ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.	)	Docket No. 000824-EI
In re: Review of 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 LLC, a Florida Transmission company, on TECO's retail ratepayers.	)	Docket No. 010577-EI Filed: October 12, 2001

PUBLIC COUNSEL'S BRIEF

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Rule 28-106.215, Florida Administrative Code, and Order No. PSC-01-1549-PCO-EI, issued July 26, 2001, submit this post-hearing brief:

ISSUE 1: Is participation in a regional transmission organization (RTO) pursuant to FERC Order No. 2000 voluntary?

OPC: *Yes. It's voluntary because Order No. 2000 says it's voluntary. It's voluntary because the Federal Power Act, under FERC's own consistent interpretation for many years, left jurisdiction over the transmission component of traditional bundled retail service to the states. And it is voluntary if FPL can refuse to proceed unless the utility receives permission to employ a specific mechanism for transmission cost recovery from this Commission.*

DISCUSSION

Order No. 2000 explicitly states that joining an RTO is voluntary, and no one on the record of this proceeding has disputed this fact. While FERC considers its jurisdiction over transmission in interstate commerce to be more extensive than its jurisdiction over sales of electric energy (which is limited to wholesale transactions), it has been forced to recognize that a traditional retail sale of electricity does not involve transmission in interstate commerce. As such, FERC must wait for an event which effects a change in the way retail service is offered, places the transmission component of a retail sale in interstate commerce, and allows it to exercise jurisdiction over the rates, terms, and conditions of retail transmission service. Under these circumstances, FERC did not have any choice but to make joining an RTO voluntary. This Commission should require the GridFlorida companies to continue to provide traditional bundled retail service[1] and not take any action which directly or indirectly could permit or cause the Commission to be divested of its historic jurisdiction over all facets of retail electric service.

A particularly interesting aspect of this case is that, while all three of the GridFlorida companies portray joining an RTO as mandatory because "voluntary" doesn't mean voluntary when FERC uses that term, FPL says it will not join GridFlorida unless the Commission approves the specific cost recovery mechanism it proposes. [T-536, 684-706] Whether FPL would be allowed to recover rates and charges imposed by GridFlorida from its retail customers

---

[1]Because of the different and sometimes confusing uses of the terms bundled and unbundled, which are addressed in some detail in this brief, the phrase "traditional bundled retail service" is used to connote the traditional monopoly arrangement under which retail customers currently purchase electric service pursuant to tariffs approved by the Commission. Mr. Ashburn said Tampa Electric's last rate case resulted in the "bundled rate design currently in place." [T-877] Mr. Naeve testified that the term unbundling, for example, can mean more than one thing. [T-140]

in some form to be determined by the Commission would apparently not be subject to much dispute. See Narragansett Electric Company v. Burke, 381 A. 2d 1358, 1361 (R.I. 1977), cert. denied 435 U.S. 972 (1978). Tampa Electric's witness, Mr. Hernandez, said that, to the extent cost recovery is a key issue for other parties (presumably FPL), it is a key element in this proceeding. [T-869] However, it's difficult to imagine how the companies could be implementing mandatory requirements while having the option of insisting on key issues. If FPL feels it has the latitude to insist upon a specific mechanism for recovering GridFlorida costs from the retail jurisdiction as a condition of its further participation, it's hard to see how joining an RTO could be anything but voluntary.[2] (Mr. Southwick, testifying for the three companies, described what will happen "if the GridFlorida project goes forward." [T-665])

Another interesting aspect of this case is the companies' testimony that, under certain circumstances, individual utilities might construct transmission assets that GridFlorida deems unnecessary. (Mr. Southwick's example of enhanced facilities [T-490-91] and Mr. Ramon's example of a second looped circuit in downtown Tampa for reliability purposes. [T-494-95]) From the record, it appears that these might become Commission-jurisdictional retail assets. If joining an RTO is not voluntary, and all transmission assets have to be placed under GridFlorida's control, how could the companies end up with transmission assets outside GridFlorida in the future? RTO participation is not very mandatory if the companies can gradually build a transmission system of their own.[3]

---

[2]Mr. Willis in his opening statement for the three companies had said they could not opt out of participation in an RTO. [T-50]

[3]One must wonder whether some of the assets to be turned over to GridFlorida at startup are (continued...)

The letter from FERC's Chairman Wood (Ex. 5) is particularly interesting for what it doesn't say. Clearly, FERC intends to make miserable any utilities who do not accept its RTO invitation, but the FERC Chairman is only threatening denial of merger applications, loss of market-based wholesale rates, and lower transmission rates.[4] This does not sound like an agency convinced it can draw a new jurisdictional line with regard to the states.[5]

ISSUE 12: Does FERC possess the jurisdiction to mandate participation in an RTO?[6]

OPC: *No. Assuming Order No. 888 is upheld on appeal, FERC will have jurisdiction over transmission in interstate commerce which will include all wholesale and all unbundled retail sales of electricity. Neither of these categories includes the transmission component of traditional bundled retail service.*

DISCUSSION

Part II of the Federal Power Act (FPA), 16 U.S.C. §§ 824-824m, was enacted in 1935 to provide the federal regulation of electric utilities found to be outside the domain of state regulators in the case of Public Utilities Commission of Rhode Island v. Attleboro Steam &

---

[3](...continued)
identical to examples of what the RTO could refuse to build in the future.

[4]The threatened loss of market-based wholesale rates might deserve a moment of reflection. It could only hurt a utility if market-based rates were significantly more profitable than cost-based rates. [T-152] Should this happen if competition is supposed to drive prices lower? Mr. Mechler agreed with Chairman Jacobs that the true indicator of how effective competition is in the wholesale market is the transactions that are occurring there. [T-809]

[5]A matter only addressed tangentially at the hearing was FERC's jurisdiction under Section 202-A of the Federal Power Act. [T-178] This provision allows for the creation of reliability council districts through the "voluntary" interconnection of facilities. Did the use of the word voluntary influence the Florida utilities' ability to separate from SERC to set up the FRCC?

[6]This is one of two new issues identified by Chairman Jacobs at the hearing. [T-1017] It is briefed out of order because of its relationship to the issue of voluntariness from Issue 1.

