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TO: DIRECTOR, DIVISION OF THE COMMISSION  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON  
(TRAPP, SHAFER, BASS, NORIEGA, GROOM) *Rob 2007 KJ*  
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DIVISION OF LEGAL SERVICES (KEATING) *RUE* *JDJ*  
DIVISION OF SAFETY & ELECTRIC RELIABILITY (BALLINGER)

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

DOCKET NO. 001148-EI - REVIEW OF THE RETAIL RATES OF FLORIDA POWER & LIGHT COMPANY.

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

AGENDA: 11/06/01 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\PAI\WP\000824.RCM

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### CASE BACKGROUND

In May 1999, the Federal Energy Regulatory Commission (FERC) was continuing to explore new transmission organizational structures through the issuance of a Notice of Proposed Rulemaking (NOPR) on Regional Transmission Organizations (RTOs). The scope of this rulemaking was expanded to include not only Independent System Operators (ISOs), but also other types of regional organizations such as independent transmission companies (Transcos), combinations of ISOs and Transcos, or other acceptable structures that had not yet been identified. In December 1999, the FERC issued its Final Rule on RTOs in Order No. 2000. Order No. 2000 required all public utilities that own, operate or control interstate transmission facilities to file by October 16, 2000 a proposal to participate in an RTO. Alternatively, utilities that had not finalized an RTO plan were required to make a filing containing: (1) a description of any efforts made by the utility to participate in an RTO; (2) a detailed explanation of the economic, operational, commercial, regulatory, or other reasons the public utility has not made a filing to participate in an RTO, including identification of any existing obstacles to participation in an RTO; and (3) the specific plans, if any, for further work toward participation in an RTO including a proposed timetable for such activity, an explanation of efforts made to include public power entities in the proposed RTO, and any factors (including any law, rule, or regulation) that may affect the public utility's ability or decision to participate in an RTO.

In response to Order No. 2000, Florida Power Corporation (FPC), Florida Power & Light Company (FPL), and Tampa Electric Company (TECO) (collectively referred to as the GridFlorida Companies) sponsored a number of stakeholder meetings to discuss the various aspects of an RTO proposal. On October 16, 2000, after several months of stakeholder meetings, the GridFlorida Companies' proposal was filed at FERC. As there were additional details needed to complete its proposal, the GridFlorida Companies requested and were granted additional time until December 15, 2000 to supplement the filing. On January 10, 2001, the FERC issued its order addressing the governance issues contained in the GridFlorida proposal. The FERC approved the proposed GridFlorida structure, subject to requiring a few minor modifications. On March 28, 2001, the FERC issued an order provisionally approving the GridFlorida

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proposal. Modifications to the proposal were to be included in a compliance filing with the FERC by May 29, 2001.

On May 3, 2001, staff filed a recommendation encouraging the Florida Public Service Commission (FPSC or Commission) to determine the impact on the ratepayers of FPL and FPC of each utility's participation in GridFlorida. On May 11, 2001, FPC, FPL, and TECO filed a joint motion to establish a generic docket to determine, on an expedited basis, the prudence of the formation of and their participation in GridFlorida LLC (GridFlorida). By Order No. PSC-01-1372-PCO-EI, issued June 27, 2001, the joint motion was granted in part (with respect to expediting a decision concerning GridFlorida) and denied in part (with respect to establishing a generic docket). The Order directed that FPC and FPL each file, by June 28, 2001, a separate petition in the respective earnings/rate review docket currently open for each utility. TECO was ordered to file its petition in a new docket opened specifically to address its participation in GridFlorida. The Order referred to the proceedings to be held on each petition as "Phase 1". "Phase 2" of the earning/rate review dockets will address the general rate proceedings initiated by this Commission and the specific ratemaking aspects, including but not limited to cost recovery, of the formation and participation in the GridFlorida RTO.

On June 12, 2001, FPC, FPL, and TECO filed separate petitions in these dockets asking the Commission to determine the prudence of the formation of and their participation in GridFlorida, thus initiating the Phase 1 proceedings. By Order No. PSC-01-1485-PCO-EI, issued July 16, 2001, and Order No. PSC-01-1641-PCO-EI, issued August 10, 2001, the issues to be addressed in Phase 1 of each docket were established. The hearing on these dockets was held October 3-5, 2001. Interveners in these dockets included: Calpine Corporation (Calpine); CPV Atlantic, Ltd. (CPV); Duke Energy North America (DENA); Dynegy Mid-Stream, Limited Partnership and Dynegy, Inc. (DYNEGY); Enron Corporation (ENRON); Mirant Americas Development, Inc. (MIRANT); Reliant Energy Power Generation, Inc. (RELIANT); PG&E National Energy Group (PG&E); Publix Super Markets, Inc. (PUBLIX); Thomas P. and Genevieve E. Twomey, Buddy L. Hansen, Louis D. Putney and Sugarmill Woods Civic Association, Inc., (TWOMEY, ETAL); Walt Disney World Company (DISNEY); Seminole Electric Cooperative (SEMINOLE); Florida Industrial Power Users Group (FIPUG); and Office of Public Counsel (OPC).

### DISCUSSION OF ISSUES

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

**RECOMMENDATION:** Yes. As a legal matter, participation in an RTO is voluntary pursuant to the express terms of Order No. 2000. Whether utility management was prudent in forming and participating in an RTO given the totality of the circumstances is addressed in Issue 6. [Keating]

### POSITION OF THE PARTIES

**FPC:** While Order No. 2000 does not include a generic finding requiring all utilities to join an RTO, that order does establish a federal policy that all transmission owners join an RTO. More recently, FERC has signaled that it intends to force all utilities to participate in an RTO. The question therefore is not whether the GridFlorida Companies were required to join an RTO but when they would be required to do so.

**FPL:** While Order No. 2000 does not include a generic finding requiring all utilities to join an RTO, that order does establish a federal policy that all transmission owners join an RTO. More recently, FERC has signaled that it intends to force all utilities to participate in an RTO. The question therefore is not whether the GridFlorida Companies were required to join an RTO but when they would be required to do so.

**TECO:** While Order No. 2000 does not include a generic finding requiring all utilities to join an RTO, that order does establish a federal policy that all transmission owners join an RTO. More recently, FERC has signaled that it intends to force all utilities to participate in an RTO. The question therefore is not whether the GridFlorida Companies were required to join an RTO but when they would be required to do so.

**CALPINE:** Yes. Pursuant to FERC Order 2000, participation in an RTO is voluntary. However, FERC acknowledged that it may use its regulatory authority in other areas such as market power analyses, market-based rate authority, and merger requests to mandate RTO participation. Notwithstanding voluntary participation, the filing requirements of FERC Order 2000 are mandatory. Public utilities

were required to file either an RTO proposal or a report on the impediments to RTO participation.

**CPV:** No position.

**DENA:** Yes. Pursuant to FERC Order 2000, participation in an RTO is voluntary. However, FERC acknowledged that it may use its regulatory authority in other areas such as market power analyses, market-based rate authority, and merger requests to mandate RTO participation. Notwithstanding voluntary participation, the filing requirements of FERC Order 2000 are mandatory. Public utilities were required to file either an RTO proposal or a report on the impediments to RTO participation.

**DYNEGY:** (Docket No. 001148-EI only) FERC Order 2000 was worded in a manner which initially made participation in an RTO for a FERC regulated utility voluntary. FERC also, however, made it clear that ultimately all FERC regulated utilities would have to participate in RTOs and that those that did not would suffer economic detriment and have merger issues if they failed to "voluntarily" do so. Given this choice, a prudent utility would see participation as mandatory.

**ENRON:** Enron supports Florida Power Corporation's, Florida Power & Light Company's, and Tampa Electric Company's (the "Joint Utilities") statement on this issue.

**MIRANT:** Yes. Pursuant to FERC Order 2000, participation in an RTO is voluntary. However, FERC acknowledged that it may use its regulatory authority in other areas such as market power analyses, market-based rate authority, and merger requests to mandate RTO participation. Notwithstanding voluntary participation, the filing requirements of FERC Order 2000 are mandatory. Public utilities were required to file either an RTO proposal or a report on the impediments to RTO participation.

**RELIANT:** No position.

**PG&E:** No position.

**PUBLIX:** (Docket No. 000824-EI only) FERC Order 2000 was worded in a manner which initially made participation in an RTO for a FERC regulated utility voluntary. FERC also, however, made it clear that ultimately all FERC regulated utilities would have to

participate in RTOs and that those that did not would suffer economic detriment and have merger issues if they failed to "voluntarily" do so. Given this choice, a prudent utility may see participation as mandatory.

**TWOMEY, ETAL:** Yes. FERC's attempt to obtain legislation explicitly granting it authority to mandate RTO participation argues it now lacks such authority. Even with such authority, all witnesses agreed FERC chose to pursue a "voluntary" methodology in Order 2000. It's subsequent threats of coercive reprisals to utilities not falling in line are legally and ethically offensive and should be forcefully rejected by this Commission and Congressionally investigated. "Amiable Terrorism," meaning threatened adverse action in unrelated matters involving actual jurisdiction to coerce action where jurisdiction is lacking, is reprehensible wherever practiced.

