 formation of the RTO?

4 THE WITNESS: I think, you would take it into account  
5 in either event. I mean, I think, if a substantial part of the  
6 grid near Miami were wiped out by a hurricane, no matter  
7 whether you're talking about a peninsular Florida RTO or a  
8 southeast RTO, the help doesn't necessarily have to come from  
9 Birmingham. I mean, it can be right there.

10 I mean, it's just a matter of developing those  
11 capabilities and being able to apply as many technical and  
12 material resources as possible to these kinds of things and  
13 that the real question here is what are these institutions  
14 going to be responsible for doing and how are they going to  
15 plan to do it? And the weather problems in Florida that you  
16 identify are, if not absolutely predictable, certainly pretty  
17 foreseeable. So, I would think that that would be built into  
18 the process.

19 COMMISSIONER JABER: Okay. If there are, in fact,  
20 regional RTOs that are formed, do you envision that the  
21 load-serving entity will be able to not buy power from the  
22 southeastern RTO if the price isn't right in a true competitive  
23 market and buy power from a different regional RTO, assuming  
24 that the interconnection, obviously, is feasible? And excuse  
25 my ignorance on this. It may be not technically feasible, but

1 how would those issues work?

2 THE WITNESS: Well, I think, that once you have big  
3 regional RTOs that facilitate the access the generation across  
4 that entire region, similarly if you have adjacent RTOs you  
5 need to begin to address those seams between those  
6 organizations so that the market expands even further.

7 I mean, one can anticipate, I suppose that at some  
8 distance a transmission arrangement becomes uneconomic, and  
9 maybe that's, in some way, a sense of how big an RTO ought to  
10 be, but if you're on the edge of an RTO and you want to buy not  
11 only within the RTO, but across that boundary, my supposition  
12 is that FERC would want to see these organizations eventually  
13 make that a very easily doable transaction.

14 COMMISSIONER DEASON: Mr. Chairman, I have a  
15 question. Can you reasonably foresee a scenario working out  
16 where Florida would be in a position of choosing its own  
17 destiny in the sense that it could go forward with GridFlorida  
18 or if it so chooses, choose to join a southeast RTO? And if  
19 you can foresee that, what do we do at this point to facilitate  
20 that?

21 THE WITNESS: I think, you're at that point right  
22 now. If the GridFlorida applicants have made a case to you  
23 that what they're proposing serves the needs of Florida, in  
24 your judgment, and you want to have the option of arguing to  
25 the industry and to FERC and to the proponents of a

1 southeastern RTO that thank you very much, but we've got our  
2 own thing going here, then it seems to me you've got to find  
3 this prudent or whatever label you want to put on it, to  
4 support the development of something that you value.

5           And that's -- you know, that's something that this  
6 Commission's going to have to confront, it seems to me pretty  
7 much this month, if I understand your procedural schedule. If,  
8 -- as I said before, if the decision were different, then I'm  
9 not sure what the FERC might think you have to argue with, what  
10 the case is for, something other than a southeastern RTO.  
11 That's at least the way I see the debate shaking out.

12           COMMISSIONER PALECKI: Chairman Hoecker, I'd like to  
13 follow-up on a question that Staff had asked you earlier. If  
14 in Florida we have a situation where our import capability from  
15 the north is completely maxed out because of our limited  
16 capability, do we really have anything to gain from becoming  
17 part of grid southeast, unless we get some sort of commitment  
18 from grid southeast that there will be additional ties built?

19           THE WITNESS: Well, in an RTO environment where there  
20 is a lot of access to generation, the market is going to help  
21 decide, it seems to me, what the best alternatives are in terms  
22 of expanding the grid or building more generation overcoming  
23 what some of you obviously, think is a bottleneck or a  
24 congestion point.

25           I don't know if you could get that kind of commitment

1 from the companies that would sponsor a southeast RTO. It  
2 would seem to me to be more of a collaborative kind of process  
3 where you would mutually decide that having more generation or  
4 having more access across that frontier so that you didn't have  
5 to build all your plants in Florida, that those kinds of  
6 decisions would be arrived at collaboratively.

7           And you may find that generators that are in Georgia  
8 and other parts of the southeast would love to have access,  
9 greater access, to the Florida market and that the generators  
10 that are here or are being built here would love to have access  
11 out. That's something I'm not really qualified to speak, to  
12 but I do think that the process is a kind of an iterative one.  
13 It's not like -- I don't think, anyway, like it's going to be  
14 of a promise that you're going to get as a condition of joining  
15 a larger RTO, but I think it might be a foreseeable result.

16           COMMISSIONER PALECKI: I guess, the problem I have is  
17 that it seems that perhaps those decisions won't made for many  
18 years out and, in the meantime, I'm having a difficult time  
19 determining any real benefit to being part of the southeast,  
20 without those additional ties.

21           THE WITNESS: Well, I'm sure that your view of the  
22 cost versus the benefits is something that's weighing heavily  
23 in your determination here about this application. All I can  
24 say is perhaps this, and that is if I read the current FERC  
25 correctly, this process is not going to be a very slow one

1 anymore and that I don't know what years out means, but I do  
2 think that these kinds of questions are going to be forced on  
3 the southeast, not just by the FERC, but by the market, and  
4 that we've got to find out who's going to make the decision.

5           You've got part of the responsibility here,  
6 obviously, in terms of citing and so forth, but it gets back to  
7 that old question about do we build generation and where do we  
8 build it? Do we build transmission? And under the old system,  
9 Florida's had trouble getting something done, apparently, and  
10 hopefully things will improve.

11           COMMISSIONER PALECKI: Do you see fact that we have  
12 quite a bit of additional natural gas infrastructure coming  
13 into the state of Florida that will allow additional low-cost  
14 generation as being an important factor in our decision?

15           THE WITNESS: I think, that's an important factor,  
16 yes. I think that it suggests that you don't have to go as far  
17 afield as you might otherwise have to, to get a competitive  
18 generation market if this -- if these new supplies -- if these  
19 new units are actually built and if they are, in fact, low  
20 cost, so the availability in natural gas in almost every  
21 electric generation market is a big factor, a big consideration  
22 in how much competition you're going to have.

23           COMMISSIONER PALECKI: Thank you, Chairman Hoecker.

24           THE WITNESS: Thank you.

25           COMMISSIONER JABER: Chairman Hoecker, in the



1 utilities' opening statements and throughout the testimony  
2 there appears to be this worry on behalf of the Florida IOUs of  
3 actually investing and going ahead with GridFlorida because of  
4 the fear that some sort of regional approach is just around the  
5 corner.

6           If FERC, as I don't doubt that their intentions are  
7 to promote a wholesale market, if FERC was truly pro-market,  
8 they may consider the opportunity that a regional RTO would  
9 negotiate and compensate some sort of state-specific RTO for  
10 the investment that they've already made; that, in fact, it  
11 wouldn't be investment that's borne by the ratepayers but  
12 perhaps by this new independent RTO. Now, that's truly a  
13 market approach, and I think that FERC might be amenable to  
14 taking that approach. Do you agree?

15           THE WITNESS: Well, it sounds a lot like a stranded  
16 cost to me, and I know where stranded costs, ultimately, always  
17 end up.

18           COMMISSIONER JABER: In negotiations for the price?

19           THE WITNESS: I think that if the scenario you've  
20 painted comes to pass, I would think that how those costs  
21 recovered and over what group of customers or other  
22 institutions or other companies is going to be a big  
23 consideration, but I know how uncomfortable everybody feels at  
24 this point given the investment that's already been made and  
25 not knowing what the Commission is likely to do. I guess, I'd

1 return to the point I made earlier, and that is to some extent,  
2 I think, you're in a position to have some influence over how  
3 the FERC thinks about the future here.

4 COMMISSIONER JABER: So, in setting that path, if we  
5 decide to find that some participation in RTO is prudent, we  
6 might want to articulate what our expectations of a  
7 transitional period should be and FERC would consider that.

8 THE WITNESS: Explain to me by what you mean by a  
9 transitional period.

10 COMMISSIONER JABER: If we go forward and allow the  
11 formation of GridFlorida and articulate that our expectation  
12 and our acknowledgement would be that that would be a  
13 transitional step towards FERC's requirement to create regional  
14 RTOs --

15 THE WITNESS: I see what you mean.

16 COMMISSIONER JABER: -- if we sort of articulate what  
17 our expectations are for FERC's treatment prospectively, there  
18 wouldn't be a reason really for them to disregard what the  
19 state Commission would hope that they did.

20 THE WITNESS: What I hear you saying is that there  
21 are sort of two options here, that you end up with a  
22 GridFlorida peninsular Florida RTO or a southeast RTO, in which  
23 case, maybe GridFlorida becomes an initial step that exists for  
24 some years and makes all this investment worthwhile, in some  
25 sense. I think, FERC be very interested in that although, you

1 know, I think, your initial question is, you know, is  
2 GridFlorida, in your estimation, viable -- is it prudent on a  
3 stand-alone basis.

4 CHAIRMAN JACOBS: Redirect?

5 MR. FAMA: Yes, thank you, Mr. Chairman. Just a few  
6 questions.

7 REDIRECT EXAMINATION

8 BY MR. FAMA:

9 Q Chairman Hoecker, you were asked some questions today  
10 about the benefits of GridFlorida versus the potential benefits  
11 of the southeast RTO, just a foundational question, is it your  
12 opinion that the development of a southeast RTO development is  
13 going to move forward whether or not the Florida utilities  
14 participate?

15 A Yes.

16 Q Okay. If the Florida companies did not have a viable  
17 option, if you will, in GridFlorida would that hurt their  
18 bargaining position, in your opinion, if they were  
19 participating or had to participate in the development of the  
20 southeast RTO?

21 A If they did not have a --

22 Q A viable option, to have a GridFlorida option, would  
23 that affect their ability to influence the southeast RTO not  
24 knowing whether or not they'd ultimately have to join the  
25 southeast RTO?

1 A I think so, yes.

2 Q Notwithstanding Pat Wood's memo, and he's got a lot  
3 of ideas about what he wants to see in RTOs, is it your view  
4 that there'll be a lot of hard bargaining among the big utility  
5 players in the southeast in that?

6 A I think, there'll be some hard bargaining, very hard  
7 bargaining in the southeast and, I think, there'll be some hard  
8 bargaining at the Commission to go with it.

9 Q To the extent the Florida utilities have to end up  
10 participating in that bargaining, if you will, is it best to  
11 send them into that or posture them to have a Florida option  
12 out there? Is that a good way to send them in?

13 A That's my belief.

14 MR. FAMA: That's all I have.

15 CHAIRMAN JACOBS: Very well. There are no exhibits,  
16 so I think that does it. Thank you very much,  
17 Chairman Hoecker, you're excused.

18 THE WITNESS: Thank you.

19 CHAIRMAN JACOBS: We will take a break for -- well,  
20 let's do this real quick. The panel is up next, correct? And  
21 I assume that the major -- if there is any cross, it'll be  
22 primarily from the intervenors; is that a correct assumption?  
23 Why don't we -- Mr. McGlothlin?

24 MR. MCGLOTHLIN: I have no questions planned, unless  
25 something that needs clarification comes up during an answer,

1 that's all.

2 MS. PAUGH: That's my posture also, Mr. Chairman.

3 MR. HOWE: Mine also.

4 MR. TWOMEY: I don't have any questions.

5 CHAIRMAN JACOBS: Staff, how long?

6 MR. KEATING: I'd anticipate about 45 minutes to an  
7 hour.

8 CHAIRMAN JACOBS: Okay. We'll take a ten-minute  
9 break, come back, and we'll at least get them started and we  
10 can finish in the morning.

11 (Recess taken.)

12 CHAIRMAN JACOBS: We'll go back on the record and,  
13 Mr. Childs, you're sponsoring the panel?

14 MR. CHILDS: Yes.

15 CHAIRMAN JACOBS: You may proceed.

16 MR. CHILDS: Commissioners, we call the panel, the  
17 prefiled testimony, they are testifying on behalf of all three  
18 of the GridFlorida utilities. I have distributed, I hope, in  
19 accordance with the request of Commissioner Baez, an errata  
20 sheet for this testimony which I would propose be included with  
21 the testimony in the record when we get to that point.

22

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25

MIKE NAEVE  
C. MARTIN MENNES  
HENRY SOUTHWICK  
GREG RAMON

1 were called to testify on behalf of Florida Power & Light  
2 Company, Florida Power Corporation, and Tampa Electric Company  
3 and, having been duly sworn, testified as follows:

4

5

DIRECT EXAMINATION

6

BY MR. CHILDS:

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8

Q Would each of you, individually state your name and  
address, please.

9

10

A (Witness Naeve) My name is Clifford M. Naeve, and my  
address is 1440 New York Avenue, Washington, D.C. 20005.