Electric Co., 273 U.S. 83 (1927). In Attleboro, the Supreme Court held that the sale of electricity between two electric utilities, one located in Rhode Island and the other in Massachusetts with power being delivered at the state line, was inherently interstate in nature and outside the reach of state regulation. Rhode Island could not alter an existing contract and regulate the terms of sale between the two utilities even if, as Rhode Island claimed, it could not effectively regulate sales to local consumers and protect them from unfair rates without doing so.[7] This was true even though Congress had never acted to provide for regulation at the federal level. It should also be noted that it was the nature of an apparently voluntary transaction that removed the matter from state oversight and placed it in interstate commerce. The Federal Power Act was created to partially close "the Attleboro gap." Federal Power Commission v. Southern California Edison Co., 376 U.S. 205 (1964). At the same time it was addressing the federal gap in electric regulation, it was apparently the intent of Congress to maintain traditional bundled retail service under the jurisdiction of the states.

The Attleboro gap was not completely closed because FERC, among other things, was not given jurisdiction over municipal electric systems or cooperatives. Testimony in this case establishes that, because of this lack of jurisdiction, FERC is powerless to force munis and co-ops to join an RTO. [T-465, 955] FERC's lack of jurisdiction over these entities, which is based on statute (Section 201(f)), would appear to be no different than the lack of jurisdiction over the

---

[7]Narragansett Electric Lighting Company, the utility in Rhode Island, entered into a contract in 1917 to provide energy and capacity to Attleboro Steam & Electric Company in Massachusetts. Attleboro dismantled its generating plant sometime after signing the contract. In 1924, after Narragansett was unsuccessful in convincing Attleboro to renegotiate the contract, Narragansett filed schedules with the Rhode Island Public Utilities Commission that had the effect of canceling the contract and imposing increased charges on Attleboro.

transmission component of traditional bundled retail service FERC has consistently found through interpretation of Section 201(b)(1).

The Federal Power Act gave the Federal Power Commission, now FERC, exclusive jurisdiction over all sales for resale, i.e. wholesale transactions, in interstate commerce as well as all transmission of electricity in interstate commerce. Federal jurisdiction attaches to almost all wholesale transactions because all interconnected electric utilities (outside of Alaska, Hawaii and Texas) are considered to be interstate providers, even when all their facilities are located within a single state and they have no direct connections with utilities in other states. Federal Power Commission v. Florida Power & Light Company, 404 U.S. 403 (1972).

The Southern California Edison case, cited above, dealt with the Federal Power Commission's assertion of jurisdiction over sales made by Edison to the city of Colton, California, which purchased all its requirements from the utility. The California Public Utilities Commission (PUC) had regulated the terms of these sales for some years, but, when the PUC approved a second increase in the contract price, Colton asked the Federal Power Commission to investigate whether it had jurisdiction over the sales. In 1958, the Federal Power Commission asserted jurisdiction under §201(b) of the Federal Power Act, which governs all sales of electric energy at wholesale in interstate commerce. The Supreme Court upheld the Federal Power Commission's position, even though the utility had no customers outside the state. (Edison received some power from Nevada and Arizona, particularly from the Hoover dam, but the Court's decision would apparently have been the same even if this were not the case.)

The comprehensive nature of the federal statute vested exclusive jurisdiction over wholesale rates in the Federal Power Commission. The Federal Power Commission, now FERC,

occupies the entire field of wholesale rate regulation. No one else can establish, or influence, the rates or the profits to be earned from those transactions.

The "filed rate doctrine," as it has come to be known, means that a state commission cannot indirectly interfere in federal matters by questioning the reasonableness of FERC-jurisdictional rates affecting retail cost of service. The retail jurisdiction must allow for full recovery of the FERC-approved charges in retail rates. Federal preemption is premised upon the Supremacy Clause, Article VI, U.S. Constitution.

In Narragansett Electric Company, supra, 381 A. 2d, at 1361, the Rhode Island Supreme Court, citing to Southern California Edison, said:

> [T]he [U.S. Supreme] Court has determined that Congress, in enacting the Federal Power Act, intended to vest exclusive jurisdiction in the FPC [i.e. Federal Power Commission] to regulate wholesale utility rates. [Citation and quote omitted.] The result is a blend of state-federal regulation, each with exclusive authority in its respective field. We conclude, therefore, that jurisdiction to determine the reasonableness of the wholesale rate charged by [New England Power Company (NEPCO)] to Narragansett rests exclusively with the FPC. [Emphasis added.]

The court's decision in Narragansett overturned an order of the Rhode Island Public Utilities Commission. The PUC had evaluated the wholesale charges of $9.3 million from NEPCO to Narragansett (both companies were wholly-owned subsidiaries of the New England Electric System) pursuant to Narragansett's filing with the PUC for a price adjustment under the PUC's purchased power cost adjustment procedures. The PUC only allowed Narragansett to recover $5.3 million of the NEPCO charges in its retail rates. The PUC's action, of course, did not modify the Federal Power Commission's decisions setting NEPCO's wholesale rates; the amounts actually billed by NEPCO and paid by Narragansett pursuant to the Federal Power Commission-approved wholesale charges were not affected by the PUC's action. The PUC only

decided the amount of wholesale charges Narragansett could impose upon its retail customers. The court, however, agreed with Narragansett that the Federal Power Act preempted any authority in state commissions to even question interstate prices set by the Federal Power Commission. 381 A. 2d at 1361. The court found that retail rates to ultimate consumers that did not give full effect to the precise charges authorized by the Federal Power Commission violated the supremacy clause. 381 A. 2d at 1361. The case was remanded to the PUC with directions to treat the NEPCO charges as prudent operating costs for purposes of establishing retail rates. 381 A. 2d at 1363.

Mr. Naeve testified that the Commission could not second guess the prudence of GridFlorida's FERC-approved costs. [T-126, 142-43] He also said:

> Order No. 2000 requires that RTO's have complete control over their rates. So once an RTO is created and up and running, it will have the ability to file whatever type of rates it chooses to file. But on day one when it commences commercial operations, the board will take control on day one, and it has to have a rate on file to begin to operate on day one. So the sponsors of GridFlorida have developed a rate plan which they have filed with FERC which will be in effect day one of commercial operations. GridFlorida, if it chooses to, could file a different rate or a rate change the very next day once they begin commercial operations, but they do have to have a rate plan on file day one, and that's the rate plan that I've described and Mr. Ashburn has described. [T-936-37][Emphasis added.]

Obviously, this Commission will become just a conduit for FERC-approved rates and charges once GridFlorida is up and running. FERC will set the rates (including the amount and amortization period for startup costs); the Commission will just decide how those rates are to be recovered at the retail level without questioning their prudence. [T-144, 219, 223-26]

The Federal Power Act gives FERC jurisdiction over all aspects of wholesale sales of electricity (including generation, transmission, terms and conditions of service, etc.) and the

transmission of electricity in interstate commerce. Obviously, the two components of federal jurisdiction overlap when the transmission component of a wholesale transaction is under consideration. But there is no overlap, in fact there is the potential for a clear divergence of jurisdiction, when the transmission component of a retail sale of electricity is considered. This comes about because the Federal Power Act, at Section 201(b)(1), also tells FERC to stay away from retail sales of electricity, a matter of traditional state regulation.