**DISNEY:** The Federal Energy Regulatory Commission (FERC), which has jurisdiction over the transmission of electricity in interstate commerce by investor-owned utilities (IOUs), expects all IOUs to join and participate in RTOs. However, FERC's Order No. 2000 denominates participation as voluntary.

**SEMINOLE:** FERC Order No. 2000 purports to allow voluntary participation by transmission-owning utilities in an RTO. In practice, however, it appears that FERC intends to exert its jurisdictional influence in such areas as merger approvals and market-based rate approvals to encourage participation by all transmission-owning utilities in an RTO.

**FIPUG:** Yes, participation is voluntary but FERC may be able to use its regulatory power in other areas to mandate participation.

**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.

**STAFF ANALYSIS:** The Federal Energy Regulatory Commission ("FERC"), through its Order No. 2000, clearly made participation in an RTO



voluntary. No party disagrees that Order No. 2000, by its express terms, did not require RTO participation. Thus, to address this issue as it is worded, the Commission need only look at those express terms. In Order No. 2000, FERC stated:

Based on the wide array of comments received . . . and the voluminous record compiled in this rulemaking proceeding, we conclude that a voluntary approach to RTO formation represents a measured and appropriate response to the technical impediments to competition that have been identified as well as the lingering discrimination concerns that have been raised.

(EXH 4, p.109) FERC further stated

Based on the record before us . . . it is clear that RTOs are needed to resolve impediments to fully competitive markets. However, we continue to believe . . . that at this time we should pursue a voluntary approach to participation in RTOs.

(EXH 4, p.124)

Only the GridFlorida Companies, Calpine Corporation, Duke Energy North America, Mirant Americas Development, Inc., Florida Industrial Power Users Group, and Office of Public Counsel provided argument on this issue in their post-hearing briefs.<sup>1</sup> None of these parties provided any argument to show that participation in an RTO under Order No. 2000 was mandated. Rather, some of these parties argue that Order No. 2000 is a clear expression of FERC's intent to have all transmission-owning entities place their transmission facilities under the control of RTOs and suggest that FERC will ultimately require such participation. (GridFlorida Brief, pp. 4-6; Calpine Brief, pp.7-12; FIPUG Brief, p.4)

The GridFlorida Companies state that FERC's intent to establish such a policy was expressed throughout Order No. 2000, but is expressed most clearly in Order No. 2000-A, where FERC stated that its "objective in promulgating Order No. 2000 was to have all transmission-owning entities in the Nation, including non-

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<sup>1</sup>Because the briefs of Calpine, Duke, and Mirant are substantially the same on this issue, only Calpine's brief and arguments are cited for the sake of efficiency.

public utility entities, place their transmission facilities under the control of appropriate RTOs in a timely manner." (GridFlorida Brief, pp.4-5) Staff believes that FERC's statement of its objectives in Order No. 2000 does not turn FERC's express voluntary approach into a mandate. FERC simply chose a voluntary approach to meet those objectives when it issued Order No. 2000.

The GridFlorida Companies and Calpine further note that FERC established in Order No. 2000 a mandatory filing requirement. All public utilities were required to file either; (1) an RTO proposal, or (2) a report on their efforts to participate in and RTO, the impediments to their participation in an RTO, and (3) their plans to overcome those obstacles. (GridFlorida Brief, p.5; Calpine Brief, p. 8) The GridFlorida Companies argue that this mandatory filing requirement makes clear that FERC did not intend for utilities to have the choice to opt out of RTO participation. (GridFlorida Brief, p. 5) Staff disagrees and views the second option under this filing requirement as consistent with FERC's express decision to choose a voluntary approach in Order No. 2000. Further, this filing requirement does nothing to change the voluntary approach expressly established by FERC in Order No. 2000.

The GridFlorida Companies, Calpine, and FIPUG also point out that FERC chose a voluntary approach in order to avoid a time-consuming legal challenge to its authority to mandate participation. (GridFlorida Brief, pp.5-6; Calpine Brief, p.8; FIPUG Brief, p.4) Indeed, in Order No. 2000, FERC stated that "we want the industry to focus its efforts on the potential benefits of RTO formation and how to best achieve them, rather than a non-productive challenge to our legal authority to mandate RTO participation." (EXH 4, p.125) Staff believes that this point only goes to explain why FERC established a voluntary approach in Order No. 2000, not to establish that participation in an RTO is mandated by Order No. 2000.

The GridFlorida Companies and Calpine argue that FERC's actions since the issuance of Order No. 2000 make it increasingly clear that FERC is going to force all utilities subject to its jurisdiction to join an RTO. (GridFlorida Brief, pp.6-8; Calpine Brief, pp.8-12) These parties cite FERC's July 12, 2001, orders requiring all utilities to participate in mediation proceedings intended to develop an outline for the establishment of large regional RTOs. These parties also cite to a memorandum from FERC Chairman Pat Wood, dated September 26, 2001, (EXH 5) in which the

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FERC Chairman suggests strong disincentives for utilities who elect not to join an RTO, including revocation of all market-based rate privileges, disapproval of mergers, and a "hard look" at the transmission rates such utilities are permitted to charge. While these are important points to consider in determining whether RTO participation by the GridFlorida Companies is prudent (Issue 6), they do not address this issue. This issue asks whether participation in an RTO is voluntary under Order No. 2000. As a legal matter, Order No. 2000 expressly establishes a voluntary approach to RTO participation. Staff believes FIPUG's comments are directly on point:

While FERC has chosen a "voluntary" approach, it may use its regulatory authority to make non-compliance with Order 2000 a wholly undesirable alternative. However, FERC's use of incentives or disincentives to persuade utilities to join an RTO does not make compliance with Order 2000 any less voluntary. In spite of FERC's overtones, compliance with Order 2000 remains on a voluntary basis.

(FIPUG Brief, p.4)

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

**RECOMMENDATION:** The benefits to Peninsular Florida associated with the utility's (FPC's, FPL's, or TECO's) participation in GridFlorida are those that can potentially improve the current Peninsular Florida transmission grid. Additional operational efficiencies between/among utilities and the consolidation of planning and maintenance may be the principal tangible benefits that can be achieved by participation in GridFlorida at this time. While GridFlorida may also enhance the effectiveness of the wholesale market for generation, it is not a prerequisite for competition, since open access transmission is currently available in the State. In addition, wholesale competition is currently constrained due to the limitation of the Florida Electric Power Plant Siting Act on merchant plant entry. The GridFlorida Companies have been unable to quantify the magnitude and the timing of the potential savings that they, and any other market participants, can expect to derive from these benefits. [Shafer, Noriega]

#### **POSITION OF THE PARTIES**

**FPC:** By proactively participating in the development of GridFlorida instead of waiting to be ordered to join an RTO, the GridFlorida Companies achieved the following benefits: (1) a Florida collaborative process; (2) a Peninsular Florida scope; (3) a Florida focus; (4) a cost-shift mitigation plan attuned to Florida's needs; and (5) the ability to influence the incurrence of costs. Participation in GridFlorida also will provide the market enhancement and other benefits FERC found would result from RTO participation.

**FPL:** By proactively participating in the development of GridFlorida instead of waiting to be ordered to join an RTO, the GridFlorida Companies achieved the following benefits: (1) a Florida collaborative process; (2) a Peninsular Florida scope; (3) a Florida focus; (4) a cost-shift mitigation plan attuned to Florida's needs; and (5) the ability to influence the incurrence of costs. Participation in GridFlorida also will provide the market enhancement and other benefits FERC found would result from RTO participation.

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**TECO:** By proactively participating in the development of GridFlorida instead of waiting to be ordered to join an RTO, the GridFlorida Companies achieved the following benefits: (1) a Florida collaborative process; (2) a Peninsular Florida scope; (3) a Florida focus; (4) a cost-shift mitigation plan attuned to Florida's needs; and (5) the ability to influence the incurrence of costs. Participation in GridFlorida also will provide the market enhancement and other benefits FERC found would result from RTO participation.

**CALPINE:** An RTO will facilitate greater system efficiencies from the existing supply infrastructure as well as provide access to a broader array of additional supply options through a competitive wholesale electricity market. An RTO will improve efficiencies in transmission grid management, improve grid reliability, interconnection procedures and planning functions, and remove impediments to competitive supply entry, including elimination of remaining opportunities for discriminatory transmission practices.

**CPV:** An RTO, if properly implemented, will provide greater system efficiencies from the existing supply infrastructure, access to a broader array of additional supply options, improve grid reliability via uniform interconnection procedures, and remove impediments to competitive supply entry.

**DENA:** GridFlorida will facilitate achievement of the benefits of a competitive wholesale electricity market in Peninsular Florida thus ensuring that ratepayers will pay the lowest possible price for reliable service. GridFlorida will improve efficiencies in transmission grid management, improve reliability and remove opportunities for discriminatory practices. GridFlorida will also enhance access to, and use of, the grid by eliminating rate pancaking, establishing uniform interconnection procedures, coordinating planning functions, and enhancing transmission expansion and upgrade activities.