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14

A (Witness Mennes) My name is Marty Mennes. My  
address -- and, I guess, my testimony says C. Martin Mennes; I  
go by Marty Mennes. My address is 4200 West Flagler Street,  
Miami, Florida.

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A (Witness Ramon) My name is Greg Ramon, Tampa  
Electric Company, 702 North Franklin Street, Tampa, Florida  
33602.

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A (Witness Southwick) I'm Henry Southwick, Florida  
Power Corporation. My business address is Box 14042, St.  
Petersburg.

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Q I'm going to skip the employer and positions since we  
have four people answering and it is in their testimony, but I  
will ask you if you have before you, gentlemen, a document  
entitled, "Testimony of Mike Naeve, C. Martin Mennes, Henry  
Southwick, and Greg Ramon in the three dockets for this

1 hearing? Do you have that before you?

2 A (Witnesses) Yes, we do.

3 Q And was that prepared by you as your testimony for  
4 this proceeding?

5 A (Witnesses) Yes, it was.

6 MR. CHILDS: Commissioners, as I mentioned, we have  
7 distributed changes.

8 BY MR. CHILDS:

9 Q And I'm going to ask that the question of whether you  
10 adopt this as your testimony with the changes that have been  
11 noted.

12 A (Witnesses) Yes.

13 Q And whatever your preference, I think, it might be  
14 helpful to simply include this sheet as part of the testimony  
15 or to make the corrections on the testimony as noted on this  
16 sheet.

17 CHAIRMAN JACOBS: I think, we'll just make it an  
18 exhibit.

19 MR. CHILDS: Make an exhibit?

20 CHAIRMAN JACOBS: Yes.

21 MR. CHILDS: Okay. Mark it for identification, then,  
22 as Exhibit 7; is that correct?

23 CHAIRMAN JACOBS: 7 it is.

24 (Exhibit 7 marked for identification.)

25 MR. CHILDS: And their testimony will be inserted,

1 please.

2 CHAIRMAN JACOBS: Without objection, show the  
3 testimony of the panel of Naeve, Mennes, Southwick, and Ramon  
4 is entered into the record as though read.

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## 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

**JOINT TESTIMONY OF  
MIKE NAEVE, C. MARTIN MENNES,  
HENRY SOUTHWICK AND GREG RAMON**

1       **Q.     Please state your names and occupations.**

2       A.     There are four persons presenting this testimony jointly on behalf of Florida  
3           Power & Light Company, Florida Power Corporation and Tampa Electric  
4           Company (the "GridFlorida Companies"). Our names, employers and positions  
5           are:

6           1.     Mike Naeve – partner in the law firm of Skadden, Arps, Slate, Meagher &  
7           Flom LLP.

8           2.     C. Martin Mennes – Vice President, Transmission, Operations and  
9           Planning of Florida Power & Light Company ("FPL").

1           3.     Henry Southwick – Manager, Regional Transmission Organization

2           Development, Florida Power Corporation ("FPC").

3           4.     Greg Ramon – Director of Transmission Policy and Analysis, Tampa

4           Electric Company ("TECO").

5     **Q.    Please briefly describe your involvement with GridFlorida.**

6     A.    Each one of us has been significantly involved in the development of GridFlorida.

7           During the stakeholder collaborative process for the development of GridFlorida,

8           Mr. Naeve was the chairman of the Governance Working Group, Mr. Mennes was

9           the chairman of the Planning and Operations Working Group, and Mr. Ramon

10          was the chairman of the Market Design Working Group. Mr. Mennes, Mr.

11          Southwick and Mr. Ramon have had the lead responsibility for representing the

12          GridFlorida Companies in the negotiations regarding the development of

13          GridFlorida.

14     **I.    INTRODUCTION**

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

16     A.    The purpose of our testimony is to describe the significant features of the

17          GridFlorida proposal and to explain why the GridFlorida Companies developed

18          the proposal as they did. Although each one of us has greater knowledge of

19          certain topics addressed in this testimony than others, the subjects are closely

20          interrelated, and the GridFlorida Companies believe that it would be more helpful

21          to the Commission if we present our testimony and are available for questioning

22          jointly. The general subjects of our testimony are as follows:

- 1           **Governance.** We will explain the ownership structure of GridFlorida and  
2           how that structure satisfies the Order No. 2000 independence requirements  
3           and, at the same time, permits transmission owners to divest their trans-  
4           mission facilities to GridFlorida in a way that minimizes taxes, allows for  
5           favorable accounting treatment and creates the financial flexibility for  
6           GridFlorida necessary for it to raise capital for transmission investment  
7           and expansion.
- 8           **Planning and Operations.** We will describe GridFlorida's planning and  
9           operations functions, and explain why transferring these functions to  
10          GridFlorida will not affect the reliability and safety of the Florida trans-  
11          mission grid. We also describe the demarcation between transmission  
12          facilities and distribution/generation facilities that was developed for  
13          determining which facilities will be subject to GridFlorida's operational  
14          authority and the rationale for that demarcation.
- 15          **Market Design.** We will describe the market design and congestion  
16          management features included in the GridFlorida proposal. We also will  
17          explain the proposed market power mitigation measures that will permit  
18          the market design to function appropriately under the current levels of  
19          market concentration.
- 20          **Market Entry.** Finally, we will provide information on the amount of  
21          new merchant generation projects being planned for Florida. We are  
22          presenting this testimony to show that there is competition in Florida

1 wholesale markets notwithstanding the provisions of the Florida Electrical  
2 Power Plant Siting Act (the "Siting Act").

3 **Q. Are you sponsoring any exhibits in connection with this testimony?**

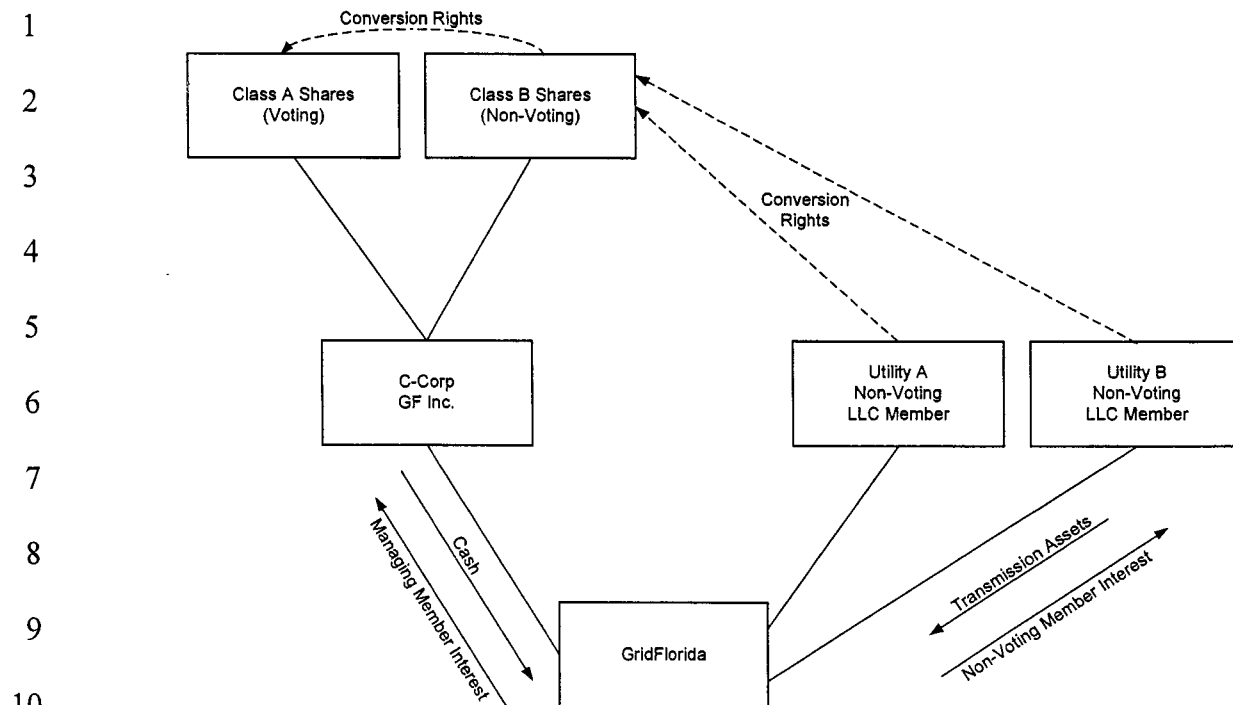
4 A. No.

5 **II. GOVERNANCE PROVISIONS OF GRIDFLORIDA**

6 **A. CORPORATE STRUCTURE**

7 **Q. What is the proposed corporate structure of GridFlorida?**

8 A. As discussed in the Testimony of Mr. Naeve, the GridFlorida Companies have  
9 proposed a for-profit transmission company that will own the transmission assets  
10 of at least FPL and TECO. The proposed structure of GridFlorida calls for the  
11 creation of two new companies: (1) GridFlorida, a Florida limited liability  
12 company which will be the RTO and will own and operate transmission facilities;  
13 and (2) "GF Inc." a Florida corporation, which will be formed specifically to own  
14 a controlling interest in GridFlorida and to manage its operations. The following  
15 chart illustrates the proposed structure.



11 Interests in limited liability companies such as GridFlorida are referred to as  
 12 "Member Interests." Passive interests are referred to as "Non-Voting Member  
 13 Interests" and voting interests are referred to as "Managing Member" Interests.  
 14 The Managing Member Interest in GridFlorida will be held by GF Inc. and the  
 15 Non-voting Member Interests will be held by those transmission owners that  
 16 divest their transmission assets to GridFlorida.

17  
 18 It is contemplated that GF Inc. will raise equity financing for GridFlorida through  
 19 an Initial Public Offering ("IPO"). Ultimately two classes of stock will be issued  
 20 – Class A Common Stock and Class B Common Stock. Class A Common Stock  
 21 will be voting common stock. Market Participants, as defined in Order No. 2000,  
 22 will not be permitted to own shares of Class A Common Stock. Class B Common  
 23 Stock will be non-voting common stock, and may be owned by Market Partici-

1 pants. Holders of shares of Class B Common Stock will not be entitled to vote on  
2 any matter presented for a vote of shareholders, except in limited circumstances.

3 **Q. Why did the GridFlorida Companies provide for the non-voting Class B**  
4 **stock?**

5 A. The Class B voting stock is part of the provisions that have been made to give  
6 divesting owners the flexibility to sell their non-voting Member Interests in the  
7 future. Divesting Owners have the right to convert their Member Interests in  
8 GridFlorida to shares of Class B Common Stock, which again qualify as passive  
9 interests. That Class B Common Stock can then be sold to another entity. To the  
10 extent that the purchaser of the Class B Common Stock is not a Market Partici-  
11 pant, the purchaser can convert its shares to Class A Common Stock.

12 **Q. Why did the GridFlorida Companies select this structure?**

13 A. This structure allows the accommodation of two competing interests. Use of a  
14 limited liability company to own the transmission facilities allows passive  
15 ownership interests in GridFlorida by divesting transmission owners to satisfy the  
16 Order No. 2000 independence standard, and offers favorable tax treatment.  
17 However, limited liability companies have restricted access to the capital markets  
18 in comparison to publicly traded corporations. Use of a corporation to own the  
19 Managing Member Interest in GridFlorida allows greater access to the capital  
20 markets through the issuance of shares in GF Inc.

1           **B.       INDEPENDENT BOARD OF DIRECTORS**

2           **Q.       What is the nature of GF Inc.'s Board of Directors?**

3           A.       GF Inc. will have an Independent Board, i.e. none of the Board members will have  
4           any connections to any of the GridFlorida Companies or any other Market  
5           Participant.

6           **Q.       How will Board members be selected?**

7           A.       A Board Selection Committee, made up of representatives of the GridFlorida  
8           Companies and of other stakeholders, was established to select the initial Direc-  
9           tors. The Committee selected the search firm of Hiedrick and Struggles, which  
10          was one of three specified nationally recognized executive search firms, to  
11          propose a pool of eight candidates and four alternate candidates for election as  
12          initial Directors. Each candidate must have qualifications equivalent to those of  
13          directors of public corporations with equivalent or larger revenues and assets than  
14          those anticipated for GF Inc., and at least six of the eight candidates and three of  
15          the four alternates must be or have been a president, chief executive officer (  
16          “CEO”), chief operating officer (“COO”) or director of a publicly traded com-  
17          pany.

18  
19          The Board Selection Committee will have the discretion to replace up to four of  
20          the eight primary candidates with alternate candidates. The Board Selection  
21          Committee will declare the resultant group of eight candidates as its slate of  
22          candidates for election as initial Directors of GF Inc. Following their selection,

1 such candidates will meet to select the initial CEO of GF Inc., who will be the  
2 initial Chairman of the Board of GF Inc.