Thus, FERC has been forced to make significant jurisdictional distinctions. The retail sale of electricity obviously contains a transmission component which, in an interconnected electric grid crossing state lines, might be considered to be in interstate commerce. Yet Congress insists a jurisdictional distinction must be drawn between transmission in interstate commerce and retail sales of electricity, reserving the latter to the states. In fact, case law has held that Congress, in the Federal Power Act intended to draw a bright line between state and federal jurisdiction so as to obviate the need for case-by-case jurisdictional determinations. See Southern California Edison, supra, 376 U.S., at 215-16 ("... Congress [in the Federal Power Act] meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary [] case-by-case analysis.")

FERC (and its predecessor) resolved the jurisdictional conundrum by paying particular heed to the proscription against interfering with the retail sale of electricity. Where the transmission component of a retail sale of electricity is part and parcel of a delivered product called retail electric service, transmission in interstate commerce is not implicated, and the complete transaction is outside of FERC's jurisdiction:

> [W]hen transmission is sold at retail as part and parcel of the delivered product called electric energy, the transaction is a sale of electric energy at retail. Under the FPA, the Commission's jurisdiction over sales of electric energy extends only to wholesale sales.
>
> Order No. 888, at 430-31, quoted with approval in Order No. 888-A, at 142-43.[8]

Florida's electric utilities provide traditional bundled retail service, i.e., customers are billed for the delivered price of electricity as a single commodity. Tariffs approved by the Commission reflect this fact. Utilities do not provide a generation service, a transmission service, a distribution service, a meter reading service, and a billing service; they provide electricity. Why is this distinction important? Well, for one thing, it defines the basis of the Commission's jurisdiction in contrast to that of FERC. Even though FERC has jurisdiction over the transmission of electricity in interstate commerce, FERC does not view its jurisdiction as encompassing the transmission component of traditional bundled retail service:

> FERC left the regulation of bundled retail transmission to the states, concluding that 'when transmission is sold at retail as part and parcel of the delivered product called electric energy, the transaction is a sale of electric energy at retail.' Order 888, ¶ 31,036 at 31,781.
>
> * * * * *
>
> A regulator could reasonably construe transmissions bundled with generation and delivery services and sold to a consumer for a single charge as either transmission

---

[8]Since Order No. 2000 makes joining an RTO voluntary, there are no significant jurisdictional pronouncements in that order. This brief makes frequent reference to Orders Nos. 888 and 888-A because they may be viewed as precursors to Order No. 2000 and contain recent statements on FERC's interpretation of its own jurisdiction. Although Order No. 2000 says Orders Nos. 888 and 889 did not go far enough to foster competition in the wholesale generation market, there is apparently no expression of how the jurisdictional lines drawn in those orders might be wrong. As recently as August 30, 2001, (well after Order No. 2000) representatives of FERC appearing before the Energy 2020 Study Commission said FERC regulates "transmission in interstate commerce -- all wholesale and unbundled retail." This is completely consistent with Orders Nos. 888 and 888-A. Additionally, the RTO tariffs are generally based on Order No. 888 tariffs. [T-147]

> services in interstate commerce or as an integral component of a retail sale. Yet FERC has jurisdiction over one, while the states have jurisdiction over the other. FERC's decision to characterize bundled transmissions as part of retail sales subject to state jurisdiction therefore represents a statutorily permissible policy choice to which we must also defer under Chevron [USA, Inc. v. Natural Resources Defense Council, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)].
>
> Transmission Access Policy Study Group v. Federal Energy Regulatory Commission, 225 F. 3d 667, 694 (D.C. Cir. 2000).

On the other hand, FERC has also stated that if retail service is unbundled, regardless of how the unbundling occurs, whether by statute, state regulatory commission action, or even unilateral action of an electric utility, the transmission component of retail sales is then (and only then) in interstate commerce.

The importance of this jurisdictional distinction cannot be overemphasized. It is apparently not a question of whether FERC could exercise jurisdiction if it chose. Instead, it is a question of whether the sale of electricity to the retail end user is structured in such a way that FERC is powerless to regulate one of the constituent parts of the transaction even though, under different circumstances, FERC would have exclusive jurisdiction. FERC apparently cannot swoop in and usurp the state's authority; it must wait in the wings for something to change the nature of the retail sale, separate the transmission component, and give FERC something to regulate. Until that happens, there is no transmission in interstate commerce, and until there is transmission in interstate commerce, there is no FERC jurisdiction. Continuing the quote from Order No. 888 above, FERC said:

> However, when a retail transaction is broken into two products that are sold separately (perhaps by two different suppliers: an electric energy supplier and a transmission supplier), we believe the jurisdictional lines change. In this situation, the state clearly retains jurisdiction over the sale of the power. However, the unbundled transmission service involves only the provision of "transmission in

> interstate commerce" which, under the FPA, is exclusively within the jurisdiction of the Commission. Therefore, when a bundled retail sale is unbundled and becomes separate transmission and power sales transactions, the resulting transmission transaction falls within the Federal sphere of regulation. 157/
>
> 157/ FERC Stats. & Regs. at 31,781; mimeo at 430-31 (emphasis in original). As discussed in Section IV.I., infra, we believe this jurisdictional determination is supported by the statute and the case law, including the D.C. Circuit's recent decision in United Distribution Companies v. FERC, 88 F. 3d 1105 (1996).
>
> Order No. 888, at 430-31; quoted with approval in Order No. 888-A, at 143.