**DYNEGY:** (Docket No. 001148-EI only) Having a single, unbiased regional transmission organization ("RTO") operating the transmission system in the state will provide better reliability to retail and wholesale electric customers within Florida by providing more effective transmission congestion control, loop flow control, interconnection planning, and emergency management, and more timely ancillary services to generators. Further, by promoting more

wholesale electric competition, wholesale retail electric service rates may be lowered as well.

**ENRON:** Enron supports the Joint Utilities' statement on this issue.

**MIRANT:** Generally, GridFlorida will improve efficiencies in transmission grid management, improve grid reliability, promote transparent and efficient competitive power markets, and remove remaining opportunities for discriminatory transmission practices. Specifically, GridFlorida will enhance access to, and use of, the transmission system by eliminating rate pancaking, providing efficiencies inherent in uniform interconnection procedures, coordinating planning functions, enhancing transmission expansion and upgrade activities, and improving parallel path flows.

**RELIANT:** Such features as the elimination of pancaked rates and the independent evaluation of interconnection requests will lead to lower transaction costs, a concomitant increase in the number of economically feasible transactions, the entry of new participants, and the reduction of market power, all of which translate to a more efficient, more competitive wholesale market and lower costs to ratepayers. At the same time, market-based mechanisms for managing congestion and a regional approach to planning will enhance reliability.

**PG&E:** An RTO, if properly implemented, will provide greater system efficiencies from the existing supply infrastructure, access to a broader array of additional supply options, improve grid reliability via uniform interconnection procedures, and remove impediments to competitive supply entry.

**PUBLIX:** (Docket No. 000824-EI only) Having an unbiased regional transmission organization ("RTO") operating the transmission system will provide better reliability to retail and wholesale electric customers by providing more effective transmission congestion control, loop flow control, interconnection planning, and emergency management, and more timely ancillary services to generators. Further, by promoting more wholesale electric competition, wholesale retail electric service rates may be lowered as well. Publix feels that this is better accomplished through a multi-state RTO than through GridFlorida.

**TWOMEY, ETAL:** Benefits to be realized by Peninsula Florida associated with the utilities' participation are potential in

nature, vague and not financially quantified. Not a single witness could quantify a single dollar of benefits from GridFlorida or state when the benefits, if at all, would begin. Furthermore, it is clear that many benefits to be realized by GridFlorida (pancake rate elimination, discrimination and market power abuses eliminated) could be realized at less cost without GridFlorida.

**DISNEY:** As explained by FERC, a well-designed RTO can enhance the efficient and reliable operation of the transmission grid and lead to a more robust and reliable electricity market, resulting, ultimately, in lower-cost, reliable electric service to consumers. The details of the RTO's design are critical.

**SEMINOLE:** GridFlorida has the potential to benefit all market participants by, *inter alia*, providing centralized and regional grid planning, maintenance and expansion; improving grid reliability; eliminating discriminatory practices; improving access for wholesale market participants; and eliminating "pancaked" rates. There are many issues that remain to be resolved before this potential for benefits can be claimed to be a reality in all aspects.

**FIPUG:** A truly independent regional RTO will enable all power suppliers to operate freely with incumbent electric companies in a competitive wholesale market resulting in lower prices and greater reliability for consumers.

**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.

**STAFF ANALYSIS:** Several views regarding the benefits to Peninsular Florida associated with the utility's (FPC's, FPL's, or TECO's) participation in GridFlorida have been expressed during this proceeding. The described benefits are predominately qualitative in nature with some reference to potential quantitative benefits.

The primary witness on behalf of the GridFlorida Companies on this issue was former FERC Chairman, James J. Hoecker. According to witness Hoecker, the major driving force of RTO development

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around the nation during the past several years has been the FERC's desire to enhance competition by opening access to the transmission grid on a national basis. In his testimony, he expressed that "FERC was persuaded that competitive generation markets would bring tangible benefits to consumers." (TR 245) According to witness Hoecker:

There are several other reasons and anticipated benefits in addition to curbing market power and eliminating pancaked rates, including:

1. More efficient planning on a regional basis;
2. The ability to improve regional reliability through regional operations;
3. Improved emergency response; and
4. More efficient treatment of loop flows.

(TR 249-250)

In addition, other benefits identified by witness Hoecker that should result from participation in an RTO versus the status quo, are the creation of market-based real-time balancing and ancillary services markets, and a congestion management proposal that leads to more efficient allocation of transmission capacity. (TR 261-266)

Witness Mechler, on behalf of Reliant Energy Power Generation, discussed what he perceived to be the significant benefit to RTO formation:

The Commission [FPSC] can have a high comfort level that the benefits produced by the RTO will more than offset the incremental cost of establishing and operating the RTO. Because the costs of generation are approximately 18 times greater than the total cost of transmission, only a very small reduction in generation cost is needed to outweigh incremental RTO cost. In fact, a 23% increase in transmission costs, per some numbers from TECO, would require only a 1.3% decrease in generation cost to offset those increases. It's not even close.

The Commission [FPSC] should review the investment in the RTO as a way to generate far greater savings in the cost of generation. The extent of the savings will be a function of the level of competition in the wholesale market. For these reasons, the policy of the Commission



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[FPSC] should be to support GridFlorida as an expeditious way to begin to realize the benefits of an RTO and to strive to maximize the depth and liquidity of the wholesale market. (TR 771-2) (emphasis added)

Discussion of benefits in terms of estimated dollars of potential savings was extremely limited. Witness Hoecker was asked by staff about a 1996 FERC study that estimated consumer benefits from the development of competitive generation markets. That particular study estimated national benefits of \$3.76 to \$5.37 billion in cases where competitive energy options were evaluated in different forms (i.e., coal and gas scenarios). In response to cross examination, witness Hoecker characterized the study as "highly speculative" and "a very broad modeling exercise, and I don't think there are any Florida-specific data associated with that or outcomes associated with that." (emphasis added) (TR 286-7)

Witness Hoecker also indicated that "...Order 2000 did something similar with a different model." (TR 286-7) However, neither the 1996 study nor the model associated with Order No. 2000 was provided by the witness as an exhibit, and staff could not verify the methodology or the accuracy of either model.

On behalf of the GridFlorida Companies, witness Naeve stated that:

There are a number of benefits cited by the FERC, cited in Order 2000, and also discussed by former Chairman Hoecker which, I believe, do produce positive economic benefits. I also testify, though, that those benefits are very difficult to quantify with any precision so that the results would be results that you would find sufficiently reliable to make a decision on. (TR 185-6) (emphasis added)

Additionally, the record reflects that there was no effort by the GridFlorida Companies to provide any estimates of these benefits. Further, there was no effort to estimate the timing of these benefits. Specifically, when asked as to whether benefits resulting from participation in GridFlorida can be quantified, representatives from all three GridFlorida Companies expressed that their respective utilities had not attempted to do so. For example, TECO witness Hernandez stated, "Tampa Electric has not

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made any calculations that cover all the potential benefits, no." (TR 859) FPL witness Mennes, when questioned if FPL attempted to quantify those benefits, replied, "No, FPL has not." (TR 978) When the same question was asked of FPC witness Southwick, he replied, "No, sir." (TR 1005)

Staff has little or no disagreement with those qualitative benefits of RTO formation outlined by witness Hoecker. However, staff does take exception to the characterization by witnesses Hoecker and Mechler, that a sufficiently competitive wholesale generation market currently exists in Florida. Witness Hoecker himself notes in his testimony the current limitations of the Florida Electric Power Plant Siting Act on merchant plant entry. (TR 264-6)

Witness Hoecker's remarks in reference to generation competition are not entirely applicable to Peninsular Florida. If the benefits of RTOs are to be linked to the level of generation competition within a state or region, then it can be said that Peninsular Florida lacks the level of market entry necessary for this to occur. Thus, the current competitive generation market in Peninsular Florida does not appear to be representative of Mr. Hoecker's description.