3  
4 GF Inc.'s Board will be established with Directors serving three-year staggered  
5 terms. Three of the initial Directors will be in a class that has a term that ends one  
6 year from the date GridFlorida begins commercial operations, three will be in a  
7 class that has a term that ends two years from the date GridFlorida begins com-  
8 mercial operations, and three (including the CEO) will be in a class that has a term  
9 that ends three years from the date GridFlorida begins commercial operations.

10 The Board Selection Committee will determine the class of Directors in which  
11 each Director will serve (except that the CEO will serve in the class with the latest  
12 expiration date).

13  
14 As is common with other corporations, subsequent Directors will be elected by  
15 the holders of Class A Common Stock at each annual meeting of shareholders of  
16 GF Inc. Until GF Inc. has issued and sold its voting stock to the public or to third  
17 party private investors, GF Inc. will use a voting trust mechanism to permit the  
18 Directors whose terms are not expiring to elect Directors to fill those directorships  
19 that expire at that year's annual meeting of shareholders. Market Participants thus  
20 will have no voice in choosing subsequent Directors.

21 **Q. How can Directors be removed?**

22 A. Directors can be removed only for cause and upon a majority vote of the holders  
23 of Class A Common Stock or, before such shares are issued and sold to the public



1 or third party private investors, the Directors-Trustees under the voting trust. If  
2 there is a vacancy on the Board prior to the end of a Director's term, the remaining  
3 Directors then in office will select a replacement Director to serve for the remain-  
4 ing term of such directorship. Again, Market Participants have no vote on these  
5 matters.

6 **Q. Did the GridFlorida Companies establish any mechanism for giving stake-**  
7 **holders input into the management of GridFlorida?**

8 A. Yes. An Advisory Committee consisting of a broad array of stakeholders has  
9 been established to advise the Board. A designated representative of the Advisory  
10 Committee will be entitled to: (i) make presentations to the Board at regularly  
11 scheduled Board meetings on matters that a majority of the representatives of the  
12 Advisory Committee agree are of sufficient importance to merit Board attention;  
13 (ii) prepare and submit written recommendations and reports, at any time, to the  
14 Board and senior management of GF Inc.; (iii) meet and confer with senior  
15 management of GF Inc., at least once during each calendar quarter, on matters of  
16 concern or interest to the Advisory Committee; and (iv) have reasonable and  
17 timely access to information concerning GF Inc.'s operation of GridFlorida's  
18 assets, in a manner consistent with GF Inc.'s Information Policy. There thus are  
19 significant opportunities for the Advisory Committee to obtain information  
20 regarding GridFlorida operations and for the representatives to convey any  
21 concerns they have to the Board and senior management of GF Inc.

1       **Q.     Who is entitled to serve on the Advisory Committee?**

2       A.     The Advisory Committee, which has been formed, can consist of up to 13 repre-  
3            sentatives. Each of the following stakeholder groups is entitled to appoint up to  
4            that number of representatives set forth below:

- 5            •     Three representatives of investor-owned utilities that are, or as of Septem-  
6                ber 1, 2000 were, owners of transmission facilities in the markets served  
7                by GridFlorida.
- 8            •     Two representatives of electric utilities that distribute electricity at retail in  
9                the markets served by GridFlorida.
- 10           •     Two representatives of non-investor-owned utilities that sell electricity  
11                exclusively at wholesale in the markets served by GridFlorida.
- 12           •     Two representatives of entities that own or are developing generation  
13                facilities that will take transmission service from facilities owned or  
14                controlled by GridFlorida.
- 15           •     Two representatives of power marketers and brokers.
- 16           •     Two representatives of governmental or non-profit organizations that are  
17                not utilities, represent end-use consumers' economic or environmental  
18                interests, and are located within the geographic region in which  
19                GridFlorida provides transmission service. One of the two representatives  
20                for this stakeholder group will be from the Florida Office of Public Coun  
21                  
22                  
23                  
24                  
25

- 1 • sel, unless the Florida Office of Public Counsel declines to serve on the  
2 Advisory Committee.

3  
4 The names of the current Advisory Committee members and minutes of their  
5 meetings are posted on the GridFlorida website.

6 **Q. How will the Advisory Committee function?**

7 A. Each representative appointed to the Advisory Committee will have one vote, and  
8 a vote of a majority of the representatives present at a meeting at which a quorum  
9 is present will control. Each stakeholder group may direct its representatives to  
10 vote in such a manner as to split the votes allocated to the representatives of such  
11 stakeholder group into an affirmative component and a negative component, based  
12 on the individual votes of the Market Participants participating in such  
13 stakeholder group, in direct proportion to the votes cast for and against a  
14 particular matter by such Market Participants. If the representatives present and  
15 voting at a meeting of the Advisory Committee cannot unanimously agree on an  
16 issue, minority opinions will be presented to the Board of Directors and/or officers  
17 of GF Inc.

18 **Q. Is the GF Inc. Board obligated to accept the recommendations of the**  
19 **Advisory Committee?**

20 A. No. The Advisory Committee was established to give stakeholders a formal  
21 avenue for providing their advice to the Board, but was not given any ability to  
22 require the Board to take any specific actions. As a result, Advisory Committee  
23 recommendations will not be binding on the Board.

1 **III. PLANNING AND OPERATIONS**

2 **A. OPERATIONS**

3 **Q. What did FERC require in Order No. 2000 with respect to the level of**  
4 **control that should be exercised over transmission facilities?**

5 A. Order No. 2000 requires that an RTO exercise operational control over all  
6 transmission facilities of all transmission owners that participate in the RTO.  
7 Order No. 2000 provides some flexibility over how this operational control can be  
8 exercised, but FERC does require that all transmission facilities be subject to the  
9 RTO's control.

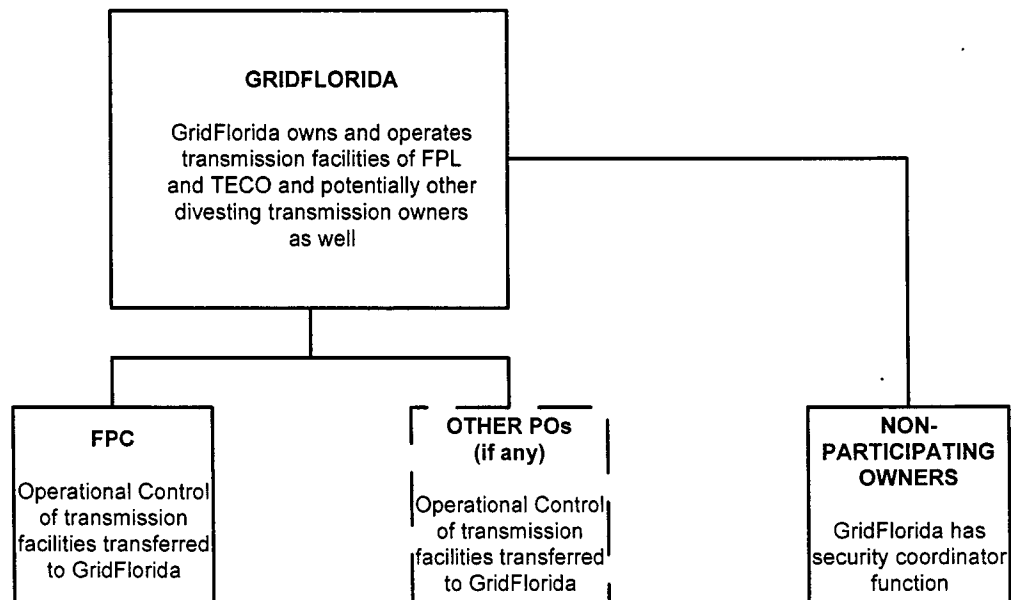
10 **Q. Please describe how GridFlorida will exercise operational control over the**  
11 **GridFlorida Companies' transmission facilities.**

12 A. The GridFlorida Companies have proposed that GridFlorida will have operational  
13 control over facilities owned by the GridFlorida Companies and any other  
14 participant in the RTO that are rated 69 kV and above. GridFlorida will exercise  
15 this operational control over all facilities that are rated 69kV and above. This  
16 control is exercised under a two-tiered structure. On the upper tier, GridFlorida  
17 will act as a Transco that owns and operates transmission facilities divested to it  
18 by FPL, TECO and other transmission owners in peninsular Florida that wish to  
19 transfer facilities to GridFlorida.

20  
21 On the second tier, GridFlorida will assume operational control over the  
22 transmission facilities of transmission owners, such as FPC, that do not wish to  
23 divest ownership of their transmission facilities. The relationship between

1 GridFlorida and the owners of these facilities (“Participating Owners” or “POs”)  
 2 is similar to an ISO-type relationship where the Participating Owners retain  
 3 ownership of their facilities, but operational control is transferred to GridFlorida  
 4 pursuant to a Participating Owners' Management Agreement ("POMA"). The  
 5 POMA gives GridFlorida all of the rights over the Participating Owners’  
 6 transmission facilities that are required by Order No. 2000. In addition, as  
 7 required by Order No. 2000, GridFlorida will act as Security Coordinator for the  
 8 FRCC. GridFlorida will perform this function both for POs and for transmission  
 9 owners in the FRCC that choose not to transfer control over the transmission  
 10 facilities to GridFlorida (“Non-Participating Owners” or “NPOs”).  
 11 The proposed RTO structure is illustrated by the following chart.

## PROPOSED RTO STRUCTURE



12

1 Thus, after the formation of GridFlorida and the commencement of its operations,  
2 GridFlorida will have operational control over all transmission facilities currently  
3 owned by the GridFlorida Companies and of any other transmission owner that  
4 chooses to participate. That operational control will result either from  
5 GridFlorida's ownership of the facilities or as a result of the transfer of operational  
6 control pursuant to the POMA GridFlorida also will act as the Security  
7 Coordinator for the entire FRCC region.

8 **Q. What kinds of operational control will GridFlorida exercise over**  
9 **transmission facilities?**

10 A. The Operating Protocol, which is Attachment O to GridFlorida's Open Access  
11 Transmission Tariff ("OATT"), spells out the extent of GridFlorida's operational  
12 authority. In general, the Operating Protocol specifies three types of control that  
13 constitute GridFlorida's operational authority: (1) direct control; (2) indirect  
14 control; and (3) security coordinator authority. GridFlorida will exercise direct  
15 control over its own facilities and over any transmission facilities owned by POs  
16 that GridFlorida determines should be subject to its direct control. All other  
17 transmission facilities included in the RTO will be subject to GridFlorida's  
18 indirect control.

19 **Q. What is meant by "direct control?"**

20 A. Direct control means that the facilities are placed into or out of service by  
21 GridFlorida from the GridFlorida control center either directly in the case of  
22 GridFlorida-owned facilities or relayed automatically from the GridFlorida control  
23 center through a PO control center in the case of PO-owned facilities. In

1 addition, GridFlorida's facilities are considered to be under the direct control of  
2 GridFlorida if they are operated manually by GridFlorida employees.

3 **Q. What is meant by "indirect control?"**

4 A. Indirect control means that GridFlorida issues instructions to the owner of the  
5 facilities, who then follows those instructions to place the facilities into and out of  
6 service. The owner of facilities subject to GridFlorida's indirect control may not  
7 take such facilities into or out of service without GridFlorida's approval, except in  
8 the event of an emergency.

9 **Q. What is meant by "security coordination?"**

10 A. By NERC rule, each NERC region (FRCC in our case) must designate a security  
11 coordinator for purposes of short term reliability. The function has the operational  
12 control authority over all generation and transmission facilities in the region for  
13 purposes of short-term reliability. This control responsibility, as distinguished  
14 from the other FERC RTO control functions, is a "keep the lights on" function.

15 **Q. Will GridFlorida operate its own control area?**

16 A. Yes. However, Participating Owners and those owners who have divested their  
17 transmission assets to GridFlorida ("Divesting Owners") will have the option of  
18 operating their own "internal" control area that will be subject to GridFlorida's  
19 indirect control. FPL and TECO have agreed to place their operations under the  
20 GridFlorida control area, while FPC has decided to retain its internal control area.

1       **Q.     What authority does GridFlorida have with respect to maintenance of**  
2       **transmission facilities?**

3       A.     GridFlorida will be responsible for performing maintenance on the transmission  
4       facilities that it owns. Participating Owners who have retained ownership of  
5       facilities placed under GridFlorida's operational control must obtain GridFlorida's  
6       approval of their proposed maintenance schedules and may not change those  
7       schedules without GridFlorida's approval. Such Participating Owners also must  
8       change previously approved schedules if so directed by GridFlorida, provided that  
9       they are reimbursed for the direct costs incurred as a result of such change.