FERC did not say it could break the retail transaction into separate components. It only said that, when a separation occurs by virtue of some independent event at the state level, jurisdictional lines change giving FERC jurisdiction over the transmission component of a retail sale because, at that point, there is now transmission in interstate commerce.[9]

Order No. 888-A was the order on rehearing of Order No. 888, which required electric utilities to open up their transmission systems and provide the same quality of service for their own wholesale transmission service as they provided to others using their transmission system for wholesale transactions of their own. The two quoted passages above from Order No. 888 were included in FERC's response in Order No. 888-A to parties arguing on rehearing that FERC had not gone far enough, that it should have also required an unbundling of transmission from

---

[9]FERC recently described its action in Order No. 888 to the United States Supreme Court this way: "Broadly speaking, Section 201 of the FPA gives the Commission jurisdiction over the transmission and wholesale sale of electric energy in interstate commerce, while leaving regulation of local distribution and retail sales of electric energy to the States. 16 U.S.C. 824. The Commission interpreted Section 201 as preserving the States' historical jurisdiction over traditional monopoly arrangements -- under which retail customers buy electric energy, transmission service, and local distribution service from a single regulated supplier for a single charge. Accordingly, under Order No. 888, States may continue to regulate the entirety of those bundled retail sales, just as before." [Emphasis added.] State of New York v. FERC, Cases Nos. 00-568 and 00-809, Brief for the Federal Energy Regulatory Commission, at 2-3.

retail service so that FERC, instead of the states, would have jurisdiction. After quoting from Order No. 888, FERC said in Order No. 888-A, at page 143:

> Nor is our decision not to unbundle transmission from retail generation service inconsistent with our assertion of jurisdiction over unbundled interstate transmission to retail customers. As we explained in the Final Rule and described further above, we have exclusive jurisdiction under the FPA over "transmission in interstate commerce" by public utilities, which includes the unbundled interstate transmission component of a previously bundled retail transaction. Our assertion of jurisdiction is such a situation arises only if the retail transmission in interstate commerce by a public utility occurs voluntarily or as a result of a state retail program. [Emphasis added; footnote omitted.]

It might appear from FERC's choice of words in the first sentence of the quote that its "decision" not to unbundle retail sales implies that FERC could have ordered unbundling (which in this context must mean something other than competitive generation suppliers) if it chose to do so. (Mr. Naeve, in his joint testimony, said Order No. 888 "permitted [companies] to provide transmission service to their own bundled retail load 'off the tariff.'" [T-124, Emphasis added.]) However, FERC cannot pick and choose when to exercise its jurisdiction; it either has it or it doesn't, and when it has jurisdiction, it must exercise it. FERC cannot choose to have the states exercise federal authority. Clearly, FERC concluded its jurisdiction only exists where a state retail program or a voluntary action of the public utility effectuates an unbundling (in some form) and places retail transmission in interstate commerce. FERC has no jurisdiction over retail transmission service provided as part of traditional bundled retail service. FERC concluded it cannot make companies file tariffs for the transmission component of a retail sale unless something first happens at the state level to place the transmission in interstate commerce and give FERC jurisdiction.

This might be the appropriate time to discuss the issue of bundled-versus-unbundled in light of the quotes above. FERC consistently refers to traditional generation-transmission-distribution-end-user service as bundled retail service outside its jurisdiction. At times, FERC suggests that any disaggregation of traditional retail service might effect an unbundling. ("[W]hen a retail transaction is broken into two products that are sold separately . . . we believe the jurisdictional lines change.") At the same time FERC implies unbundling may occur only when retail customers are given a choice of their generation provider as in the parenthetical example of "two different suppliers: an electric energy supplier and a transmission provider."

Accordingly, it is not completely clear what FERC means when its says it obtains jurisdiction only when unbundling "occurs voluntarily or as the result of a state retail program." In a narrow sense, this may mean that either the utility voluntarily allows its customers to choose their generation provider or that the state enacts retail competition by law. More broadly, the use of the term voluntary could mean any action by the utility which results in FERC having jurisdiction over a matter traditionally regulated by the state.

The narrow view allows FERC to say retail service has been unbundled, and FERC thereby obtained jurisdiction over the unbundled retail transmission (which is now separated from generation).[10] It is apparently this interpretation which allows the utility companies (as well as several intervenors) to say Issue 8 is moot because the electric utilities will continue to provide

---

[10]FERC, in Order No. 888-A, also rejected demands that it go further and "unbundle" transmission from all retail service. Although FERC declined to do so for jurisdictional reasons, it did not quibble with the use of the word unbundle in this context, even though the movants simply wanted FERC to exercise jurisdiction over all transmission, retail as well as wholesale. Transmission and generation would not have to be charged for separately at the retail level just because FERC took charge of retail transmission service. Is this another type of unbundling?

bundled retail service. [T-99, 125] Even though the transmission component of retail service would be provided by someone else, they maintain that the RTO will provide all transmission service, i.e., to wholesale customers as well as to both unbundled and bundled retail customers. [T-141] In other words, in their view (and perhaps in FERC's) retail service in Florida will remain "bundled," even though GridFlorida will provide retail transmission service, because the companies will continue to provide a delivered retail product called electricity to their customers. Retail utilities could apparently continue to charge a "bundled" retail rate (which included the costs for transmission at FERC-approved rates) even though some form of "unbundling" of traditional bundled retail service was necessary to take retail transmission service away from this Commission and give it to FERC.

The question of bundled-versus-unbundled may be completely irrelevant to these consolidated dockets. It's hard to tell. FERC has clearly stated that it has no jurisdiction over traditional bundled retail service which has been characterized as retail service in which an integrated electric utility provides generation (or purchased power) to its own end-use retail customers for a single rate. What is unclear is what is necessary to effect an unbundling in FERC's eyes. What is very clear is that this Commission should not do anything which directly or indirectly causes or permits a transfer of any jurisdiction to FERC.

So this is where Public Counsel comes down on the issue. Matters at issue in this docket are too important to get tripped up on semantics which might allow or cause an unintended transfer of retail oversight to a federal agency. The better and safer course is to defer to FERC's interpretation of when it gains jurisdiction over retail transmission and then avoid those

circumstances at all cost. FERC has clearly said it has jurisdiction over unbundled retail transmission service, as FERC uses that term:

> All transmission in interstate commerce by a public utility in conjunction with a sale for resale of electric energy is jurisdictional and must be taken under a FERC-jurisdictional tariff. The same is true for all unbundled transmission in interstate commerce to wholesale customers, as well as to unbundled retail customers. [Emphasis added.]
>
> Order No. 888-A, at 118, note 130.

FERC also clearly believes (along with everyone else) that an independent RTO would be an entity providing transmission service in interstate commerce subject to FERC's exclusive jurisdiction. Therefore, if the Commission does not have to, it should not allow the utility companies to take any action which would allow FERC to construe retail transmission service in Florida as transmission in interstate commerce.