Regarding the quantitative analysis of potential benefits alluded to by witness Hoecker, staff believes that the information has little more value than a guess. Staff concurs with witness Hoecker that the estimated amounts of dollar benefits provided are highly speculative. (TR 286) Staff also concurs with witness Naeve that, "...those benefits are very difficult to quantify with any precision so that the results would be results that you would find sufficiently reliable to make a decision on." (TR 185-6)

Staff is also concerned by the lack of evidence regarding the expected time frame in which Florida consumers might realize net benefits from the formation of GridFlorida. Only TECO witness Hernandez discussed the progression of benefits. He states, "Some of the savings, for example, the elimination of pancaked rates will be in effect by day one. Some of those savings will be realized as the market progresses." (TR 859-60) He goes on to say, "...I think, there's a tiered timing of benefits, but they're all cumulative." (TR 860) Finally, in response to cross examination, he stated, "What that break-even point is, I'm not clear, at this point and time." (TR 861)

It is clear from the record that the GridFlorida Companies, particularly FPL, are only willing to go forward with the formation of GridFlorida if they are authorized cost recovery of GridFlorida's costs, irrespective of the benefits received. When asked whether FPL would proceed with GridFlorida if the FPSC did not approve a cost recovery mechanism at this time, Counsel for FPL replied, "We will not be able to go forward until the matter is addressed and we find out how it is addressed." (TR 687)

Finally, when asked about whether there are any differences in the benefits that could be achieved by a for-profit Transco versus a not-for-profit ISO, witness Hoecker stated, "There are important benefits to be gained from either method of organization." (TR 296) FPC witness Southwick, FPL witness Mennes, and TECO witness Ramon, have all indicated that they believe a not-for-profit ISO structure could provide all of the same operational, planning, and congestion management benefits as a for-profit Transco. (TR 451, 418, 419)

Overall, the evidence adduced at hearing reflects that the GridFlorida Companies are willing to accept the "qualitative," and not "quantitative," aspects of any potential benefits as the threshold that allows them to affirm that benefits and associated savings will eventually be realized. Moreover, the GridFlorida Companies are also willing and desirous of passing on the additional costs associated with GridFlorida irrespective of the magnitude or timing of net savings. Staff agrees that the benefits identified by witness Hoecker will most likely materialize under an RTO structure. However, staff believes that the GridFlorida Companies have not provided sufficient evidence regarding the timing and magnitude of those benefits nor have they demonstrated that GridFlorida, as proposed, is clearly the best structure for a Peninsular Florida RTO to achieve those benefits.

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

**RECOMMENDATION:** The benefits to the utility's ratepayers of its participation in GridFlorida are those that can potentially improve the current Peninsular Florida transmission grid. Additional operational efficiencies between/among utilities and the consolidation of planning and maintenance may be the principal tangible benefits that can be achieved by participation in GridFlorida at this time. While GridFlorida may also enhance the effectiveness of the wholesale market for generation, it is not a prerequisite for competition, since open access transmission is currently available in the State. In addition, wholesale competition is currently constrained due to the limitation of the Florida Electric Power Plant Siting Act on merchant plant entry. The GridFlorida Companies have been unable to quantify the magnitude and the timing of the potential savings that they, and any other market participants, can expect to derive from these benefits. [Noriega]

**POSITION OF THE PARTIES**

**FPC:** The benefits described in Issue 2 above should help to establish a more efficient wholesale market, which should in turn lead to lower wholesale power costs that will flow through to retail ratepayers. It is impossible to determine, however, the amount by which power costs will be reduced, either prospectively or after the fact.

**FPL:** The benefits described in Issue 2 above should help to establish a more efficient wholesale market, which should in turn lead to lower wholesale power costs that will flow through to retail ratepayers. It is impossible to determine, however, the amount by which power costs will be reduced, either prospectively or after the fact.

**TECO:** The benefits described in Issue 2 above should help to establish a more efficient wholesale market, which should in turn lead to lower wholesale power costs that will flow through to retail ratepayers. It is impossible to determine, however, the amount by which power costs will be reduced, either prospectively or after the fact.

**CALPINE**: An RTO will benefit ratepayers by facilitating enhanced grid reliability and efficient power supply. Since an RTO will evaluate all resources under its control, it will be more efficient and reliable than current localized control. Unified transmission system operation and planning will lower transmission costs through economies of scale and the elimination of duplicative, parochial practices. An RTO will also provide the operational independence and infrastructure necessary to facilitate a viable competitive wholesale market.

**CPV**: An RTO should benefit ratepayers by facilitating enhanced grid reliability, more efficient power supply, and more reliability than the existing local level of system control. Likewise, unified transmission system operation and planning should lower transmission costs through economies of scale and the elimination of duplicative practices.

**DENA**: An RTO will benefit ratepayers by enhancing grid reliability, reducing generation and transmission costs, and shifting investment risk away from ratepayers. Uniform transmission protocols and prices coupled with appropriate maintenance and planning regulations provided by an RTO will enable competitive wholesale transactions thus lowering consumers' generation costs because of increased supply options. Unified transmission system operation, planning and maintenance will lower transmission costs through economies of scale and the elimination of duplicative, parochial practices.

**DYNEGY**: (Docket No. 001148-EI only) There are long term cost benefits to be derived by wholesale and retail electric customers, transmission customers, municipal utilities, independent power producers and electric cooperatives from the formation of GridFlorida in that "pancaked" transmission costs would be phased out over a period of years thereby lower priced wholesale electric generation sources more attractive. Other costs savings may be realized through coordinated transmission system upgrade costs and by spreading the costs of system improvements to all system users.

**ENRON**: Enron supports the Joint Utilities' statement on this issue.

**MIRANT**: An RTO will benefit ratepayers by enhancing grid reliability, reducing generation and transmission costs, and shifting investment risk away from ratepayers. Uniform transmission protocols and prices coupled with appropriate

maintenance and planning regulations provided by an RTO will enable competitive wholesale transactions thus lowering consumers' generation costs because of increased supply options. Unified transmission system operation, planning and maintenance will lower transmission costs through economies of scale and the elimination of duplicative, parochial practices.

**RELIANT:** See position to Issue 2.

**PG&E:** An RTO should benefit ratepayers by facilitating enhanced grid reliability, more efficient power supply, and more reliability than the existing local level of system control. Likewise, unified transmission system operation and planning should lower transmission costs through economies of scale and the elimination of duplicative practices.

**PUBLIX:** (Docket No. 000824-EI only) There are potential long term cost benefits to wholesale and retail electric customers from the formation of an RTO in that "pancaked" transmission costs would be phased out over a period of years thereby making lower priced wholesale electric generation sources more attractive. Other cost savings may be realized through coordinated transmission system upgrade costs and by spreading the costs of system improvements to all system users.

**TWOMEY, ETAL:** No witness was able to quantify even a dollar's financial benefits that will enure to the jurisdictional, especially residential, customers of these utilities, let alone "net benefits," resulting from the utilities' participation in GridFlorida. The Commission should not accept vague promises of customer benefits in the face of certain and substantial costs.

**DISNEY:** See Position on Issue 2.

**SEMINOLE:** No position.

**FIPUG:** A truly independent regional RTO will enable all power suppliers to operate freely with incumbent electric companies in a competitive wholesale market resulting in lower prices and greater reliability for consumers.

**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,

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all of the claimed benefits relate to wholesale sales and other matters outside the Commission's jurisdiction.

**STAFF ANALYSIS:** As discussed in Issue 2, the GridFlorida Companies were unable to provide any quantifiable benefits to ratepayers resulting from the utility's proposed participation in GridFlorida. See staff's analysis in Issue 2.

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

**RECOMMENDATION:** If the Commission approves staff's recommendation regarding the prudence of the GridFlorida Companies participation in GridFlorida (Issue 6), staff recommends that the GridFlorida Companies should be afforded recovery of the approximately \$9 million in actual expenditures incurred through May 31, 2001, after an additional audit and review for reasonableness. Because there are questions regarding the prudence of a Transco going forward as being premature (see Issue 7), staff recommends that recovery of any incremental costs should not be addressed at this time. Additionally, staff recommends that final determination of actual costs expended through May 31, 2001, along with an appropriate recovery mechanism, be addressed in the Phase 2 proceedings for FPL and FPC. For TECO, staff recommends that the Commission address the reasonableness of its expenses and appropriate recovery mechanism at the time it seeks recovery of these costs. The Commission should make no decision on the acceptance of a specific pricing proposal until the utilities can provide quantifiable impacts on retail ratepayers. Without those quantifiable impacts, there is no sound basis for designing any rate proposal. [Revell, Maurey, C. Romig, Meeks, Gardner, Kummer]

**POSITION OF THE PARTIES**

**FPC:** The total incremental start-up costs are estimated to be \$136 million. The amounts allocated to GridFlorida Companies' retail customers are:

FPL: approximately \$70 million  
FPC: approximately \$32.7 million  
TECO: approximately \$16.9 million

Incremental annual operating costs are estimated to be \$52 million for the first full year of operation in the End State mode allocated to GridFlorida Companies' retail customers as follows:

FPL: approximately \$26.8 million  
FPC: approximately \$11 million  
TECO: approximately \$7.5 million



**FPL:** The total incremental start-up costs are estimated to be \$136 million. The amounts allocated to GridFlorida Companies' retail customers are:

FPL: approximately \$70 million  
FPC: approximately \$32.7 million  
TECO: approximately \$16.9 million

Incremental annual operating costs are estimated to be \$52 million for the first full year of operation in the End State mode allocated to GridFlorida Companies' retail customers as follows:

FPL: approximately \$26.8 million  
FPC: approximately \$11 million  
TECO: approximately \$7.5 million

FPL maintains that such incremental GridFlorida transmission charges are properly recoverable through the Capacity Cost Recovery Clause. Explicit approval of recovery of the incremental transmission costs through a recovery clause is required for FPL to proceed with RTO development.