10      **Q.     What is GridFlorida's role with respect to generation maintenance?**

11      A.     GridFlorida will not have a direct role in reviewing or approving generation  
12      maintenance, since GridFlorida's responsibilities do not extend to oversight of  
13      generation. However, GridFlorida will work with the FRCC to review proposed  
14      maintenance schedules on a monthly basis to ensure compliance with NERC and  
15      FRCC transmission reliability criteria, and will attempt to obtain voluntary  
16      agreements to change maintenance schedules if the criteria are violated, and can  
17      resort to dispute resolution if voluntary agreements are not forthcoming. In its  
18      role as Security Coordinator, GridFlorida also will have the ability to require  
19      short-term changes to generation maintenance schedules in order to preserve the  
20      short-term reliability of the transmission system.

21      **Q.     Do you believe that GridFlorida will be able to operate the transmission**  
22      **system in a reliable manner?**



1       A.     Yes. The POMA requires GridFlorida to demonstrate its ability to operate the  
2             transmission system prior to operational control of Participating Owners'  
3             transmission facilities being transferred to GridFlorida, and the Divesting Owners  
4             will require a similar provision in the agreements pursuant to which ownership of  
5             their transmission facilities is transferred to GridFlorida.

6  
7             Furthermore, GridFlorida's tariff ensures the reliability of delivery over  
8             GridFlorida's transmission system to the GridFlorida Companies' distribution  
9             systems and serves to maintain the reliability of service to the GridFlorida  
10            Companies' ratepayers. The Operating Protocol, Attachment O to the GridFlorida  
11            OATT, Section I.F., describes the Reliability Agreement that GridFlorida would  
12            enter into with the GridFlorida Companies. Attachment O obligates GridFlorida  
13            to provide the GridFlorida Companies "with reliable service that is at least  
14            equivalent to the reliability of the transmission system for [the GridFlorida  
15            Companies] prior to [GridFlorida] assuming operational and planning authority."  
16            Certain precise measurements for managing this requirement are included. In  
17            addition, GridFlorida must annually specifically address the worst six percent of  
18            delivery points based on the previous year's reliability indices.

19  
20            Finally, the GridFlorida Companies recognize that GridFlorida may not be ready  
21            to exercise direct control over all facilities from the outset. Therefore, the  
22            GridFlorida Companies have provided in Attachment O for a transition to direct  
23            control. In particular, Attachment O allows GridFlorida to contract with the

1 Divesting Owners to perform operations and maintenance services on the divested  
2 facilities for a transition period until GridFlorida is ready to perform this function  
3 itself.

4 **B. DEMARCATION BETWEEN TRANSMISSION FACILITIES AND**  
5 **DISTRIBUTION FACILITIES**

6  
7 **Q. What is the demarcation between transmission facilities and distribution**  
8 **facilities?**

9 A. The GridFlorida Companies have proposed to define transmission facilities  
10 (control over which will be transferred to GridFlorida) as follows:

11 **Transmission Line segments:** All overhead transmission line segments 69 kV  
12 and above, including the structures, foundations, line switches, metering  
13 equipment, conductors, insulators, overhead ground wire, bonding, and other  
14 hardware, but not the land and/or right-of-way. All underground transmission line  
15 segments 69 kV and above, including the cable and pipe, and any cooling  
16 equipment associated with the underground cable, excluding land and/or right-of-  
17 way, also will be transferred.

18 **Transmission switching stations (type T):** All equipment associated with a  
19 transmission switching station.

20 **Generator switchyards (type GT):** All equipment associated with the generator  
21 switchyards with the exception of the generator step up transformers and coolers,  
22 and the protective equipment associated with these devices.

23 **Generator switchyards that also serve distribution load (type GTD):** All  
24 equipment associated with the generator switchyards will be transferred to

1 GridFlorida with the exception of the following assets: the generator step up  
2 transformers and coolers, plus the protective equipment associated with these  
3 devices. The step down transformers, associated protective devices, and all  
4 equipment rated below 69 kV associated with serving the retail or generator  
5 auxiliary load will not be considered transmission facilities.

6 **Distribution step down substations (type D):** The high voltage bus and all  
7 above grade equipment associated with the high voltage bus including: bus  
8 support structures, line sectionalizing switches, motor operators, and/or  
9 transmission breakers, insulators, reactive devices, and any equipment used for  
10 protection of the transmission line or bus. Transformer fault interrupting devices,  
11 foundations, conduits, control cable, ground grid, remote communication  
12 equipment, telemetry, battery bank and charger, and all other equipment less than  
13 69 kV are not deemed to be transmission facilities.

14 **Combination transmission switching stations and step down substations:**

15 **Predominately distribution step down substations (type DT):** The only assets  
16 from these stations that will be considered transmission facilities are  
17 autotransformers, the transmission bus(es) and all above grade equipment  
18 associated with the high voltage bus including: bus support structures, line  
19 sectionalizing switches, motor operators, and/or transmission breakers, insulators,  
20 reactive devices, plus any equipment used for protection of the transmission line  
21 or bus. Transmission breakers in a ring bus that also serve as the protective  
22 device for a step down transformer are not deemed to be transmission facilities.

1 **Predominately transmission switching stations (type TD):** All assets will be  
2 transferred to GridFlorida with the exception of the step down transformers, its  
3 associated protective devices, plus all equipment rated below 69 kV that's  
4 associated with serving the retail load. Transmission breakers in a ring bus that  
5 also serve as the protective device for a step down transformer will be transferred  
6 to GridFlorida.

7 **Q. What factors did the GridFlorida Companies consider in determining the**  
8 **demarcation point for transmission facilities for GridFlorida?**

9 A. There are at least four factors that led the GridFlorida Companies to propose to  
10 turn over all facilities 69 kV and above to GridFlorida. They are listed below.

11  
12 (1) Historically, facilities 69 kV and above have been considered by the  
13 GridFlorida Companies to be transmission facilities, from a planning/operations  
14 and ratemaking perspective. This is because the primary function for the vast  
15 majority of such facilities is to transmit power for delivery and transformation to  
16 distribution voltage levels for further delivery to end users.

17  
18 (2) Stakeholders in the collaborative process generally expressed the need for  
19 open access to all 69 kV and above transmission facilities in Florida. Such  
20 transmission facilities belonging to the initial GridFlorida participants currently  
21 serve a large number of wholesale delivery points. Some such facilities currently  
22 might not meet the FERC's criteria for being considered transmission, particularly  
23 because those facilities are radial lines. However, since such lines already provide

1 wholesale transmission access, the stakeholders generally were insistent that such  
2 service be provided exclusively under the RTO's open access tariff, without  
3 having to also deal directly with the incumbent utility for such access. In fact, the  
4 stakeholders wanted all such facilities to be accessible through the RTO's tariff,  
5 whether or not such facilities currently serve wholesale delivery points.

6  
7 (3) Classification of radial facilities as distribution instead of transmission  
8 would make access to transmission more complicated than it needs to be. For  
9 example, if a radial 69 kV line were initially left under the control of an  
10 incumbent utility and it later became looped (i.e. extended to interconnect to the  
11 transmission system at both ends such that power may flow in either direction),  
12 control over that facility would then need to be transferred to the RTO. This  
13 could happen many times each year. Similarly, a looped line could later become  
14 radial. The changing of control of such facilities back and forth between the RTO  
15 and utilities could be cumbersome and complicated.

16  
17 (4) The rate structure proposed for GridFlorida would result in subsidies  
18 across utilities if each utility chose a different demarcation point for facilities to  
19 turn over to the RTO, since the RTO rates would be based on the costs of all  
20 transferred facilities. For example, if TECO elected not to turn over control of its  
21 69 kV facilities and FPL and FPC did turn over control of their 69 kV facilities,  
22 TECO's ratepayers would pay all the costs of the TECO's 69 kV facilities plus a  
23 load ratio share of the costs of FPL's and FPC's 69 kV facilities, while FPL's and

1 FPC's ratepayers would pay only their load ratio share of the costs of FPL's and  
2 FPC's 69 kV facilities, since TECO's facilities would not be included in  
3 GridFlorida's rate base. Thus, the GridFlorida Companies's ratepayers could pay  
4 for more than their load ratio share for use of the 69 kV facilities within the  
5 region, subsidizing the costs borne for use of 69 kV facilities by other ratepayers  
6 within the region.

7 **Q. What did the GridFlorida Companies conclude from the above mentioned**  
8 **factors?**

9 A. The GridFlorida Companies concluded that it would be in the best interest of the  
10 GridFlorida Companies and their ratepayers to relinquish control over all of their  
11 69 kV and above transmission facilities. A uniform demarcation point is a  
12 reasonable approach to achieve fairness and equal access to the transmission  
13 system of the RTO. Given the small portion of their 69 kV and above facilities  
14 that might be eligible for reclassification as distribution, the GridFlorida  
15 Companies concluded that the other factors and benefits outweigh any reason to  
16 attempt to undertake any such reclassification.

17 **Q. Why isn't land being transferred to GridFlorida?**

18 A. It would be difficult to transfer some of the rights-of-way, and others cannot be  
19 transferred at all. In addition, many of the rights-of-way are needed by the  
20 GridFlorida Companies for purposes other than transmission. As a consequence,  
21 the GridFlorida Companies determined that it would be better to simply enter into  
22 a land use agreement with GridFlorida which gives GridFlorida the necessary  
23 access to its transmission assets. Retention of these rights by the GridFlorida

1 Companies greatly simplifies the asset transfer and ensures that they will have  
2 access to the rights-of-way for other purposes. Of course, other Divesting Owners  
3 could arrange to sell their land to GridFlorida if that was mutually agreeable.

#### 4 **C. PLANNING**

##### 5 **Q. What authority will GridFlorida have with respect to planning?**

6 A. As required by Order No. 2000, GridFlorida will have the exclusive authority to  
7 engage in the planning for its system and to direct the necessary expansion. This  
8 authority is spelled out in great detail in the Planning Protocol that is Attachment  
9 N to the GridFlorida OATT.

##### 10 **Q. What process will GridFlorida employ in performing its planning function?**

11 A. GridFlorida will adopt a regional transmission planning process designed to  
12 identify and to facilitate, in a timely manner, the adoption and implementation of  
13 transmission expansion options, including the opportunity by market participants  
14 to offer generation alternatives to these transmission options that can  
15 economically relieve congestion and maintain and enhance grid efficiency and  
16 reliability. This process will encourage and provide opportunities for meaningful,  
17 in depth participation by all market participants, the Florida Public Utility  
18 Commission ("FPSC"), and other interested parties.

19  
20 The GridFlorida Companies were concerned that the various aspects of  
21 GridFlorida's planning might be performed on a piecemeal basis that does not  
22 allow consideration of transmission needs on a regional basis. As a result, they  
23 have provided for an annual transmission planning process that allows for

1 coordinated regional planning. This process, which is set forth in Exhibit N.1 to  
2 the Planning Protocol requires the submission of data to GridFlorida on the  
3 expected uses of the system by November 1 of each year. On the following June  
4 1, GridFlorida will develop an Initial Transmission Expansion Plan for peninsular  
5 Florida and, after receiving comments and conducting a regional planning  
6 conference, GridFlorida will post a Final Transmission Expansion Plan by  
7 October 1. The development of this plan, however, does not relieve GridFlorida  
8 of its obligation to process requests for transmission service under GridFlorida  
9 OATT under the timelines provided for in FERC's Order No. 888.

10 **Q. What types of planning will GridFlorida perform?**

11 A. There are three broad categories of transmission planning that GridFlorida will  
12 perform.

13 **Bulk Transmission Planning:** GridFlorida will conduct annual studies of the  
14 transmission system from a regional perspective and will coordinate with  
15 participants in the development of expansion plans. GridFlorida also will perform  
16 the planning required in order to address requests for transmission service under  
17 GridFlorida OATT. This includes conducting the necessary system impact studies  
18 and determining the additional facilities, if any, necessary to grant the  
19 transmission request.

20 **Local Area Planning:** Local Area Planning is the ongoing planning required in  
21 order to meet the load growth of Network customers (including the GridFlorida  
22 Companies, who will be Network customers). Local Area Planning consists of a  
23 process in which GridFlorida will work with each Load Serving Entity (“LSE”) to



1 develop a plan to meet that LSE's future transmission needs. The focus of this  
2 planning is on the local transmission system serving existing and proposed new  
3 Points of Delivery where GridFlorida will deliver electricity to the LSE.  
4 However, GridFlorida also will consider expansions or additions to the high  
5 voltage bulk transfer facilities necessary to satisfy expected load growth.