This is really the crux of the jurisdictional issue. Transmission must occur in interstate commerce in order for FERC to have jurisdiction. Thus, when some public utilities asked whether FERC's open access transmission tariff applied when they transmitted power purchased at wholesale to their own retail customers, FERC responded that, as part of a traditional bundled retail sale, the transmission was not in interstate commerce and was, therefore, outside FERC's jurisdiction:

> Several parties have noted on rehearing that there is conflicting language among the Final Rule, Order No. 889 and the pro forma tariff as to whether and to what extent the transmission provider must take service for "wholesale purchases" under its own tariff. As discussed below, we clarify that a transmission provider does not have to "take service" under its own tariff for the transmission of power on behalf of bundled retail customers.
>
> In a situation in which a transmission provider purchases power on behalf of its retail native load customers, the Commission does not have jurisdiction over

> the transmission of the purchased power to the bundled retail customers insofar as the transmission takes place over such transmission provider's facilities, 128/ and therefore the pro forma tariff does not have to be used for such transmission. [Emphasis added.]
>
> 128/ To the extent the transmission takes place on the interstate facilities of other public utilities, we would have jurisdiction over such transmission.
>
> Order No. 888-A, at 117-18.

FERC's focus is apparently always on the transmission entity. If the transmission entity is providing electricity (whether generated at its own facilities or purchased from someone else) to its own retail end-use customers, and there is no separate charge for transmission service, there is no transmission of electricity in interstate commerce, and FERC is completely without jurisdiction. On the other hand, if the transmission entity is not providing power to its own end-use retail customers (as in Order No. 888-A, footnote 128, above), the transmission is in interstate commerce.

Witnesses for the utility companies suggested that FERC could force the companies to join an RTO. This authority was represented as emanating from FERC's authority to remedy undue discrimination. [T-179] But the remedy would seemingly have to relate to something existing under FERC's actual jurisdiction. Certainly, FERC could act against anyone guilty of undue discrimination involving wholesale sales. As a remedy, it might force public utilities to "unbundle" their generation and wholesale sales of electricity from their wholesale transmission of electricity. FERC might also extend its interpretation of transmission in interstate commerce to include the transmission component of a previously bundled retail sale. In fact, that is just what it did in Order No. 888. [T-824] Mr. Naeve and Mr. Hoecker, testifying for the companies, said FERC used Section 205 and 206 authority to justify Order No. 888 and might do the same to

compel joining an RTO. [T-180, 221, 231, 278] This is significant because, in Order No. 888-A, FERC explained that it lacked the jurisdiction to reach traditional bundled retail service. It could only get to retail transmission service which was unbundled voluntarily or as the result of a state retail program. Sections 205(a) and (b) of the Federal Power Act only allow FERC to remedy undue discrimination "with respect to any transmission or sale subject to the jurisdiction of the Commission [i.e., FERC]." In other words, FERC could not act until something happened to place retail transmission in interstate commerce. Remember, in Order No 888-A, FERC concluded it could not invoke Section 206 as a vehicle to unbundle all retail sales because it had no jurisdiction over traditional bundled retail service pursuant to Section 201. If we accept the companies' position, this only happens when retail customers have the ability to choose their power supplier. But nothing suggests FERC has ever held it could force divestiture of state regulation of traditional bundled retail service. In its recent brief at the United States Supreme Court in Cases Nos. 00-568 and 00-809, at page 21, FERC said it resolved the jurisdictional ambiguity in favor of the states "by adhering to 65 years of practice under the FPA, and holding that transmission provided as part of a bundled retail sale of electric energy is subject to state jurisdiction."

With its action in Order No. 888, it looks like FERC has pretty well covered all the bases within its jurisdiction. Wholesale sales as well as everything FERC considers to be transmission in interstate commerce have been taken care of. The transmission component of a traditional bundled retail sale would seem to remain out of FERC's reach because it is not, and never has been, transmission in interstate commerce. It is doubtful FERC could make a finding of undue discrimination on a matter outside its jurisdiction as a basis to extend that very jurisdiction. This

fact may explain proposed legislation which, if enacted, would amend Section 201(b) of the Federal Power Act and extend FERC's jurisdiction by defining the transmission of electric energy in interstate commerce "to include the transmission component of electric energy sold at retail." Section 402(b)(3) of the "Electric Restructuring Act of 2001," a bill dated September 6, 2001, sponsored by Senate Energy Committee Chairman Bingaman.

ISSUE 2: What are the benefits to Peninsular Florida associated with the utility's (FPC, FPL, or TECO) participation in GridFlorida?

OPC: *The Commission can only speak to this issue within the scope of its own jurisdiction. At this level, the Commission must assume, in the absence of legislative directives, that the policy of this state is to continue all regulation of retail transmission service under the Commission's continued oversight. As such, there are no benefits to Peninsular Florida associated with participation in GridFlorida.*

DISCUSSION

In the absence of legislative directives, the policy of this state must be presumed to contemplate continued retail regulation on the same basis as before. There was some discussion at the hearing that wholesale competition as envisioned by FERC could have attractive benefits for the state. More power plants mean more competition mean lower wholesale prices mean lower retail prices. Who could object? Well, the testimony at hearing was to the effect that new generation in excess of load growth would cause GridFlorida's transmission rates to go up [T-945] because the more generators, the higher the price under the pricing scheme the companies developed. [T-937] And the Commission mustn't lose sight of the fact that it can only issue need determination orders if there is an identifiable retail load to be served. The policy of the state, at

least at the moment, is apparently not to have as many generators as can be built.[11] It is questionable whether the Commission can or should do anything in its present role to foster wholesale generation beyond what is needed by retail.

Repeated reference was made to the benefits from eliminating pancaked rates. That's solely a wholesale issue outside the Commission's jurisdiction. If FERC's Chairman Wood can threaten the companies with reduced transmission rates if they won't join an RTO, it would seem possible that FERC might already have the authority to just order no more rate pancaking for wholesale transactions.

The companies tried to mollify the Commission somewhat by saying they have taken steps to keep the Commission involved in the processes GridFlorida will follow. [T-867] That these steps should allow the Commission some level of comfort. Apparently, GridFlorida has given the Commission certain rights of participation ("a seat at the table") in its planning protocols, and GridFlorida will build any transmission the Commission orders an individual utility to construct. [T-367-72, 432-36, 546-47] GridFlorida, however, will make the final decision, whereas those decisions are currently made by the utilities. [T-433] These provisions are in the Open Access Transmission Tariff (OATT), which could be changed by GridFlorida with a filing at FERC. [T-368] They can only be enforced at FERC. [T-369] Pursuant to the planning protocols, the Commission would have to first raise any concerns with the Transmission Planning Committee. [T-374] There is no formal role for the Commission. [T-434-35] The

---

[11]The fact that the need determination process is not applicable to generation with less than 75 mW of steam output may foster construction of many small units, but that is not something for the Commission to remedy. Moreover, when originally enacted, the 75 mW limit may have served the purpose of letting traditional regulated utilities build small plants without the Commission getting in their way.