**TECO:** The total incremental start-up costs are estimated to be \$136 million. The amounts allocated to GridFlorida Companies' retail customers are:

FPL: approximately \$70 million  
FPC: approximately \$32.7 million  
TECO: approximately \$16.9 million

Incremental annual operating costs are estimated to be \$52 million for the first full year of operation in the End State mode allocated to GridFlorida Companies' retail customers as follows:

FPL: approximately \$26.8 million  
FPC: approximately \$11 million  
TECO: approximately \$7.5 million

**CALPINE:** Specific data related to cost analyses are not available to Calpine. However, as a general matter, costs of providing wholesale electric service should be lower under an RTO than continued sub-region specific tariffs and localized system operation. Even greater cost efficiencies can be achieved through an RTO with a scope greater than Peninsular Florida.

**CPV:** No position.

**DENA:** No position.

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**DYNEGY**: (Docket No. 001148-EI only) No position.

**ENRON**: Enron supports the Joint Utilities' statement on this issue.

**MIRANT**: No position.

**RELIANT**: For purposes of this case, Reliant Energy has accepted the cost estimates provided by the GridFlorida applicants.

**PG&E**: No position.

**PUBLIX**: (Docket No. 000824-EI) No position.

**TWOMEY, ETAL**: Despite the utilities' efforts to minimize the financial impact on customers, Commission approval of the RTO will constitute a huge rate increase and an unnecessary economic drain on Florida's shaky economy. The five-year amortization of start-up costs alone exceeds \$162 million, assuming that number is correct and not greatly increased by the FERC. Other capital costs were greater, depending upon whose numbers you accept. Critically, any cost review will be lost to the FERC with approval of any RTO.

**DISNEY**: Only the IOUs can answer this question fully. Walt Disney World is concerned about the level of claimed start-up and initial operating costs.

**SEMINOLE**: No position.

**FIPUG**: FIPUG has no independent basis upon which to assess the costs to utility ratepayers of GridFlorida at this time.

**OPC**: The costs will be determined by whatever FERC approves for GridFlorida's tariffs at startup or 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.

**STAFF ANALYSIS**: The GridFlorida Companies provided estimates of the total start-up costs and the incremental annual operating costs for the first full year of operation of GridFlorida on a macro level. However, for certain cost centers, the companies did not provide the cost analyses on a micro level necessary to make a determination of the reasonableness of these estimates possible.

**Start-up Expenses and First Year Operating Expenses**

Staff tried to examine both the estimated start-up expenses and first year operating expenses of the RTO to determine if the costs for the three companies were reasonable and prudent. These expenses were listed on Exhibit BLH-3 of witness Holcombe's direct testimony. (EXH 16) The following table lists, by company, the estimated total first year operating costs, the estimated cost offsets, as well as the actual start-up costs, as of May 31, 2001. The allocation of actual start-up costs listed in the following table is based on the load ratio of each company. Information in the following table was compiled from Exhibit 16.

Analysis of Incremental Cost Impact on GridFlorida Users				
User Cost Assessments	Estimated Total First Year Operating Cost (000's)	Estimated Cost Off-sets (000's)	Estimated Net Increase (000's)	Actual Start-up Cost as of May 31 (million's)
FPL	\$125,437	(\$98,593)	\$26,844	\$5
TECO	\$30,314	(\$22,756)	\$7,558	\$1
FPC	\$11,836	(\$487)	\$11,348	\$2
Wholesale	\$13,915	(\$8,047)	\$5,868	\$1
<b>Total</b>	<b>\$181,502</b>	<b>(\$129,883)</b>	<b>\$51,618</b>	<b>\$9</b>

The GridFlorida Companies responded to interrogatories requesting detailed justification and backup to the numbers contained in the exhibit. FPL submitted minimal information in response to this request. (EXH 3, pp. 197-198) FPC stated in its response to Staff's 2<sup>nd</sup> Request For Documents, Document No. 3, that "There is no such supporting documentation. The information provided for FPC in Exhibit BLH-3 is based on internal discussions." (EXH 1, p. 150) TECO stated in its response to Staff's 2<sup>nd</sup> Request for Documents, Document No. 3 that "There is no such supporting documentation." (TR 905)

During cross examination, FPC witness Southwick did not provide any justification or backup for the amounts given in

Exhibit BLH-3, Tables 1 and 2. He stated that there was no supporting workpapers available as the amounts of these expenses were based on internal discussions. (TR 1012) TECO witness Ashburn indicated that the companies met to determine the expenses, but that he did not attend any meetings where cost numbers were discussed and, further, was not positive that there was any documentation to support the expenses. (TR 904-906)

The utilities did not provide any accounting documentation for the approximately \$150,000,000 in estimated total start-up expenses and approximately \$181,000,000 in projected first year operating expenses, nor offset costs of \$13,944,000 and \$129,883,000, respectively. As a result, staff was unable to examine any supporting documents or workpapers related to these expenses. Staff is unable to determine whether these estimated expenses are accurate, reasonable, or prudent for the purposes of the Phase 1 proceeding. Also, it should be noted that the first year operating expenses do not appear to include amortization of the start-up costs.

#### Recovery of costs

FPL is the only company maintaining that the Commission explicitly approve, in this proceeding, recovery of the incremental transmission costs through a recovery clause. FPL asserts that such a finding is a requirement in the Phase 1 proceeding in order for it to proceed with RTO development. (Brief pp. 20-2, TR 19) On the other hand, TECO's witness Hernandez testified that it is not essential for the Commission to decide the cost recovery mechanism in Phase 1 of these proceedings. (TR 862) Additionally, FPC's witness Southwick testified that it will seek recovery of the costs associated with its participation in GridFlorida when the costs begin to occur. (TR 1007) Interestingly, while witness Southwick endorses the use of a pass through recovery clause, FPC is silent in its brief on the subject of a recovery mechanism. (TR 1000; Brief pp. 20-2)

FPL witness Dubin admitted that the company did not evaluate any other recovery mechanisms other than the recovery clauses. (TR 733) Moreover, FPL did not evaluate the impact on its ratepayers of recovery through base rates or a pass-through mechanism. (TR 733, 742)

Staff believes the appropriate recovery mechanism is best addressed in Phase 2 of these proceedings, after a more in-depth review of the GridFlorida costs and possible recovery mechanisms are made. The record evidence in the Phase 1 proceedings is not sufficient to make a determination of the most appropriate recovery mechanism, whether through base rates, a cost recovery clause, a pass-through clause, or some other mechanism. Since TECO has no Phase 2 proceeding, staff recommends that the Commission address the appropriate recovery mechanism at the time it seeks recovery of these costs.

Nonetheless, based on staff's recommendations in Issues 6 and 7 that the GridFlorida companies were prudent to be proactive in the development of an organization that would satisfy FERC's Order No. 2000, staff believes that the GridFlorida Companies should be afforded recovery, subject to audit, of the approximately \$9 million in actual expenditures incurred through May 1, 2001, after an additional review for reasonableness. Because staff questions the prudence of a Transco going forward as being premature (Issue 6), staff believes recovery of any incremental costs should not be addressed at this time. Additionally, because staff is unable to determine the reasonableness of the actual incurred costs in this proceeding, this issue should be addressed in the Phase 2 proceedings for FPL and FPC. For TECO, staff recommends that the Commission address the reasonableness of its expenses at the time it seeks recovery of these costs.

### Cost of Capital

With respect to the cost of capital, the GridFlorida Companies have not made a final determination of the sources of capital that may be transferred and/or assigned to GridFlorida. (EXH 2, pp. 37-8; EXH 3, pp. 52-3) As a result, the GridFlorida Companies have not made a determination regarding what the total cost of capital will be for GridFlorida. (EXH 1, p. 9; EXH 2, pp. 39-40; EXH 3, pp. 54-5) Due to the lack of information available from the GridFlorida Companies, it is not possible to make a meaningful recommendation regarding the cost of capital embedded in the total start-up costs and incremental annual operating costs of GridFlorida at this time.

### Income Taxes

As discussed elsewhere in this recommendation, the form of organization for the RTO is still undecided. However, if it is organized as an 1120C Corporation, income taxes are dependent upon other revenue requirement elements. As also discussed, other revenue requirement elements cannot be determined. Consequently, for 1120C Corporation purposes, staff is unable to determine income tax expense.

If, on the other hand, the RTO is organized as a Limited Liability Company (LLC) and elects to be taxed as a partnership, a tax expense may not be appropriate. At this time, income tax expense cannot be established because neither the costs associated with GridFlorida are known nor is the form of tax entity that will be created known. Further, the deferred tax consequences cannot be determined at this time.