6 **Generation Interconnection Planning:** In accordance with FERC's policy  
7 governing generation interconnections, GridFlorida's generation interconnection  
8 planning will involve the planning necessary to connect generators to the grid,  
9 which is performed separately from the planning necessary to transmit power from  
10 the generation to any location beyond the point of interconnection or to integrate  
11 the generator over the transmission grid. GridFlorida will perform this function,  
12 and will negotiate and execute interconnection agreements with generators.

13 **Q. How will expansion of transmission facilities be accomplished?**

14 A. Attachment N includes detailed provisions governing transmission expansion. As  
15 noted above, Attachment N provides that GridFlorida will make the final  
16 determination as to what facilities should be constructed after the planning  
17 process identifies the need for new facilities. In making its determination as to the  
18 best alternative, GridFlorida is required to consider the relative estimated costs of  
19 each proposed alternative, the impacts on reliability and existing firm service,  
20 consistency with the long-term planning for the region, the environmental impacts  
21 and availability of permits, and the impact of each alternative solution on  
22 congestion. In determining which alternative to select, GridFlorida is required

1 also to consider market solutions, including solutions that do not involve the  
2 construction of new facilities.

3 **Q. Who will be responsible for the construction of new facilities?**

4 A. Attachment N provides that, if the facilities are to be added to the existing  
5 facilities of a PO, then that PO shall have the option of constructing and owning  
6 that portion of the new facilities that is to be located in its service area. If the  
7 facilities are to be added to the existing facilities of more than one PO, then each  
8 PO shall have the option of constructing and owning the facilities to be added to  
9 its existing facilities that are to be located in its service area. If facilities are to be  
10 added to both the existing facilities of a PO and GridFlorida, the PO shall have the  
11 option of constructing and owning the facilities to be added to its existing  
12 facilities that are to be located in its service area, and GridFlorida shall construct  
13 and own the remaining facilities. If the facilities are to be added to the existing  
14 facilities of GridFlorida, but do not require facilities to be added by a PO, or if a  
15 PO declines the option of constructing and owning new facilities, then the  
16 facilities will be constructed and owned by GridFlorida. If a PO is selected to  
17 construct and own transmission facilities and that PO fails to obtain necessary  
18 permits or financing or fails to commence construction within a reasonable period  
19 of time, then GridFlorida shall construct and own the facilities itself. In this way a  
20 PO cannot be forced to expend the funds for expansion yet, at the same time, the  
21 PO cannot block a proposed expansion by refusing to pursue it.

1       **Q.       Questions have been raised as to whether GridFlorida will have the right of**  
2       **eminent domain to acquire rights of way for necessary transmission**  
3       **additions. How did the GridFlorida Companies account for the possibility**  
4       **that GridFlorida might be found not to have eminent domain rights?**

5       A.       The GridFlorida Companies addressed this possibility in the Planning Protocol.  
6       They added a provision to the Planning Protocol (Section II.F) that requires the  
7       GridFlorida Companies to use their own powers of eminent domain to acquire  
8       rights of way if GridFlorida is unable to do so.

9       **Q.       What happens if one of the GridFlorida Companies or another transmission**  
10       **customer wants to build facilities that GridFlorida does not believe are**  
11       **necessary?**

12       A.       The GridFlorida Companies recognize the concern raised by some stakeholders  
13       that they may want to build facilities that GridFlorida finds are not necessary or to  
14       provide for enhancements to the facilities that GridFlorida determines should be  
15       constructed. As a consequence, they have included extensive provisions to  
16       Attachment N providing that any entity is permitted, if certain conditions are  
17       satisfied, to construct or require GridFlorida to construct facilities in addition to  
18       those that GridFlorida determines should be built or to place facilities in service  
19       sooner than GridFlorida determines they are needed. GridFlorida's tariff provides  
20       that "A Transmission Customer may request and [GridFlorida] shall be obligated  
21       to provide and, where applicable, to interconnect enhanced or special facilities,  
22       regardless of whether such facilities have been identified as necessary by  
23       [GridFlorida]." (Attachment N, Planning Protocol, Section I.E.) Thus, although

1 GridFlorida is likely to build the facilities that its customers will need,  
2 GridFlorida cannot deny or obstruct special needs of a utility as it carries out its  
3 obligation to serve its customers.

4 **Q. Given GridFlorida's assumption of authority in the planning area, will the**  
5 **GridFlorida Companies be able to comply with an order of the FPSC**  
6 **requiring them to construct new transmission facilities?**

7 A. Attachment N obligates GridFlorida to act as the GridFlorida Companies' agent  
8 and to construct the necessary facilities. Therefore, if the FPSC orders one of the  
9 GridFlorida Companies to construct transmission facilities, GridFlorida will be  
10 obligated to perform such construction as the agent for the GridFlorida  
11 Companies.

12 **Q. Do you believe that GridFlorida will be able to perform the planning**  
13 **function in an appropriate manner?**

14 A. Yes. As was the case with the operations function, GridFlorida will have to  
15 demonstrate that it is capable of performing the planning function before control  
16 over facilities is transferred to it. Furthermore, the entire planning process is  
17 designed to give the GridFlorida Companies and others the ability to participate in  
18 the process and ensure that GridFlorida is made aware of their needs. Finally,  
19 there are transition mechanisms designed to ensure that planning will be  
20 performed appropriately when GridFlorida first commences operations.

21 **Q. What transition mechanisms have been put in place?**

22 A. The GridFlorida Companies recognize that GridFlorida may not be able to fully  
23 perform all aspects of planning from the date it commences operations.

1 Therefore, they have included two provisions for a transition from current  
2 planning processes to the planning process described above. The first provision  
3 relates to Local Area Planning, which requires an extensive knowledge about  
4 local area conditions. GridFlorida therefore will assign the Local Area Planning  
5 function to the GridFlorida Companies with respect to their local areas (and has  
6 the option to do so for other LSEs as well) for a three year transition period. The  
7 results of the planning performed by the GridFlorida Companies during the  
8 transition period are subject to review and approval, or modification, by  
9 GridFlorida.

10  
11 The second transition provision provides that “as a transition mechanism, at the  
12 commencement of operation of [GridFlorida, it] shall adopt and incorporate into  
13 its transmission expansion plan the most recent ten (10) year plan of all  
14 Participating Owners and Divesting Owners associated with facilities that are  
15 considered part of the Transmission System....” (Attachment N, Planning  
16 Protocol, Section I.A.11) These 10 year plans will constitute the baseline plan for  
17 GridFlorida. Thus, the GridFlorida Companies’ needs for future transmission  
18 expansion will be taken into account immediately.

1 **IV. MARKET DESIGN**

2 **A. CONGESTION MANAGEMENT**

3 **Q. What is congestion management?**

4 A. When there is more demand to use a particular transmission facility than there is  
5 capacity, we say that the facility is "congested." Congestion management deals  
6 with how capacity to congested interfaces is allocated, i.e. who is given rights to  
7 schedule transactions over the congested facilities and who must resort to other  
8 alternatives. Congestion management also addresses how congestion is addressed  
9 in real time when, notwithstanding the allocation of capacity, flows over  
10 transmission facilities reach the capacity of the facilities and certain transactions  
11 must be curtailed.

12 **Q. What standards did Order No. 2000 require of congestion management**  
13 **proposals?**

14 A. In Order No. 2000, FERC required that "an RTO [or an independent entity] must  
15 ensure the development and operation of market mechanisms to manage  
16 congestion," and that these mechanisms should "provide[] all transmission  
17 customers with efficient price signals regarding the consequences of their  
18 transmission use decisions." Order No. 2000 at 380-82. FERC stated that "a  
19 workable market approach to congestion management should establish clear and  
20 tradable rights for transmission usage, promote efficient regional dispatch, support  
21 the emergence of secondary markets for transmission rights, and provide market  
22 participants with the opportunity to hedge locational differences in energy prices."  
23 Id. at 385. In establishing these requirements, FERC noted that it has not

1 identified any one approach as being superior to all others, and stated that “an  
2 RTO's choice of a congestion pricing method will depend on a variety of factors,  
3 many of which are unique to that RTO.” Id. at 384. FERC therefore decided to  
4 provide flexibility to allow proposals that are best suited to each RTO's  
5 circumstances. Id.

6 **Q. What congestion management approach did the GridFlorida Companies**  
7 **propose?**

8 A. The congestion management proposal is included in Attachment P to the  
9 GridFlorida OATT. As noted above, there are two aspects to congestion  
10 management: (1) allocation of capacity and (2) treatment of congestion in real  
11 time. With respect to the allocation of capacity, the GridFlorida Companies  
12 proposed a "physical rights" system. Under a physical rights system, customers  
13 are allocated capacity rights based on the physical capacity of the system and are  
14 entitled to use those rights to transmit power from generation to load. This is in  
15 contrast to a "financial rights" system used by some other RTOs where  
16 transmission customers do not have the right to physically transmit power  
17 between any two points in the system, but are placed in the same financial  
18 position as if they did possess such physical rights.

19 **Q. How will GridFlorida implement its physical rights approach?**

20 A. GridFlorida will manage congestion through "flowgates," which are the  
21 transmission facilities that are most likely to be subject to significant congestion  
22 based both on past experience and an analysis of proposed future uses of the  
23 system. The rights to transmit power through a flowgate are called Physical

1 Transmission Rights ("PTRs"). PTRs will provide customers with clear rights  
2 that will be fully tradeable in secondary markets, as well as afford customers a  
3 means to hedge locational differences in energy prices.

4 **Q. What approach did the GridFlorida Companies propose for dealing with**  
5 **congestion in real time?**

6 A. GridFlorida will rely on mandatory incremental bids ("incs") and decremental  
7 bids ("decs") submitted for generators scheduled by Market Participants. An inc  
8 bid is the price that a generator would charge to increase the output of its  
9 generation facility by a specified amount, and a dec bid is the price that a  
10 generator would pay to decrease the output of its generation facility by a specified  
11 amount (a dec bid will never be more than the variable cost that the generator will  
12 save by not running its unit). The incs and decs will be called upon by  
13 GridFlorida to manage real-time congestion, which will be done by calling on inc  
14 bids to increase generation on the congested side of the flowgate and calling on  
15 dec bids to decrease generation on the other side of the flowgate. The price paid  
16 to generators for the incs and decs will be cleared through the real-time balancing  
17 market described below.

18 **Q. How will PTRs work in the scheduling process?**

19 A. Market Participants will be required to submit their balanced schedules each day  
20 for the next day and to identify the PTRs they intend to use. PTRs not scheduled  
21 by their holders will be made available by auction as recallable PTRs to other  
22 Market Participants, subject to the right of the original holder to recall the PTR up  
23 to a specified time before the close of the hourly scheduling adjustment process



1 described below. The original holder of PTRs that are auctioned under this  
2 process will not be paid the revenues received in the auction. Instead, those  
3 revenues will be credited against charges under the transmission tariff. This “use-  
4 it-or-lose-it-rule” will prevent hoarding of flowgate capacity and will increase  
5 liquidity in the secondary market for PTRs; PTR holders that do not intend to use  
6 their PTRs for their own transactions will have an economic incentive to sell the  
7 PTRs in that market.

8 **Q. How will PTRs be allocated?**

9 A. Because load serving entities within Florida will retain their obligation to serve  
10 after GridFlorida begins operations, they must continue to be able to serve their  
11 customers in a reliable manner. Further, many entities have entered into bilateral  
12 transactions that rely on firm transmission rights under bilateral transmission  
13 agreements or service agreements under open-access transmission tariffs. The  
14 economics of these transactions should not be disturbed unnecessarily. The  
15 GridFlorida Companies therefore developed a system of PTR allocation that  
16 respects both existing native load obligations and existing contracts. PTRs will be  
17 allocated annually without auction and in sufficient quantities to preserve existing  
18 uses (including native load growth) of the transmission system, with the  
19 remainder allocated by auction. This means that the GridFlorida Companies will  
20 be assured of having sufficient PTRs to meet current and future firm native load.

21 **B. REAL TIME BALANCING MARKET**

1       **Q.     What have the GridFlorida Companies proposed for a real-time balancing**  
2       **market?**

3       A.     Order No. 2000 requires RTOs to establish real-time energy balancing markets  
4       that will be applicable to all market participants. Attachment P to the GridFlorida  
5       OATT includes the GridFlorida Companies' balancing energy proposal. In the  
6       GridFlorida Companies' proposal, market participants are required to submit  
7       balanced schedules to GridFlorida in the day-ahead scheduling process. With  
8       those schedules, market participants must submit incs and, where applicable, decs  
9       for all scheduled resources (and for quick-start units, even if not scheduled).  
10      These incs and decs will be available to GridFlorida in real-time to perform the  
11      balancing function. All Market Participants will be required to clear their  
12      imbalances through GridFlorida's balance energy clearing process as required by  
13      Order No. 2000.