Commission was given a budgetary oversight role over the market monitor in the sense that the budget would be submitted to the Commission before going to FERC. [T-378-79, 384] If the Commission found a problem, it could bring it to FERC's attention. [T-379] The companies thought about giving the Commission the role of market monitor but rejected it out of concern that FERC would not approve. [T-446, 548] Think about this for a moment. Utilities currently under the Commission's jurisdiction are defining the extent of the Commission's future participation in their affairs. While it may be laudable that, as Mr. Southwick testified, "FPC was successful in incorporating certain features [in the GridFlorida proposal] specifically designed to mitigate the impact of cost shifting on FPC's retail customers [T-1003]," the companies will have deprived the Commission of the ability to comply with its statutory duties to protect retail customers if GridFlorida becomes reality.

ISSUE 3: What are the benefits to the utility's ratepayers of its participation in GridFlorida?

OPC: *None are readily identifiable at this time. Certainly no benefits have been identified which would fully offset the increased costs caused by participation in GridFlorida. Moreover, all of the claimed benefits relate to wholesale sales and other matters outside the Commission's jurisdiction.*

ISSUE 4: What are the estimated costs to the utility's ratepayers of its participation in GridFlorida?

OPC: *The costs will be determined by whatever FERC approves for GridFlorida's tariffs at startup or at any time in the future. As such, the level of estimated costs today is irrelevant because the Commission will not exercise any jurisdiction over amounts to be recovered from retail ratepayers at any time after GridFlorida is in operation.*

ISSUE 5: Is TECO's/FPL's decision to transfer ownership and control of its transmission facilities of 69kV and above to GridFlorida appropriate?

and

Is FPC's decision to transfer operational control of its transmission facilities of 69 kV and above to GridFlorida while retaining ownership appropriate?

OPC: *No. Moreover, the companies cannot make such a decision without prior Commission authorization. Inasmuch as such an authorization may effectively divest the Commission of jurisdiction over retail transmission assets, the Commission cannot allow either the asset transfer or the transfer of operational control.*

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

OPC: *No. The utilities have not been forced to join GridFlorida. Retail customers should not have to bear additional costs because of the utilities voluntary action. And retail customers should not have to bear the risks associated with having jurisdiction over retail transmission transferred, on the utilities' initiative, to a federal agency.*

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

OPC: *GridFlorida would be a FERC-regulated entity outside the Commission's jurisdiction. As such, the Commission should refrain from making policy pronouncements in matters not related to retail electric regulation.*

ISSUE 8: Is Commission authorization required before the utility can unbundle its retail service?

OPC: *Yes. Public Counsel understands this issue to address whether a utility can fundamentally change the manner in which it provides traditional bundled retail service pursuant to tariffs approved by the Commission, or affect any aspect of the Commission's jurisdiction, without prior approval. It cannot. Moreover, the Commission cannot authorize unbundling (i.e. a change in traditional bundled retail service) if to do so would effectively divest it of some of its jurisdiction.*

ISSUE 9: Is Commission authorization required before the utility can stop providing retail transmission service?

OPC: *Yes. A utility cannot unilaterally alter the terms or conditions of service governed by tariffs approved by the Commission. Moreover, a utility cannot take an action that would affect any aspect of the Commission's regulatory oversight without the Commission's prior approval. The Commission cannot allow Florida's electric utilities to get out of the retail transmission business if to do so would effectively divest it of some of its jurisdiction.*

ISSUE 10: Is Commission authorization required before FPC can transfer operational control of its retail transmission assets?

and

Is Commission authorization required before FPL/TECO can sell its retail transmission assets?

OPC: *Yes. A utility cannot unilaterally alter the terms or conditions of service governed by tariffs approved by the Commission. Moreover, a utility cannot take an action that would affect any aspect of the Commission's regulatory oversight without the Commission's prior approval. The Commission cannot allow Florida's electric utilities to transfer retail transmission assets or transfer operational control of retail transmission assets if to do so would effectively divest the Commission of some of its jurisdiction.*

DISCUSSION
(ON ISSUES 5, 8-10)

A fair assumption is that most, if not all, of the GridFlorida companies' major assets were acquired, in the first instance, to serve retail customers. Tampa Electric, for example, did not even have wholesale customers of consequence until the mid-1980's. Retail customers, among other things, are entitled to economic dispatch which commits the lowest cost generation (consistent with good utility practices) to meet their load on the system. Florida's entire system is (or certainly should be) operated with an understanding of the priority status of retail native load customers under the Commission's oversight.[12]

---

[12]Mr. Southwick testified for FPC that the third 500 kV transmission line was canceled because (continued...)

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

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

FERC has tendered an invitation to the companies. By accepting, the companies have announced they want to take their retail transmission assets and service away from the

---

[12](...continued)
the company concluded it would be too expensive for its retail customers, apparently under rates which would have been approved by FERC. [T-679-80]

Commission and confer it on FERC. Can they do it without Commission approval? Can the Commission give consent? Should it?

In the absence of explicit statutory language giving the Commission authority to evaluate the transfer of assets to entities outside its jurisdiction, the companies have taken the position that the Commission's jurisdiction extends only to the question of whether after-the-fact cost recovery would be allowed. This is apparently the limit of the companies' concerns. They are not asking for the Commission to approve the transfer of transmission assets to the RTO. They are only asking that the Commission find the companies' unilateral divestiture decision prudent, which by unstated implication would open the door for uncontestable cost recovery.

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

The only thing that has really changed has been FERC's pronouncements. It may be that FERC could preempt the Commission's jurisdiction, but that has not happened. As things now

stand, the Commission must regulate Florida's investor-owned electric utilities as the Florida Statutes direct. Those utilities should not be allowed to unilaterally divest the Commission of its jurisdiction over retail transmission assets or to impose higher costs on retail ratepayers because of the utilities' voluntary participation in GridFlorida.

In point of fact, nothing FERC has done or is likely to do can alter the statutory framework within which the Commission must operate. Just as the Commission is not competent to find a statute it administers unconstitutional (and therefore not subject to enforcement), the Commission is probably not competent to view its responsibilities in a different light because of forces in play elsewhere. An obvious response to this assertion is, of course, that the Commission is not expected to operate in a vacuum. That might be true as a general proposition, but it is untrue with regards to the statutes that must be administered. Those statutes only change when the legislature chooses to reflect external changes in its enactments. Until that time, the Commission is expected to act consistently.