### Depreciation

#### Contribution vs. Operational Control of Transmission Assets

As addressed in more detail in Issue 5, FPL and TECO provisionally plan to contribute transmission assets to GridFlorida for a passive ownership interest in the RTO. (TR 834; EXH 3, p. 19; EXH 2, p. 22) On the other hand, FPC is planning to only turn over operational control of its transmission assets to GridFlorida. (TR 1003) FPC witness Southwick stated that FPC has been successfully engaged in the transmission business for many years and sees no reason to exit the business. This was the determining factor FPC considered when evaluating the form of its participation in GridFlorida. (TR 987-9, 1003; EXH 1, p. 98) None of the GridFlorida Companies conducted an evaluation of the costs and benefits associated with transferring operational control or ownership of transmission facilities to GridFlorida when evaluating participation in GridFlorida. (EXH 1, p. 22; EXH 3, pp. 69-70)

### Demarcation

The GridFlorida Companies have proposed to use a uniform line of demarcation of 69kV in determining transmission assets to transfer or to turn over operational control to the RTO. (TR 333) The GridFlorida witnesses asserted that a uniform demarcation point is a reasonable approach to achieve fairness and equal access to

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the transmission of the RTO. (TR 337) In response to questions regarding the factors considered in determining the 69kV as the demarcation point, the GridFlorida witnesses testified that facilities 69kV and above have historically been considered by the participating companies to be transmission facilities, both from a planning/operations and a ratemaking perspective. Additionally, the need for open access to all 69kV and above transmission facilities was expressed by the stakeholders in the collaborative process. Moreover, the GridFlorida witnesses opine that subsidies could result from the proposed rate structure for GridFlorida if each utility chose a different demarcation point, since the proposed rates would be based on the costs of all transferred facilities. (TR 335-7)

While staff agrees that a uniform line of demarcation for determining transmission assets is a fair and reasonable approach, it is disconcerting that the GridFlorida Companies did not provide any evidence supporting the selection of 69kV as the demarcation line as opposed to 138kV, 230kV, or any other voltage level. Nonetheless, as a result of using the proposed 69kV line of demarcation to identify those assets to be transferred to GridFlorida, FPL and TECO indicate that some assets currently accounted for as distribution plant will be reclassified as transmission plant and subsequently transferred to GridFlorida. (EXH 3, pp. 11-3, 17, 24; EXH 2, pp. 14-6; EXH 18) However, during cross examination of the Joint Panel, FPL and TECO asserted that no assets from the distribution or general plant functions will be reclassified or refunctionalized to transmission as a result of the demarcation point. (TR 524) Due to the conflicting evidence, staff is unable to make a determination as to whether or not assets will be reclassified or refunctionalized between asset accounts or functions.

FPC will only turn over operational control of its transmission facilities to GridFlorida. Therefore, its assets will remain on the company's books as currently classified. (TR 1013-4; EXH 1, pp. 108-9) FPC states it will transfer operational control of the Controlled Facilities pursuant to the Participating Owners Management Agreement and GridFlorida's Operating and Planning Protocols. (EXH 4, Volume VI, pp. 3755-3818, 4419-76) The accounting of these assets will not change just because of the transfer of control. (TR 527) In other words, the control of any distribution assets that meet the 69kV line of demarcation and

function as transmission will transfer to GridFlorida while the ratemaking jurisdiction will remain with this Commission. (TR 527)

Value of Divested Transmission Assets

An integral part of identifying the operating costs for GridFlorida is the value assigned to the transferred assets. Both FPL and TECO selected the net book value (gross investment less reserve) as the value to be used for the transfer due to the ramifications for tax purposes and the effect on rates. (EXH 2, p. 79; EXH 3, p. 18; TR 835-6) The exception for FPL is with the portion of the 500kV line that FPL was allowed accelerated depreciation through the Oil Backout Cost Recovery Clause. FPL states that this asset will be transferred to GridFlorida as though only straight-line depreciation had been recorded based on the Commission approved transmission account depreciation rates. The accelerated depreciation amount will be recorded as a gain on the transfer of the transmission property and amortized over the estimated remaining life of the Oil Backout 500kV line (about 27 years). (EXH 3, pp. 19, 26, 36) In this way, the amortization could be used to offset the higher charge from GridFlorida resulting from its larger rate base and higher depreciation expense. (EXH 3, p. 19)

In response to questions relating to why net book value was determined to be the most appropriate valuation to transfer divested assets, FPL and TECO responded:

The Federal Energy Regulatory Commission Uniform System of Accounts promulgates the accounting for electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise. GridFlorida's accounting for the asset contribution would be governed by the accounting rules within the Uniform System of Accounts. Any amount the GridFlorida pays over and above the cost incurred by a contributing company, the person who first devoted the property to utility service, would be charged to Account 114 electric Plant Acquisition Adjustments and amortized to Account 425 Miscellaneous Amortization. Items described as chargeable to Account 425 include Account Amortization of utility plant acquisition adjustments, or of intangibles included in utility plant in service **when not authorized to be included in utility operating expenses by the**



**Commission.** (emphasis added) (EXH 3, pp. 74, 94; EXH 2, pp. 52, 79)

To the extent assets are transferred above book value, GridFlorida rates would increase. Any gain would need to be amortized to offset the increased transmission rates. Neither FPL nor TECO believe that its customer's rates should increase or decrease in the future as a result of transferring the assets at above or below net book value. (EXH 3, pp. 74, 94; EXH 2, pp. 52, 79) However, FPL also noted that the FERC has not provided any guidance on the accounting procedures to be followed in the transfer of assets to an RTO. Moreover, FPL admitted there were no supporting documents it referred to or relied upon in determining that divested transmission assets should be transferred to GridFlorida at net book value. (EXH 3, p. 201)

As of December 31, 2000, the estimated original cost and associated reserve of the FPL assets are \$1.9 billion and \$907 million, respectively. (EXH 3, p. 24) TECO estimates the original cost and associated reserve of its assets to be contributed to GridFlorida to be about \$244.5 million and \$90.2 million, respectively. (EXH 2, p. 69) Both utilities note however that these amounts are estimates only and do not include property in other functions such as Intangible or General Plant that may be transferred to GridFlorida. Additionally, equipment which may be excluded from or included in the property to be transferred continues to be identified. (EXH 3, p. 24; EXH 2, pp. 14-6) The reserve amounts for FPL represent a calculation made at the retirement unit level based on the depreciation rates approved over the life of the retirement unit by the this Commission. (EXH 3, p. 35) TECO calculated the depreciation reserve amounts using account investment to reserve ratios. (EXH 2, p. 19) Staff finds either method reasonable.

The parties have stated that assets are still being identified that will be transferred or turned over for operational control to GridFlorida. (EXH 3, p. 24; EXH 2, pp. 14-6) Therefore, the associated investment and reserve amounts provided to determine the net book value are tentative. Consequently, staff believes that it is not possible to make a recommendation regarding the investment and reserve amounts associated with transmission assets to be transferred to GridFlorida.

If the Commission approves the staff recommendation in Issue 7 that, at this time, an ISO model should be adopted in lieu of a Transco model, ownership of transmission assets will be retained by the individual companies. In such case, the issue regarding the appropriate value to transfer assets becomes moot.

#### Depreciation Summary

In summary, none of the GridFlorida Companies conducted an evaluation of the costs and benefits associated with transferring operational control or ownership of transmission facilities to GridFlorida when evaluating participation in GridFlorida. Additionally, there is no record evidence either supporting or contradicting the GridFlorida Companies' selection of 69kV as the point of demarcation as opposed to some other voltage level. Further, the companies are still identifying assets that will either be transferred or turned over for operational control to GridFlorida.

If the Commission approves the staff recommendation in Issue 7 that, at this time, an ISO model should be adopted in lieu of a Transco model, ownership of transmission assets will be retained by the individual companies. In such case, the issue regarding the appropriate value to transfer assets becomes moot. Additionally, staff believes that the revenue requirements needed to support retail transmission service would continue to be set by this Commission. This issue will be pursued in Phase 2, the rate setting and cost recovery phase, for FPL and FPC.

#### Class B Common Stock

Staff has concerns relating to transferring transmission assets and the issuance and selling of Class B Stock. Ultimately, two classes of stock will be issued under the GridFlorida proposal -- Class A Common Stock and Class B Common Stock. Class A Common Stock will be voting common stock. Market Participants, as defined in Order No. 2000, will not be permitted to own shares of Class A Common Stock. Class B Common Stock will be non-voting common stock, and may be owned by Market Participants. The Class B voting stock is one of the provisions that have been made to give divesting owners the flexibility to sell their non-voting Member Interests in the future. Divesting owners have the right to convert their Member Interests in GridFlorida to shares of Class B Stock, which again

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qualify as passive interests. That Class B stock can then be sold to another entity. (TR 320-1)

If FPL and/or TECO ever chooses to sell its interest in GridFlorida, it must convert its membership interest into non-voting stock of GridFlorida. That stock can then be sold in public markets. As with any stock transaction, the share purchase price would reflect the expectation of future earnings associated with the stock as well as market conditions at the time. Thus, the share purchase price may be above or below book value. In recent utility acquisitions, the purchasing entity has typically paid a premium price over and above net book value for the utility. When utilities are sold for a premium over net book value, those premiums belong to the stockholder of the selling entity. (EXH 3, p. 105)

Stockholders would clearly own the assets of GridFlorida. However, the FPSC has the responsibility to ensure reasonable outcomes for both the consumer and GridFlorida stockholders. Should the stockholders engage in behavior regarding the sale of stocks and/or assets that would in some way threaten the safety, reliability, and adequacy of utility service or serve to increase stockholder value while having a demonstrable negative impact on consumers and the rates they pay, the FPSC needs to mitigate such actions. If the utility sold assets to a third party, the FPSC would be responsible for determining the disposition of gains or losses on the sale. The difference in this situation is that the utilities are proposing to convert physical assets to paper assets and those paper assets have value tracked by the FPSC. If and when Class B stock is converted to cash, the FPSC should retain jurisdiction over the resulting gain or loss on the sale, just as the Commission would for the physical asset. Jurisdiction over possible gains or losses on the transferred assets will remain with the FPSC.