14      **Q.     How will the balancing price be determined?**

15      A.     The real-time balancing energy price will be determined by GridFlorida's dispatch  
16      of resources for balancing and congestion management. In the absence of  
17      congestion, there will be a single real-time balancing energy price for the entire  
18      GridFlorida region. When there is congestion across flowgates, i.e. the  
19      transmission facilities that make up the flowgate are being used up to their  
20      physical capacity, the balancing energy price will be different for each Settlement  
21      Zone which, initially, will be equivalent to the service areas of the GridFlorida  
22      Companies. When intra-zonal congestion exists, i.e. when transmission facilities

1 that are not included in a flowgate are being used up to their physical capacity, all  
2 load within each Settlement Zone will pay the same price, generators will be  
3 compensated in a manner that recognizes any redispatch to relieve intra-zonal  
4 congestion, and the costs of relieving intra-zonal congestion will be borne only by  
5 load within the Settlement Zone (i.e., these costs will not be socialized across the  
6 entire GridFlorida region).

7 **Q. How will market power be addressed in the pricing of balancing energy?**

8 A. FERC rejected the GridFlorida Companies' initial market power mitigation  
9 proposal, which required entities without market-based rates to bid in at their  
10 costs, but to receive the market-clearing price. FERC found that the market data  
11 necessary to ensure that entities with market power could not abuse that market  
12 power had not been submitted. In response, the GridFlorida Companies filed two  
13 proposed mitigation proposals. They stated that they prefer Alternative A, which  
14 most closely permits the establishment of a market.

15 **Alternative A**

16 Alternative A retains the essential provisions of a bid-based market, where  
17 potential suppliers submit bids and a market-clearing price is established.  
18 However, a cap would be placed on the amounts that entities without market-  
19 based rates could bid and receive. This cap would be equal to a FERC-approved  
20 cost-based rate based on that entity's costs. This could be either at an existing  
21 cost-based rate for energy or a newly filed rate.  
22

1 A market clearing price for generators would be established based on all bids  
2 submitted to GridFlorida, and determined at each generator location, or "node."  
3 However, to the extent that the market-clearing price exceeded an entity's cost-  
4 based rate cap, that entity would be limited to receiving its cost-based rate. For  
5 example, if an entity's cost-based rate cap was \$50/MWh and the market-clearing  
6 price was \$60/MWh, then that entity would be paid only \$50/MWh. Only entities  
7 with market-based rate authority or a cost-based rate cap at \$60/MWh or higher  
8 could receive the \$60 price. If, on the other hand, the market clearing price was  
9 \$40/MWh, the entity with a \$50 cap would be paid only \$40/MWh.

10  
11 An important element of this proposal is that the cost-based rate caps are not  
12 limited to variable costs, but also permit bids that include recovery of fixed costs,  
13 including return of and on investment. It is important that bids include the  
14 recovery of fixed costs. Since the cost-based rate cap is not just a bid cap but a  
15 price cap, it would not be possible to recover any fixed costs if the price cap were  
16 limited to variable costs.

17  
18 The GridFlorida Companies retained the same obligation to submit bids that was  
19 in their previous proposal. All generation owners must submit bids for the  
20 uncommitted capacity of any unit that is on line, as well as for all quick start units.

### 21 **Alternative B**

22 The GridFlorida Companies submitted an alternative mitigation proposal in the  
23 event that FERC was not comfortable with a market-clearing price, even with a

1 cost-based cap. This proposal is identical to Alternative A in all respects except  
2 one. Generation owners will still bid into the market and entities without market-  
3 based rates will still be limited to a cost-based bid (including fixed costs).  
4 However, no market-clearing price will be calculated. Instead, each generator  
5 selected to produce energy will be paid what it bids. For example, if the entity  
6 with a \$50/MWh cost-based bid cap bids \$40/MWh, it will be paid \$40/MWh if it  
7 is selected to produce balancing energy regardless of what other bids are selected  
8 by GridFlorida.

9  
10 There is no question that this proposal should provide adequate market power  
11 mitigation. Since no market-clearing price is established, there is no market price  
12 to be artificially driven up through an improper bidding strategy. And, since  
13 sellers without market-based rate authority would be limited to recovering their  
14 costs, no seller would be able to bid at inappropriately high levels and recover  
15 more than its costs. However, the GridFlorida Companies prefer Alternative A  
16 because it more closely resembles a market-based mechanism, and the  
17 GridFlorida Companies believe that a market-based balancing price mechanism  
18 will send price signals that will permit more efficient market behavior and more  
19 efficient generation location decisions.

20 **C. ANCILLARY SERVICES**

21 **Q. What did the GridFlorida Companies propose with respect to ancillary**  
22 **services?**

1 A. Initially, the GridFlorida Companies proposed a bid-based system where a market-  
2 clearing price would be established for ancillary services in much the same way  
3 that the balancing energy price was to be established. Again, however, FERC  
4 found that the market data necessary to support this approach had not been  
5 provided.

6 **Q. How did the GridFlorida Companies revise their proposal?**

7 A. The GridFlorida Companies withdrew their bid-based approach. Instead, they  
8 proposed that GridFlorida satisfy its provider of last resort obligation by procuring  
9 ancillary services at cost-based rates from the GridFlorida Companies and/or other  
10 market participants and passing the costs through to customers who purchase the  
11 services. GridFlorida will charge the average of the cost that it incurs to procure  
12 the services.

13 **Q. What is the GridFlorida Companies' obligation to provide ancillary services**  
14 **to GridFlorida?**

15 A. In agreeing to provide ancillary services to GridFlorida, the GridFlorida  
16 Companies did not wish to expand their current obligation as transmission  
17 providers to provide ancillary services. For example, FPL did not want to have to  
18 provide ancillary services for a transmission customer located in TECO's service  
19 area. As a consequence, each Joint Applicant's obligation to provide ancillary  
20 services to GridFlorida was limited to transactions where they are obligated to  
21 provide ancillary services today. GridFlorida also will be able to purchase  
22 ancillary services from other sellers, if it believes it would be appropriate to do so.

1       **Q. Will transmission customers be obligated to purchase ancillary services from**  
2       **GridFlorida?**

3       A. GridFlorida is obligated only to be the provider of last resort for energy-based  
4       ancillary services. The GridFlorida Companies' new proposal continues to permit  
5       customers to self provide such ancillary services. Customers also are permitted to  
6       procure energy-based ancillary services from third parties on a bilateral basis.  
7       However, Scheduling and Black Start Restoration services, which are not energy-  
8       based ancillary services, must be provided by and purchased from GridFlorida.

9       **Q. Is this approach to ancillary services intended to be permanent?**

10      A. The goal for GridFlorida is that it ultimately will be able to institute the bid-based  
11      market for ancillary services. When GridFlorida determines that the market is  
12      ready for a bid based system, it will be free to implement such a market upon  
13      making an appropriate showing to FERC.

14

15      **Q. How will the responsibility for providing operating reserves be determined?**

16      A. The current FRCC method for allocating operating reserve responsibility will be  
17      retained.

18      **Q. Does the GridFlorida proposal include any installed capacity requirements?**

19      A. The GridFlorida Companies have proposed to include an Installed Capacity and  
20      Energy ("ICE") provision that would require GridFlorida's transmission customers  
21      to demonstrate that they have satisfied ICE requirements. The provisions for  
22      establishing the amount of ICE responsibility and exactly how that responsibility

1 is to be met are being discussed at the FRCC, and it is anticipated that an ICE  
2 proposal will be presented by the FRCC to the FPSC for its approval.

3 **V. PROPOSED NEW GENERATION PROJECTS IN FLORIDA**

4 **Q. What is the current status of proposed new non-utility generation projects in**  
5 **Florida?**

6 A. Because there is no obligation to inform any of the GridFlorida Companies about  
7 proposed new projects, the GridFlorida Companies do not know for sure how  
8 much new generation currently is planned. However, the GridFlorida Companies  
9 do process requests for new interconnections for generation projects, and therefore  
10 do have knowledge at least of projects that have submitted a request for  
11 interconnection to one of their transmission systems.

12

13 The following chart shows the amount of non-utility generation that is in the  
14 interconnection study queues of the GridFlorida Companies to come on line in the  
15 next five years.



1 **NON-UTILITY GENERATION IN GRIDFLORIDA COMPANIES**  
2 **INTERCONNECTION QUEUES FOR 2001-05**

3

<b>In-Service Date</b>	<b>Number of Units</b>	<b>Total MW</b>
4 2001	3	684
5 2002	14	6,546
6 2003	22	8,676
7 2004	10	6,844
8 2005	4	3,728
9 <b>Total 2001-05</b>	<b>53</b>	<b>26478</b>

10  
11 Not all of the units included in the study queues and reflected in the chart will be  
12 constructed. However, significant sums are being expended on a number of these  
13 projects, and the GridFlorida Companies expect that many of the units will be  
14 completed and placed on line. It thus is clear that non-utility generation facilities  
15 are being built in Florida.

1           **CONCLUSION**

2           **Q.    Please summarize your testimony.**

3           A.    The GridFlorida Companies' GridFlorida proposal appropriately addresses the  
4           requirements of Order No. 2000 while still protecting the interests of Florida retail  
5           customers. In particular, with respect to each area discussed above, our  
6           conclusions are as follows:

7           **Governance**

8           GridFlorida will be managed through an Independent Board that will have the  
9           appropriate skill sets and experience to make appropriate decisions. Stakeholders  
10          will have input into GridFlorida management through the Advisory Committee.

11          **Planning and Operations**

12          The Florida transmission system will be planned and operated reliably by  
13          GridFlorida. The GridFlorida Companies have provided for appropriate transition  
14          mechanisms that will help ensure that GridFlorida will be able to perform its  
15          planning and operations functions.

16          **Market Design**

17          The congestion management, balancing energy and ancillary services proposals  
18          have been designed to facilitate efficient markets while at the same time  
19          mitigating any market power that might be possessed by a market participant.

20          **Q.    Does this conclude your testimony?**

21          A.    Yes it does.

1 MR. CHILDS:

2 Q Okay. And I'd like to have you summarize the  
3 testimony, please.

4 A (Witness Naeve) Yes, I have a very brief summary of  
5 the panel testimony.

6 GridFlorida proposal was designed to address the  
7 requirements of FERC Order 2000 while protecting the interest  
8 of Florida retail customers. The central features of the  
9 GridFlorida proposal are as follows: With respect to  
10 governance, GridFlorida will be a for-profit transmission  
11 company governed by an independent board. They'll have the  
12 skill sets and experience necessary to make appropriate  
13 decisions. Stakeholders will have input into GridFlorida  
14 management through the advisory committee.

15 With respect to planning and operations, the Florida  
16 transmission system will be planned and operated reliably by  
17 GridFlorida. The GridFlorida companies have provided for  
18 appropriate standards and other provisions in the GridFlorida  
19 tariff that will allow them to ensure reliable transmission  
20 operations. The GridFlorida companies also have provided for  
21 transition mechanisms that will help ensure that GridFlorida  
22 will be able to perform its planning and operation functions.

23 With respect to market design, the congestion  
24 management, balancing energy and ancillary services proposals  
25 have been designed to facilitate efficient markets while at the

1 same time mitigating any market power that might be possessed  
2 by a market participant.

3 That concludes my summary.

4 MR. CHILDS: We now tender the panel for cross  
5 examination.

6 CHAIRMAN JACOBS: I believe, Staff, you're on.

7 CROSS EXAMINATION

8 BY MR. KEATING:

9 Q Good afternoon. Let's start with a few questions  
10 that were originally directed to Mr. Naeve earlier today that,  
11 I believe, he either deferred to the panel or would be maybe  
12 better addressed by the panel as well.

13 First, if the participants -- if the GridFlorida  
14 participants are required by FERC to participate in a southeast  
15 RTO, do you anticipate that each utility's participation will  
16 be the same as it is in GridFlorida?

17 In other words, would Florida Power & Light and TECO  
18 continue to be divesting their assets while Florida Power  
19 Corporation maintained operational control -- or gave up  
20 operational control? I'm sorry.

21 A (Witness Mennes) There are certain functions and  
22 characteristics that in Florida Power & Light's case or in the  
23 RTO's case that they will have to maintain. Of course, one of  
24 those is the short-term reliability and the ability to control  
25 the equipment. So, the RTO, whether it's GridFlorida or the

1 southeast RTO will have that control of the asset.

2 Now, until the southeast RTO, the terms and  
3 conditions and the governance and what it looks like our set in  
4 Florida Power & Light's case, it's just impossible to say what  
5 our participation would be and what it would look like in the  
6 southeast RTO.

7 A (Witness Ramon) I can just echo Mike Naeve's  
8 comments about that and Marty Mennes, but for Tampa Electric we  
9 would also have to see first and foremost what is the southeast  
10 and construct, what kind of model it would be, whether it's a  
11 Transco or a not for-profit RTO.