In 1984, Florida Power Corporation sought a need determination for its proposed Lake Tarpon-to-Kathleen 500kv transmission line. Circumstances in later years, however, led Florida Power to question the need for the line, in spite of the Commission's Order No. 13676 (issued September 13, 1984, in Docket No. 84004-EI), granting the company's original petition. Florida Power, therefore, filed a petition in 1995 alleging that the project was no longer viable because there were less costly alternatives to alleviate a transmission system weakness south of the Crystal River Energy Complex. The Commission agreed in its Order No. PSC-95-1230-FOF-EI (issued October 3, 1995, in Docket No. 950270-EI) and allowed the company to amortize the monies already expended on the project.

The Florida Power case is cited because it illustrates the practice which has been followed for many years. Even though statutes and rules do not inform of exactly what steps should be taken, it was understood that companies would seek approval of major projects and, when things changed, ask for permission to do something else. Even the electric utility "that still maintains twenty miles of transmission line to serve two customers and a mule will have to face the facts" that it cannot change the type of service it provides without its regulatory commission's consent.[13]

But what of the argument that the GridFlorida companies are not going to stop providing retail transmission service, they are just going to get someone else to do it for them? Answer: There is no substantive difference between discontinuing service and finding someone else to do the utility's job. In each case, the company wants to change the terms and conditions of service to either some or all of its customers. It cannot do that without prior permission. The fact that there is no explicit statutory authority is of no moment. The Commission did not have statutory language authorizing it to set interim rates subject to refund or to conduct a limited proceeding the first time it did those things either.

Particularly telling is how the Commission responded when faced with a request for approval of a 1960 territorial agreement between City Gas Company and Peoples Gas System. At

---

[13]"When the mother lode pinches out and the once bustling Silver City becomes a ghost town, with the dust thick on the few unbroken beer mugs in what had been the last saloon, an electric utility that still maintains twenty miles of transmission line to serve two customers and a mule will have to face the facts. But the company will not be able to abandon its service to Silver City until the state commission having jurisdiction has consented. [Footnote omitted.] . . . In all events, utilities quite uniformly seek regulatory consent before service is either discontinued or materially curtailed. They must show altered circumstances, minimized demand, substantial losses or preference for alternative service which may at once be less expensive and more satisfactory." I A. J. G. Priest, Principles of Public Utility Regulation (1969) 379-80.

the time, the Commission had no explicit authority to approve such agreements. The Commission concluded that, since the agreement would impinge upon its power to require repairs, improvements, additions and extensions to the plant and equipment of any utility, it could have no validity without the Commission's approval. Ultimately, the Florida Supreme Court agreed in City Gas Company v. Peoples Gas System, Inc., 182 So. 2d 429, 436 (Fla. 1965):

> In short, we are of the opinion that the commission's existing statutory powers over areas of service, both expressed and implied, are sufficiently broad to constitute an insurmountable obstacle to the validity of a service area agreement between regulated utilities, which has not been approved by the commission. This, of course, is the position taken by the commission itself, in its order approving this very agreement. Said the commission,
>
> > "In the exercise of [its] jurisdiction the Commission is specifically authorized to require repairs, improvements, additions and extensions to the plant and equipment of any public utility reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto. Obviously, any agreement between two gas utilities which has for its purpose the establishing of service areas between the utilities will, in effect, limit to some extent the Commission's power to require additions and extensions to plant and equipment reasonably necessary to secure adequate service to those reasonably entitled thereto. In our opinion, such a limitation can have no validity without the approval of this Commission."
>
> By substantially the same reasoning, we also conclude that the commission has adequate implied authority under Ch. 366 to validate such agreements as the one before us. Indeed, we agree with the North Carolina court that the practical effect of such approval is to make the approved contract an order of the commission, binding as such upon the parties. Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812, 817 (1961). [Emphasis added.

Certainly, Florida's investor-owned electric utilities could not, within the context of traditional retail regulation, modify the manner in which traditional bundled retail service is provided without the Commission's permission. Stated differently, electric utilities could not, of

their own choosing, transfer jurisdiction to another regulatory body by unilateral action. But could they get the same result in another way, i.e., achieve indirectly what they could not do directly? In the absence of FERC's Order 2000, could an electric utility transfer its retail transmission assets to another entity (perhaps a sister company under the same corporate parent) without Commission permission and then announce it no longer has the ability to provide traditional bundled retail service? Is the transfer of transmission assets easily distinguishable from the unbundling which follows, or are they really one and the same? The result in either case is the elimination of Commission jurisdiction over transmission assets used to provide retail service -- without Commission participation in the process.

The result is tantamount to a discontinuation of retail transmission service by the entity charged with that responsibility. If the companies want someone else to own or operate their transmission assets they need the Commission's permission, just as City Gas and Peoples Gas System needed permission to carve up their territories, and have one or the other newly responsible for a geographic area. But the creation of GridFlorida goes further. It is perhaps more analogous to the situation in City of Gainesville v. Gainesville Gas & Electric Power Co., 62 So. 919, 921 (Fla. 1913), where the court found that "[t]he policy of the law is to require by mandatory process the performance by public utility corporations of their duties to the public." In that case, the Florida Supreme Court found that the electric utility serving Gainesville, having engaged in a business affecting the public interest, using the streets of the city for its poles, and accepting a guaranteed opportunity to earn a fair return, could not act like other companies and just decide to get out of the electric utility business. The company was obligated to render the service it had undertaken to provide.

The utilities under this Commission's jurisdiction are not, of course, proposing to get out of the electric utility business all together. But they are proposing to take retail transmission assets which may reasonably be considered to have been built to serve retail customers and, in a very real sense, to have been bought and paid for by retail customers, away from any form of local control. This Commission's permission is essential for such an endeavor, but it cannot be granted because the result would effectively divest the Commission of the oversight it is expected to maintain. This Commission should align itself with the Louisiana Public Service Commission, which on September 27, 2001, in Order No. U-25965, directed its electric utilities to, among other things, show cause "[w]hy they should not be enjoined from transferring ownership or control of their bulk transmission assets, paid for by jurisdictional ratepayers, to a TRANSCO or any similar organization." The final order out of these consolidated dockets should direct the companies to continue to provide the same traditional bundled retail service they are providing today.

ISSUE 11: Is a Regional Transmission Organization for the Southeast region of the United States a better alternative for Florida than the GridFlorida RTO?

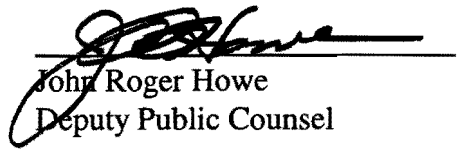
OPC: *Passing on the relative merits of matters outside the Commission's retail jurisdiction would be inappropriate.*

ISSUE 13: What jurisdiction will the Commission exercise over GridFlorida?