### Pricing Protocol and Rate Design

#### Companies' proposal

Each utility has different costs of transmission due to differences in the size, age of facilities, and operational needs for delivering electricity to end users. Movement to a single uniform statewide rate would have disparate impacts depending on whether an individual utility's costs were above or below the RTO average. (TR 609) Witness Ashburn states that the proposed pricing

protocol, developed during the collaborative process, was designed to meet the requirements of FERC Order No. 2000. In addition, the protocol was designed to address the areas of cost shifting due to moving to average RTO wide rates, credits for facilities owned by transmission dependent utilities (TDUs) and the elimination of pancaking of transmission rates across service territories. (TR 556-7) The pricing protocol provides for two pricing components plus a grid management charge.

Part I rates consist of zonal rates to recover existing transmission costs. To establish the RTO rate, each participating transmission owning utility submits a FERC approved revenue requirement to GridFlorida for transmission facilities in its zone. (TR 614-5) Each transmission owner will initially be considered a "zone" for the purpose of setting Part I rates. Base rate revenue requirements are frozen for five years. (TR 939) The Part I component will be phased out into Part II beginning in year five of operations so that at the end of ten years the individual zone charges will be completely merged into the uniform GridFlorida charge. (TR 561-2) The Part II rate will recover the cost of transmission facilities built after December 31, 2000, including any facilities constructed by the RTO. In addition, pancaked rates in existing contracts will be phased out over a ten year time period. (TR 572)

Time Frame	Part I Rate	Part II Rate	Pancaking
Years 1-5	Existing utility revenue requirements for zone (utility).	Starts with new construction and any new facilities added by RTO.	Short term pancaking phased out 20% per year.
Years 6-10	Existing revenue requirements phased into Part II rates 20% per year.	Increases by 20% of Part I rates until single system charge is in place in year 10.	Phase out pancaked rates in long term contracts.

The total costs associated with both the zonal revenue requirements and the new facilities will be allocated to each user

of the system based on its system load ratio share. (TR 566) This charge will apply to all users of the transmission system, whether or not they are participants in the RTO. (TR 463)

The proposal also addresses cost shifting arising from movement to a uniform rate and the elimination of pancaking, which the utilities maintain is required by Order No. 2000. (TR 555-6) Utilities that lose significant revenues associated with pancaking or wheeling will see an increase in the average cost to their native load. Those that no longer have to pay multiple transmission rates will see a decrease in transmission costs. Cost shifting due to loss of pancaked revenues will be mitigated by a phase-out reimbursement process. Participants losing wheeling revenues will be reimbursed from RTO charges for point-to-point transmission service into and out of GridFlorida. The subsidy for short-term wheeling will decrease 20% per year beginning in the first year of operation. Longer term contracts which include pancaked rates will be phased out on a similar schedule in years 6 through 10. (TR 572-4)

Another issue addressed by the pricing protocol concerns the recovery of the cost of facilities owned by transmission dependent utilities, or those utilities whose facilities are included within another utility's rate zone. (TR 595) Witness Naeve indicated that the TDUs' want their facilities to be included in the zonal revenue requirements at the start. (TR 228) However, the participants were reluctant to include all the TDU facilities at the outset because their integration had disparate impacts. (TR 575) In addition, many of the facilities are radial in nature (i.e., they do not link other transmission facilities but only serve load) and are thus, not true network facilities. (TR 464) As a result, TDU's were given the option to: (1) meet FERC's integration standards and have their facilities immediately included in their zones' revenue requirements; or (2) allow the cost of non-certified facilities to be phased in over a five year period.

In addition to the two-part rate charge, the companies propose a GridManagement Charge (GMC). Witness Ashburn describes the purpose of the GMC as recovering "all reasonably incurred costs necessary for GridFlorida to carry out its business that are not separately charged in the Tariff." (TR 583) This includes RTO startup costs as approved by FERC, payments to the market monitor, and FERC regulatory fees. An estimate of the startup costs and first year operation costs were provided by witness Holcombe. (EXH

16) Any start up costs not approved for recovery through the RTO by the FERC will revert to the individual utilities. (TR 619) Revenues from RTO functions such as system impact studies and facilities studies done at individual customer or utility request would serve to offset the GMC charge. Since FERC Order No. 2000 requires the RTO to serve as the Security Coordinator, the RTO, under contract with the Florida Reliability Coordinating Council, (TR 393) will also receive revenue from all Florida utilities for the provision of security coordination services. (TR 583)

#### Staff Analysis

The proposed pricing protocol assumes that a uniform rate for all participants in the RTO will be imposed or reached at some future date and that depancaking of transmission rates is required by FERC. (TR 105) The proposed cost shifting mechanisms are designed not only to mitigate the impact of a Transco structure on the retail ratepayers of the current applicants, but also to make the RTO more attractive to other potential members. (TR 227-8, 593) It also assumes that all decisions concerning the pricing of transmission will be made by the FERC, and that utilities must be allowed to recover FERC-established rates. (TR 220,223) If a less structured approach with more state control is adopted by the Commission, the FPSC may retain the ability to consider the costs and benefits to each participant in lieu of a one-size-fits-all approach to socializing the cost shifts.

The record contains little hard data on the rate impact from adopting the proposed Transco. (TR 614-5) Witness Holcombe, in Exhibit BLH-3 (EXH 16) presents his incremental cost impact for the first year of GridFlorida operations. This analysis does not present the RTO rate that will be assessed for transmission service but simply looks at the incremental organizational costs (facilities and services, salaries and other office expenses) associated with any business. (TR 647) Some utilities in the state have significantly higher transmission unit costs than the applicants. (EXH 3, p. 6) If these higher cost utilities choose to join, their costs will be rolled into the average RTO rate, which will then increase the cost of transmission to all participants, whether or not they receive any benefits from the new addition. The final RTO rate will depend on the collective revenue requirements of utilities which join the RTO plus organizational costs. The incremental costs presented by witness Holcombe represent only one piece of the rate impact.

Although the utilities had the data available on the cost shifting impacts due to a uniform RTO rate and depancaking (TR 606), they did not enter the data in either the testimony or the exhibits of their witnesses. During cross examination, witness Ashburn estimated a reduction in TECO's transmission revenues of approximately \$500,000 due to depancaking costs for short-term transactions, and an additional \$2.5 million for depancaking long-term transmission rates. (TR 607) He was unable to provide comparable information for the other two participants. (TR 606, 608) Witness Southwick noted that FPC's customers are served primarily from resources on FPC's existing system and therefore would not realize any savings from depancaked rates but would see losses associated with transmission services provided to other entities through FPC's system. (TR 999) The cost estimates also do not take in account the cost of including the TDU facilities in the RTO transmission rate. These costs may or may not be significant, but no data were presented by the utilities either way.

Staff's Composite Exhibit 3 contains an estimate of the impact on the retail ratepayers of cost shifting which was prepared during the collaborative process and referenced by witness Ashburn. (TR 606) The chart is based on 1998 data and assumes all utilities providing information at that time join the RTO. The three petitioners are all net losers in this analysis in terms of cost impact while, according to the estimate, the primary beneficiaries are non-rate base regulated entities, such as municipal and cooperatives.

Company	Impact of de-pancaking	Impact of uniform rate	Net benefit (cost) to retail ratepayers
FPL	\$ 100,000	(\$12,800,000)	( \$12,800,000)
FPC	\$ 1,600,000	(\$25,100,000)	( \$23,500,000)
TECO	\$ 500,000	(\$ 8,000,000)	( \$ 7,500,000)

[Staff Composite Exhibit 3, p. 6]

Although these numbers rely on a different set of assumptions than those presented in the hearing, they were presented as an initial estimate of the impact of moving to a GridFlorida structure as proposed during the collaborative process. The main point staff

would like to emphasize is that, in this proceeding, all cost estimates are just that -- estimates. The estimates also depend on a number of external factors such as who joins the RTO, what costs FERC approves for recovery and the possible formation of a Southeast RTO. (TR 289) Not only were actual rates not provided in this docket, rates will not be available until approximately 60 days prior to the RTO filing for approval at the FERC.

#### Pricing Protocol and Rate Design Recommendation

There will likely be some need for cost shift mitigation under any type of RTO structure. If the Commission accepts the proposed Transco structure, there will be a greater need for some type of formalized cost mitigation procedure as proposed by the utilities. Given the assumptions used in the Transco model in its conceptual form, the pricing protocol proposed by witness Ashburn appears to be a plausible theoretical attempt to balance the cost shifts and other pricing issues inherent in adopting the RTO structure.