12 A (Witness Southwick) Well, I would somewhat agree in  
13 that, obviously, we'd have to see what it was before we would  
14 commit to anything, but I would be surprised if we changed our  
15 position that we did not want to divest our assets at this  
16 time.

17 Q Under what conditions do you believe it would be  
18 appropriate for the GridFlorida companies to abandon the  
19 GridFlorida proposal and seek to join a southeast RTO?

20 A (Witness Mennes) Okay. I think, what you're asking  
21 is if we had the two options out there and we decide that what  
22 would make us decide a southeast RTO is a better deal than  
23 GridFlorida and, I think, the first important thing to note in  
24 Florida Power & Light's case we'll end up being, no matter  
25 where the RTO is, one of the largest customers of it.

1           So, what will be the first and foremost on our mind,  
2 of course, will be the reliability and cost aspects of the RTO,  
3 and we'd have to look at that and probably would be the biggest  
4 weighted, of course, cost reliability is the whole thing, but  
5 the terms and conditions we would look at and decide what is  
6 best for us and our customer.

7           A     (Witness Ramon) I think for Tampa Electric it is  
8 real clear, at least one way this would shape out for us to  
9 prefer the southeast, it would be if this Commission found it  
10 imprudent to go forward on GridFlorida and, obviously, the only  
11 other RTO that's out there and FERC may order us to participate  
12 in that RTO.

13          A     (Witness Southwick) I will add one other thing, at  
14 least from our perspective, in addition to reliability and how  
15 well we believe it would operate in addition to the cost which  
16 is also very, very important, we would also be concerned about  
17 potential cost shifting and what the impacts would be to us  
18 from that.

19          Q     Would you expect the cost associated with  
20 participation in the southeast RTO to be greater or smaller  
21 than the costs involved with participating in GridFlorida?

22          A     (Witness Southwick) I, personally, would have no way  
23 to answer that. We just don't know until we see it; it could  
24 be more, it could be less.

25          Q     Do you know if that -- has there been any estimate

1 made of the cost of participating in a southeast RTO?

2 A (Witness Southwick) Not to my knowledge.

3 MR. CHILDS: I would ask -- I'm not sure if these are  
4 questions you're pursuing because they were referred, but this  
5 panel is talking about, I believe, the significant features of  
6 the GridFlorida proposal and how the companies developed the  
7 proposal as they did.

8 It may help to move it along, you know, if you want  
9 to ask the questions now, but it seems that it is not what  
10 these witnesses are talking about at this point.

11 CHAIRMAN JACOBS: Objection to the form of that  
12 question or --

13 MR. LONG: Well, Mr. Chairman, I just want to point  
14 out that the witnesses are appearing as a panel and not as  
15 company-specific witnesses. To the extent that there are  
16 policy questions for Tampa Electric, they should be addressed  
17 to Mr. Hernandez. And to the extent that there are cost  
18 questions very specific to Tampa Electric, they should be  
19 addressed to Mr. Ashburn as opposed to the panel.

20 CHAIRMAN JACOBS: I see.

21 MR. KEATING: I only have a couple other questions  
22 along those lines, so I will reserve them for the  
23 company-specific witnesses.

24 CHAIRMAN JACOBS: Very well.

25 MR. CHILDS: Thank you.

1 BY MR. KEATING:

2 Q Is it correct that GridFlorida -- under the  
3 GridFlorida proposal physical transmission rights would be  
4 used?

5 A (Witness Ramon) Yes.

6 Q Do you believe that physical transmission rights are  
7 better than financial transmission rights for your purposes?

8 A (Witness Ramon) It's been Tampa Electric's  
9 preference -- it's no mystery that we prefer the financial, but  
10 for purposes of GridFlorida we find the physical right from all  
11 that we've worked out together to be satisfactory for initial  
12 operation of GridFlorida.

13 Q Why did GridFlorida --

14 COMMISSIONER DEASON: Excuse me, let me ask the  
15 question. Is that something that the board can change or is  
16 that like part of the foundation that is like the constitution  
17 that it can't be changed on a going-forward basis?

18 WITNESS NAEVE: No. One of the requirements under  
19 Order 2000 for an RTO is that it have control over its tariff.  
20 And in this case, the RTO will have the ability to file tariff  
21 changes if it doesn't like aspects of it that were originally  
22 proposed.

23 BY MR. KEATING:

24 Q Why did the GridFlorida companies choose to select  
25 physical transmission rights?



1           A       (Witness Mennes) Well, the whole process that we had  
2 with GridFlorida was a collaborative process and, of course,  
3 when you get into any negotiated or collaborative process  
4 there's always a lot of differing views and opinions, and the  
5 one thing that -- the reason I do think that we chose the  
6 physical rights was the concern with a lot of the load-serving  
7 entities in there and their concern.

8                   And also, I think, it's a fair thing to say that the  
9 Public Service Commission also voiced a concern about the  
10 ability of the load-serving entities to receive their power  
11 under the terms and conditions of the open access transmission  
12 tariff that would be developed. And at the time that we were  
13 looking at that, the physical rights, I think, gave the people  
14 the comfort that were load-serving entities at the time that,  
15 okay, this is the way to start it and this is the right thing  
16 out the door, the right thing out the door to do.

17                   With that said, I think, you know, just to go to the  
18 next step, we do have a Stakeholders Advisory Committee that  
19 was formed to give input to the board when it was there, and it  
20 is one of the first things that the Stakeholder Advisory  
21 Committee was going to just step back and look at the whole  
22 market design and how it was or how it is set up originally by  
23 GridFlorida and possibly would have resulted in changes.

24                   So, the short answer is it gave the most people that  
25 were load-serving entities the biggest warm fuzzy feeling that

1 -- just to get this thing started and developed, because there  
2 was so much mystique out there with other market designs, I  
3 think, is why it went to the physical rights.

4 Q Would the choice of physical versus financial  
5 transmission rights have an affect on ratepayers? I mean,  
6 would one affect ratepayers differently than another?

7 A (Witness Ramon) No, not that it's obvious  
8 differences.

9 COMMISSIONER DEASON: Let me ask the question.  
10 Mr. Naeve earlier described his understanding of the difference  
11 between physical and financial. Do any of the panel members  
12 have anything to add to that distinction?

13 WITNESS RAMON: On the financial, I'll start with the  
14 physical, since that's our proposal, you pre-identify congested  
15 transmission corridors, so-called flow gates and you build your  
16 congestion management approach in terms of physical  
17 transmission rights, the rights that are allocated to  
18 load-serving entities, as Marty said, to schedule across those  
19 flow gates.

20 Those rights, if you will, or PTRs, you don't receive  
21 any congestion, revenues associated with congestion that may  
22 occur across those flow gates. A financial model or what they  
23 call financial rights, there is no pre-identification of flow  
24 gates, if you will, there's known congestion that the market  
25 participants know about and you identify financial rights from

1 point A to point B, if you will.

2 And regardless of any constraints that may occur  
3 between those two points, you are hedged, if you will, with  
4 that financial right. And any congestion that occurs between  
5 those two points, you receive those congestion revenues.

6 COMMISSIONER DEASON: Who receives those revenues?

7 WITNESS RAMON: The holder of the financial rights.

8 BY MR. KEATING:

9 Q Mr. Ramon, you stated earlier that the choice of  
10 physical versus financial transmission rights wouldn't affect  
11 ratepayers one way or the other; is that correct?

12 A (Witness Ramon) We haven't looked at the comparison  
13 between the two in the collaborative process, because the  
14 collaborative process, except for Tampa Electric and other -- a  
15 few other parties wanted the physical model, so that's the one  
16 we worked with and tried to develop. We didn't contrast the  
17 two in terms of its impact on ratepayers.

18 Q So, that's something that hasn't been considered at  
19 this point?

20 A (Witness Ramon) The impact on retail ratepayers --

21 Q Yes.

22 A (Witness Ramon) -- versus on the two approaches?

23 No.

24 A (Witness Naeve) I think, though, even though it's not  
25 been done in theory, if the two proposals are implemented

1 efficiently; in other words, if they're structured well and  
2 implemented well, and if you have the ability to trade those  
3 rights, the net effect of the two should be the same. The  
4 primary debate and the people on both sides of this debate as  
5 to which can be operated more efficiently and with the least  
6 cost to get up and started and to operate it, but I think as a  
7 theoretical matter one should not have any more or less effect  
8 on ratepayers than the other.

9 COMMISSIONER DEASON: Is it contemplated that the  
10 physical transmission rights can be traded?

11 WITNESS NAEVE: Yeah, it is.

12 WITNESS RAMON: Right.

13 BY MR. KEATING:

14 Q Under GridFlorida's planning protocols, are there any  
15 differences in the role that the PSC plays today with respect  
16 to transmission planning function versus the role it would play  
17 under GridFlorida?

18 A (Witness Southwick) As a practical matter, I don't  
19 think there's any significant differences. As a procedural  
20 matter there may be some. In the GridFlorida planning  
21 protocol, we have designed and put in place an open  
22 participatory planning process in which the PSC will have a  
23 seat at the table, they'll be involved all the way through to  
24 the extent that they choose to be, they'll be aware of what's  
25 being done, they'll have the right to object, if they don't

1 like things; they will, of course, retain all of their current  
2 citing authority, for example. They will --

3           We've put in provisions in the planning protocol to  
4 ensure that if the PSC wanted a line to be built and if it did  
5 not have the authority, and I don't know if it will or not, but  
6 even if it did not have the authority to order GridFlorida to  
7 build a line, it will have the authority to order the existing  
8 utilities to build a line, and GridFlorida is committed to  
9 build those lines for that utility given that situation, so I  
10 think the practical answer is that the results will be the  
11 same.

12           COMMISSIONER DEASON: Where do we find that  
13 commitment? Is it written somewhere?

14           WITNESS SOUTHWICK: Yes, sir, it's in the  
15 GridFlorida -- the tariff, what we call the OATT, the Open  
16 Access Transmission Tariff.

17           WITNESS RAMON: It's Exhibit 6.

18           COMMISSIONER DEASON: Thank you.

19 BY MR. KEATING:

20           Q    So, besides siting, the Commission's role would  
21 simply be to provide input? When you said it would have a seat  
22 at the table, I assume, that's an input role rather than an  
23 authoritative role where it --

24           A    (Witness Southwick) No, I see that the Commission  
25 will still have the right through the utilities to force lines

1 to be built, if they see that there is a requirement for a line  
2 to be built as they have today.

3 Q You mentioned a provision in the planning protocol  
4 that would require GridFlorida to build a line that the  
5 Commission orders an individual company to build. Has that  
6 provision been approved yet by the FERC?

7 A (Witness Southwick) Yes. That's in our  
8 FERC-approved OATT.

9 Q How would that be enforced? If GridFlorida chose not  
10 to build the line, would that be enforced by FERC, that tariff,  
11 that provision?

12 A (Witness Naeve) Yes, it would, because all  
13 jurisdictional utilities to FERC must file their tariffs with  
14 FERC and when those tariffs are accepted they have to abide by  
15 their tariffs and we previously discussed what enforcement  
16 actions the FERC has when parties don't comply with orders of  
17 the Commission or tariffs approved by the Commission.

18 Q How would this Commission become involved in such  
19 proceeding? Would this Commission need to file a complaint  
20 with FERC or take some other action?

21 A (Witness Naeve) Well, whether or not this Commission  
22 or even the utilities complained to FERC they would be in  
23 violation of their tariff, if they didn't act. This Commission  
24 would have the ability to point it out to FERC that the RTO is  
25 in violation of its tariff, so would the companies, and

1 certainly I would assume, too, that the companies that had  
2 asked for the line to be built, if GridFlorida had not built  
3 the line, they would point it out to FERC that GridFlorida was  
4 not in compliance with its own tariff.

5 Q Do you believe that under current law GridFlorida  
6 could be an applicant under the Transmission Line Siting Act?

7 A (Witness Naeve) I don't know the answer to that.

8 A (Witness Southwick) Would you restate that question,  
9 please?

10 Q Yes. Do you believe that under current law  
11 GridFlorida could be an applicant under the Transmission Line  
12 Siting Act?

13 A (Witness Southwick) Well, Mike's already given the  
14 answer from the legal standpoint but, again, we've built  
15 provisions into the planning protocol to provide for if in case  
16 the answer is no that the -- in the case of -- if GridFlorida  
17 does not have the authority, if it were to turn out that way,  
18 to apply, for example, for siting, they can work back through  
19 the utilities, whether they divested or in the case of Florida  
20 Power, for example, that they did not, that there is a  
21 commitment that they will carry that forward for them. So, the  
22 end result would be the same, that the work would get done, and  
23 that's also in the planning protocol.