OPC: *None.*

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



John Roger Howe
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for the Citizens
of the State of Florida

John Roger Howe
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKETS NOS. 000824-EI, 001148-EI, 010577-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing PUBLIC COUNSEL'S BRIEF has been furnished by U.S. Mail or *Hand-delivery to the following parties on this 12th day of October, 2001.

Robert V. Elias, Esquire*
Marlene Stern, Esquire*
William Cochran Keating, IV, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mark F. Sundback, Esquire
Kenneth L. Wiseman, Esquire
Andrews & Kurth Law Firm
1701 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

Lee L. Willis, Esquire
James D. Beasley, Esquire
Ausley & McMullen
Post Office Box 391 (32302)
227 South Calhoun Street (32301)
Tallahassee, FL

Diane K. Kiesling, Esquire
Leslie A. Paugh, Esquire
Landers & Parsons, P.A.
310 W. College Avenue
Tallahassee, FL 32301

Bill L. Bryant, Jr., Esquire
Natalie B. Futch, Esquire
Katz, Kutter, Haigler, Alderman, Bryant & Yon
106 East College Avenue, 12th Floor
Tallahassee, FL 32301

John W. McWhirter, Jr., Esquire
Florida Industrial Power Users Group
McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, P.A.
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350

Michael B. Twomey, Esquire
Post Office Box 5256
Tallahassee, FL 32314-5256

James P. Fama, Esquire
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, NW Suite 1200
Washington, DC 20009

James A. McGee, Esquire
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Harry W. Long, Jr., Esquire
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601

Mr. Robert C. Williams, P.E.
Director of Engineering
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819-9002

Joseph A. McGlothlin, Esquire
Vicki Gordon Kaufman, Esquire
McWhirter, Reeves, McGlothlin, Davidson
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Thomas A. Cloud, Esquire
W. Christopher Browder, Esquire
Gray, Harris & Robinson, P.A.
Post Office Box 3068
Orlando, FL 32802-3068

Frederick M. Bryant
Florida Municipal Power Agency
2061-2 Delta Way
Tallahassee, FL 32303

Jon C. Moyle, Jr., Esquire
Cathy M. Sellers, Esquire
Moyle, Flanigan, Katz, Raymond
& Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Matthew M. Childs, Esquire
Steel Hector & Davis
215 South Monroe Street, Suite 601
Tallahassee, FL 32301-1804

Bruce D. May, Esquire
Holland Law Firm
Post Office Drawer 810
Tallahassee, FL 32302-0810

Ms. Angela Llewellyn
Regulatory Affairs
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601-0111

Kenneth A. Hoffman, Esquire
Rutledge Law Firm
Post Office Box 551
Tallahassee, FL 32302-0551

Mr. Richard Zambo, Esquire
598 SW Hidden River Avenue
Palm City, FL 34990

Buddy L. Hansen
13 Wild Olive Court
Homosassa, FL 34446

Gary L. Sasso, Esquire
James Michael Walls, Esquire
Carlton Fields Law Firm
Post Office Box 2861
Saint Petersburg, FL 33731

Ronald C. LaFace, Esquire
Seann M. Frazier, Esquire
Greenberg Traurig Law Firm
101 East College Avenue
Tallahassee, FL 32301

Florida Retail Federation
100 East Jefferson Street
Tallahassee, FL 32301

Thomas J. Maida, Esquire
Foley & Lardner
106 East College Avenue, Suite 900
Tallahassee, FL 32301

Paul Lewis, Jr.
Florida Power Corporation
106 East College Avenue
Suite 800
Tallahassee, FL 32301

Linda Quick, President
South Florida Hospital
and Healthcare Association
6363 Taft Street
Hollywood, FL 33024

Michael G. Briggs, Senior Counsel
Reliant Energy Power Generation, Inc.
801 Pennsylvania Avenue, Suite 620
Washington, DC 20004

John G. Trawick
Mirant Americas Development, Inc.
1155 Perimeter Center West
Atlanta, GA 30338-5416

Homer O. Bryant
3740 Ocean Beach Boulevard, Unit 704
Cocoa Beach, FL 32931

Michelle Hershel
Florida Electric Cooperatives
Association, Inc.
2916 Apalachee Parkway
Tallahassee, FL 32301

David L. Cruthirds
Dynegy Inc.
1000 Louisiana Street, Suite 5800
Houston, TX 77002-5050

Timothy S. Woodbury
Vice President - Strategic Services
Seminole Electric Cooperative, Inc.
16313 North Dale Mabry Highway
Tampa, FL 33688-2000

Steven H. McElhaney
2448 Tommy's Turn
Oviedo, FL 32766

Sofia Solernou
526 15 Street, Apt. 14
Miami Beach, FL 33139

Melissa Lavinson
PG&E National Energy Group Company
7500 Old Georgetown Road
Bethesda, MD 20814

James J. Presswood, Jr.
Legal Environmental Assistance Foundation
1114 Thomasville Road
Tallahassee, FL 32303-6290

Mr. R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Marchris Robinson
Enron Corporation
1400 Smith Street
Houston, TX 77002-7361

Lee E. Barrett, Director
Regulatory Policy
Duke Energy North America
5400 Westheimer Court
Houston, TX 77056-5310

Lee Schmudde
Vice President, Legal
Walt Disney World Co.
1375 Lake Buena Drive
Fourth Floor North
Lake Buena Vista, FL 32830

Thomas W. Kaslow
Director, Market Policy &
Regulatory Affairs
Calpine Eastern
The Pilot House, 2nd Floor
Lewis Wharf
Boston, MA 02110

William G. Walker, III
Florida Power & Light Company
215 South Monroe STreet, Suite 810
Tallahassee, FL 32301-1859

Black & Veatch
Myron Rollins
Post Office Box 8405
Kansas City, MO 64114

Russell S. Kent
Sutherland Asbill & Brennan LLP
2282 Killearn Center Boulevard
Tallahassee, FL 32308-3561

Daniel E. Frank, Esquire
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415

Jennifer May-Brust, Esquire
Colonial Pipeline Company
945 East Paces Ferry Road
Atlanta, GA 30326

Day Berry Law Firm
Gerald Garfield/Robert P. Knickerbocker/
Scott P. Myers
City Place I
Hartford, CT 06103-3499

Paul E. Christensen
Sugarmill Woods Civic Association, Inc.
26 Hibiscus Court
Homosassa, FL 34446

John Roger Howe
Deputy Public Counsel