24 A (Witness Ramon) Also I'd like --

25 Q I guess --

1 A (Witness Ramon) Go ahead.

2 Q I'm sorry. I guess, the concern is you said that  
3 GridFlorida would construct the facilities if the Commission  
4 ordered an individual utility to do so, but could they apply  
5 under the Transmission Line Siting Act for that authority?

6 MR. CHILDS: Well, I don't think this witness can  
7 give you a legal opinion as to that.

8 A (Witness Ramon) That's what I was going to say. I  
9 think where your question is aimed at is GridFlorida an  
10 electric utility as defined by the state statutes and, I think,  
11 that's a legal question.

12 BY MR. KEATING:

13 Q Okay. Well, was that a consideration in developing  
14 the planning protocol?

15 A (Witness Southwick) Well, again, whether -- yes, it  
16 was a consideration and, again, we don't know the legal answer,  
17 at least I don't, but because of that we'd have a provision,  
18 it's on Page 4065 of Volume 6, which is the GridFlorida Open  
19 Access Tariff. On Page 4065 in Paragraph F we specifically  
20 provide for the event that the answer might be no, so we did  
21 consider it, yes, but --

22 Q And what happens if the answer is no?

23 A (Witness Southwick) Well, I can read the paragraph  
24 on Page 4065. It starts by saying, "The transmission provider  
25 may require a PO or divesting owner to the extent necessary to



1 apply for all necessary certificates of public convenience and  
2 necessity and permits for the construction of transmission  
3 facilities that will become part of the transmission system and  
4 to use their power of eminent domain to assist the transmission  
5 provider in the acquisition of any necessary property rights,  
6 including rights for the construction of such transmission  
7 facilities," and the transmission provider, by the way, is  
8 GridFlorida.

9 Q I think that provides the clarification I was looking  
10 for.

11 As a for-profit Transco, wouldn't GridFlorida have  
12 the profit incentive to build transmission facilities or  
13 expedite transmission planning and expansion requests in lieu  
14 of pursuing other energy solutions?

15 A (Witness Naeve) Well, this is the question that was  
16 asked of me earlier and, I think, my response is the same and  
17 that is as a for-profit company, certainly one way it makes  
18 money is by investing in transmission. At the same time, its  
19 planning process was designed during the collaborative process  
20 to provide safeguards to ensure that it equally considers  
21 transmission expansion and transmission alternatives, along  
22 with generated alternatives. It has to consider them under its  
23 tariff, and it also -- there are a variety of procedures for  
24 the parties to complain and seek arbitration, if they feel that  
25 GridFlorida has not done that.

1           A     (Witness Mennes) Just as a follow-up, this was an  
2 issue in the collaborative process with quite a few market  
3 participants. And just referencing our -- I guess, it's  
4 Exhibit 6, Page 4069, Item 4, is where we actually talk about  
5 that in our tariff in the annual regional plan that we have  
6 where we give the dates and we go through exactly how the  
7 planning process works. It does state in there that the  
8 transmission provider shall regard the alternatives example,  
9 generation edition, so that we actually did go ahead and spell  
10 it out in our tariff and our planning protocol.

11                 MR. CHILDS: Excuse me. Do you mean Volume 6?

12                 WITNESS MENNES: I'm sorry, yes, Volume 6.

13 BY MR. KEATING:

14           Q     Mr. Naeve, you indicated that there was some  
15 safeguards and that the market participants had some input and  
16 had a complaint process, where do they go -- where would those  
17 market participants go for resolution? And I apologize if I  
18 missed that in your answer before.

19           A     (Witness Naeve) Well, initially they would be  
20 participants in the planning process itself. Also, GridFlorida  
21 has an information policy which requires GridFlorida to make  
22 available to the market participants the basic information they  
23 would need to participate effectively in the planning process.  
24 And then, in the final analysis, if the parties feel that the  
25 planning process hasn't been adequately filed, there's an

1 arbitration procedure in the Order 888 tariff filed by  
2 GridFlorida, which they would have access to.

3 A (Witness Mennes) Just as a follow-up to tat also in  
4 our Exhibit 1, Volume 6, Planning Protocol, on Page 4069, we  
5 addressed that issue, that any user, including the PSC, shall  
6 first raise the issue with what we refer to as the Transmission  
7 Planning Committee. This was a committee that we were going to  
8 form made up of stakeholders, and we're going to be -- they  
9 would be very involved in this whole planning process. So, the  
10 first shot would be to take this to this transmission planning  
11 committee made up of stakeholders, and then go to the dispute  
12 process that Mike Naeve referenced that is also in the tariff.

13 Q And that dispute process would be if it can't be  
14 resolved within GridFlorida, would it be resolved by FERC?

15 A (Witness Mennes) Well, the dispute resolution  
16 process is a whole series. It starts off with trying to do a  
17 one-on-one mediation or -- I mean, one-on-one with, if you  
18 would, senior type people of -- let's just say the two sides  
19 that have the dispute or if that doesn't work, the next step is  
20 to go to some kind of mediation where you try to select one  
21 mediator.

22 And if you can't select one mediator, then each  
23 company, selects one and then now you have two, and then those  
24 two select one, so there's a whole series of steps and  
25 processes in there and, basically, the FERC would be the end

1 process, but there is a mediation process developed in our  
2 tariff.

3 Q Okay. I've got some questions about the market  
4 monitor and, I believe, these are similar to some questions  
5 that we went through in the deposition of the panel.

6 I believe, in the deposition of this panel, the panel  
7 stated that the market monitor is free to develop its own  
8 methodology for measuring market power and that the methodology  
9 could be different from FERC -- from the methodology that FERC  
10 uses; is that correct?

11 A (Witness Naeve) That's correct.

12 Q Okay. Could this methodology include a  
13 widely-accepted measure of market power recognized by  
14 economists?

15 A (Witness Naeve) Well, I would assume it would.

16 Q It could include pretty much any measure that the  
17 market monitor chose?

18 A (Witness Naeve) Yes.

19 Q Okay. Does the market power methodology developed by  
20 the market monitor have to receive approval by FERC?

21 A (Witness Naeve) It depends on the purpose for which  
22 they are using it. If the market monitor is attempting to  
23 market -- I mean, monitor the performance of the markets for  
24 purposes of alerting FERC to issues to potential exercise of  
25 market power or for the purpose of making recommendations to

1 FERC about how the market should be restructured and changed,  
2 in that circumstance, FERC does not have to approve the  
3 methodology that they used for purposes of trying to detect  
4 market power and issue any reports to FERC or issue any reports  
5 to the state Public Utility Commission as well, Public Service  
6 Commission. They're also obligated to issue reports to the  
7 Public Service Commission. So for those purposes, they're free  
8 to use whatever methodology they may choose to use.

9           If, on the other hand, they petition FERC for -- and  
10 we've given them the authority to do this -- for remedial  
11 powers on their own right, so that when they detect market  
12 power they'll have the power to step in and take action to  
13 moderate that market power, mitigate that market power, they  
14 would have to file with FERC the measures that they would use  
15 to determine when that market power exists so that there's a  
16 tariff on file, procedures on file that they would follow,  
17 rather than being arbitrary in the way they would exercise that  
18 power.

19           Q     So, to who would the market power or to whom would  
20 the market monitor be accountable?

21           A     (Witness Naeve) The market monitor is accountable to  
22 its board of directors as structured in the GridFlorida  
23 proposal so, I think, that's the answer.

24           Q     Would the market monitor be accountable to FERC in  
25 any way?

1           A     (Witness Naeve) Well, the market monitor, if it  
2 seeks authority to manage wholesale markets -- I use the word  
3 manage carefully, but RTOs have the ability to ask FERC for  
4 powers to actually mitigate market power themselves. And in  
5 the structure we have here, it would be the market monitor that  
6 would ask FERC for those powers.

7                     They would certainly be accountable to FERC in the  
8 sense they would have to get authority from FERC to exercise  
9 those powers, because in some ways it's a delegation of FERC  
10 power to regulate wholesale markets, and I'm certain that to  
11 the extent that they -- once they are granted that power, FERC  
12 would have oversight to the manner in which they exercise that  
13 power to ensure that it's consistent with the authority that  
14 they've been given and also to ensure that it's working.

15           Q     I believe, you stated that the market monitor would  
16 provide reports to the Public Service Commission?

17           A     (Witness Naeve) That's correct.

18           Q     Would the market monitor be accountable in any way to  
19 the Public Service Commission or any other arm of the state  
20 government in Florida?

21           A     (Witness Naeve) Well, they're accountable in the  
22 sense that they have the obligation to ensure that there's not  
23 an exercise in market power in peninsular Florida and they have  
24 to, you know, report to the Commission and to the FERC where  
25 they detect potential exercises of market power. So, they're

1 accountable in that sense.

2           Do they report to the Public Service Commission? The  
3 answer there would be no, but they give reports to the Public  
4 Service Commission.

5           Q     Will the PSC have any role, besides being given  
6 reports by the market monitor and, that is, a role in  
7 monitoring the market itself?

8           A     (Witness Naeve) Well, the PSC certainly could  
9 develop its own procedures for marketing -- excuse me, for  
10 monitoring the market. I mean, there's nothing that precludes  
11 the PSC from establishing its own unit to monitor the markets,  
12 to monitor the functioning of the market, the performance of  
13 individual companies, and so forth, so. there's nothing that  
14 precludes them from doing that.

15                 In addition, we did provide that the PSC would have a  
16 budgetary oversight role with respect to the market monitor  
17 and, I think, this really works both ways; one, to ensure that  
18 they don't try to build too expensive an empire, but I think it  
19 works the other way, too, to also insure that they are asking  
20 for sufficient funds to cover their operations.

21                 So, ultimately, the Commission requires -- the  
22 Commission being FERC -- that RTOs be independent and that  
23 market monitors be independent and a part of being independent  
24 is having control over your budget. So, we couldn't completely  
25 take away the independent power of the market monitor to

1 propose a budget to FERC, but what we did require was that the  
2 market monitor submit its proposed budget to the PSC for review  
3 and comment before they submit it to FERC.

4 Q If the PSC were to do that, to monitor the market  
5 itself and the PSC found some sort of market power abuse that  
6 perhaps the market monitor was not reporting, what recourse  
7 would the PSC have?

8 A (Witness Naeve) I think, they would have a couple of  
9 options. One option would be to bring the market abuse to the  
10 attention of FERC and ask FERC to take action. And certainly,  
11 for example, that's happened in California recently, and FERC  
12 has acted. Another option would be to bring it to the  
13 attention of market monitor. And whether the market monitor  
14 could take steps or not to cure the remedy or mitigate the  
15 abuse would depend on whether or not they have been delegated  
16 that power by FERC.

17 CHAIRMAN JACOBS: Have we reached a breaking point,  
18 Staff?

19 MR. KEATING: For the day?

20 CHAIRMAN JACOBS: Yeah.

21 MR. KEATING: If I could go through just a few more  
22 questions --

23 CHAIRMAN JACOBS: Okay.

24 MR. KEATING: -- I think, I could come to a good  
25 stopping point.



1 CHAIRMAN JACOBS: How long is a few more?

2 MR. KEATING: Okay, thank you.

3 CHAIRMAN JACOBS: How long is a few more?

4 MR. KEATING: If they answer honestly?

5 CHAIRMAN JACOBS: With this fine, distinguished  
6 group, how could you question that?

7 MR. KEATING: I was always told if they answered  
8 honestly, it goes real quick, but I know that's not true.

9 CHAIRMAN JACOBS: Not true that they answer honestly  
10 or that it takes longer?

11 THE WITNESS: I need my attorney to do an objection.

12 MR. KEATING: I think, just about ten or 15 minutes.

13 COMMISSIONER DEASON: Let's go ahead and break now.

14 CHAIRMAN JACOBS: I think, we'll go ahead and break  
15 now. That sounds like a good point.

16 MR. KEATING: Okay.

17 CHAIRMAN JACOBS: And we'll start with that in the  
18 morning. We'll start at 8:30 in the morning, and we are in  
19 recess. Thank you. Have a good evening.

20 (Transcript continues in sequence in Volume 3.)

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1 STATE OF FLORIDA     )  
 2                                 :     CERTIFICATE OF REPORTER  
 3 COUNTY OF LEON        )

4  
 5             I, KORETTA E. FLEMING, RPR, Official Commission  
 6 Reporter, do hereby certify that a Workshop was heard at the  
 7 time and place herein stated in Docket Numbers 000824-EI,  
 001148-EI, and 010577-EI.

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

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

14                             DATED this Friday, October 5, 2001.

15                             *Koretta E. Fleming*  
 16                             \_\_\_\_\_  
 KORETTA E. FLEMING, RPR  
 17 FPSC Official Commissioner Reporter  
 (850) 413-6734

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 FLORIDA PUBLIC SERVICE COMMISSION