However, if the Commission adopts a less structured ISO model as recommended in Issue 7, it may be able to retain greater control over the cost of facilities included in any RTO system rate, as well as the manner of recovery of those costs. Witness Ashburn notes that FERC specifically allowed for a flexible pricing approach for the allocation of fixed costs. (TR 556-7) Witnesses Ashburn and Southwick admitted that the impact of depancaking rates depended on whether a utility is paying or receiving revenues now. (TR 607, 999) Under an ISO, the FPSC would have greater latitude in assessing the impact of de-pancaking and the recovery of TDU transmission investment on individual utilities. It could also determine if a single statewide transmission rate is appropriate. Moreover, these issues could be addressed on a case by case basis, balancing the costs and benefits to ratepayers. In addition, the need for, or magnitude of, any GridManagement Charge could significantly decline if the Commission accepts staff's recommendation to implement an ISO structure in lieu of a for-profit Transco as proposed by the utilities. A less structured organization should have a lower price tag since many of the functions attributed to the Transco would remain with the transmission owners and not be duplicated on a statewide level.

However, the absence of any hard cost data makes any final judgment on the proposed rate structure a risky decision at this time. There is simply too little information to determine what impact any RTO pricing structure will have on retail ratepayers



since the parties were unable to quantify either the short-term or long-term benefits of an RTO in this docket. In addition, the utilities testified that significant costs will go into a billing program designed for the specific tariff filed, (TR 647) and any pricing protocol adopted for GridFlorida may not be acceptable in a regional RTO configuration. It would not be prudent to expend significant funds to develop a billing system for a tariff that may never be implemented. Therefore, staff recommends that no decision be made on the acceptance of a specific pricing proposal until the utilities can provide quantifiable impacts on retail ratepayers. Without these quantifiable impacts, there is no sound basis for designing any rate proposal.

**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 69kV and above to GridFlorida while retaining ownership appropriate?

**RECOMMENDATION:** The GridFlorida Companies should only transfer operational control of their transmission system assets to an ISO. The companies should maintain ownership of transmission assets, at this time. The Commission should find the demarcation point of 69kV and above for transmission facilities is reasonable. [Groom, Bass]

**POSITION OF THE PARTIES**

**FPC:** Tampa Electric and FPL have provisionally decided to transfer their transmission assets to GridFlorida while FPC has determined to remain the owner of its transmission facilities for the time being. Both courses of action are reasonable and prudent. The facilities operated by GridFlorida will be operated at the same level of efficiency, reliability and safety, and the GridFlorida Companies will receive the same level of high quality transmission service.

**FPL:** Tampa Electric and FPL have provisionally decided to transfer their transmission assets to GridFlorida while FPC has determined to remain the owner of its transmission facilities for the time being. Both courses of action are reasonable and prudent. The facilities operated by GridFlorida will be operated at the same level of efficiency, reliability and safety, and the GridFlorida Companies will receive the same level of high quality transmission service.

**TECO:** Tampa Electric and FPL have provisionally decided to transfer their transmission assets to GridFlorida while FPC has determined to remain the owner of its transmission facilities for the time being. Both courses of action are reasonable and prudent. The facilities operated by GridFlorida will be operated at the same level of efficiency, reliability and safety, and the GridFlorida Companies will receive the same level of high quality transmission service.

**CALPINE:** While Calpine expects that the respective companies will substantiate their own business decisions, an effective RTO structure should be able to accommodate different business decisions

while concurrently providing the centralized, independent control that is the hallmark of reliable, regionally operated transmission systems. TECO's/FPL's decision to transfer ownership and control of their facilities to GridFlorida, and FPC's decision to retain ownership but transfer operational control of its transmission assets are consistent with these goals.

**CPV:** No position.

**DENA:** Yes. An effective RTO structure should be able to accommodate different business decisions while at the same time providing the centralized, nondiscriminatory control that is the hallmark of reliable, regionally operated transmission systems. Assuming the GridFlorida governance is properly organized and independent, it is appropriate for the entity that possesses responsibility for operating and maintaining the transmission facilities to also own them. Likewise, such an entity can effectively operate assets owned by the utility.

**DYNEGY:** (Docket No. 001148-EI only) FPL's and TECO's decision to transfer ownership and control of their transmission lines of 69kV and above to GridFlorida, while not the only option, is appropriate. It will help to assure that GridFlorida is financially sound, an acceptable credit risk for contracting with third parties, bond agencies and lenders, and will force GridFlorida to be concerned with the cost, reliability and upkeep of its transmission assets as its primary means of income.

**ENRON:** Enron supports the Joint Utilities' statement on this issue.

**MIRANT:** Yes. An effective RTO structure should be able to accommodate different business decisions while at the same time providing the centralized, nondiscriminatory control that is the hallmark of reliable, regionally operated transmission systems. Assuming the GridFlorida governance is properly organized and independent, it is appropriate for the entity that possesses responsibility for operating and maintaining the transmission facilities to also own them. In addition, such an entity can effectively operate assets owned by the utility.

**RELIANT:** No position.

**PUBLIX:** (Docket No. 000824-EI only) No position.

**PG&E:** No position.

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**TWOMEY, ETAL:** It would appear that there should only be one "most appropriate," or preferable ownership decision and that, therefore, both the TECO/FPL and FPC decisions cannot be correct. Neither alternative should result in costs greater than under the Commission's current regulation. It appears the sale of assets will be more difficult to reverse than a mere transfer of control of assets should the GridFlorida experience prove unrewarding.

**DISNEY:** Walt Disney World does not oppose the IOUs using a 69-kV rule of thumb for determining which of their own transmission facilities to transfer, so long as that rule of thumb is not deemed by anyone to replace FERC's "functional" test for other utilities that may participate in an RTO.

The Commission can decide that the three IOUs' transfer of ownership or control of their transmission facilities of 69 kV and above is appropriate without upsetting FERC's test for other utilities. FERC has adopted a multi-factor "functional" test rather than a simple 69kV test of whether specific facilities are to be classified as transmission or local distribution. (TR 159-60, 188-90) The IOUs' witnesses acknowledge that voltage level is only one factor in FERC's test, although in their pre-filed testimony they present various reasons for their use of 69kV as a demarcation point and why trying to draw finer distinctions would be inappropriate for their systems. (See joint Panel Testimony (Pre-filed) at 20-22; Tr. at 335-37.)

Walt Disney World does not oppose the three IOUs' use of 69 kV as a rule of thumb for the IOUs to determine which of their transmission facilities to transfer. However, the appropriateness of their decision should not be viewed as displacing the applicability of other criteria to other companies that might join the RTO.

**SEMINOLE:** No position.

**FIPUG:** FIPUG believes independent control of the transmission system is beneficial to consumers. The retail rate impact issues resulting from ownership transfer will be addressed in Phase II of this docket.

**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.

**STAFF ANALYSIS:**

Asset Transfer and/or Transfer of Operational Control

An important aspect of the GridFlorida proposal is whether ownership of transmission assets will be transferred from the participants to GridFlorida. In the alternative, operational control of transmission facilities could be given over to GridFlorida while a participating member retained ownership of the facilities.

TECO has notified the FERC of its intent to contribute its transmission assets to GridFlorida. TECO will make its final decision whether to go forward with that contribution nearer to the operational date of GridFlorida. (TR 818) FPL has also indicated its intention to transfer ownership of transmission facilities to GridFlorida. FPC has decided to retain ownership and only transfer operational control. (TR 121)

Witness Naeve, on behalf of the GridFlorida Companies, indicates in his direct testimony that the decision of whether to transfer ownership of transmission assets or simply operational control of those assets was based on several factors. First, the ownership of assets by GridFlorida would provide greater financial strength and incentives to innovate and would allow GridFlorida to assume an acceptable amount of risk in order to provide improved service. (TR 121) In addition, witness Naeve goes on to state, "There is a benefit to aligning the ownership of the transmission facilities with the responsibility for operating and maintaining those facilities." (TR 121) Furthermore, witness Naeve implies that aligning ownership of the facilities with the authority for expansion and capital expenditure decisions as well as responsibility for securing the financing for such expenditures is a positive factor. (TR 121-2) However, witness Naeve says that given current uncertainties regarding the ultimate shape of the restructured industry, there is a benefit in retaining ownership of transmission facilities in order to respond to any changes that may occur in the future. (TR 122) Finally, witness Naeve reiterated his position that GridFlorida ownership of "significant assets of its own" is very important. (TR 123)

While both TECO and FPL have chosen to transfer ownership of transmission facilities to GridFlorida, FPC has chosen to retain ownership of its transmission assets and simply relinquish operational control to GridFlorida. FPC's decision to proceed in

this way, as witness Southwick states, is a business determination rather than a utility operations determination. Witness Southwick explains, "The ultimate return on such an investment depends on an initial public offering of GridFlorida equity and other events that will unfold over the next several years, all of which are uncertain. FPC believes that it is in its best interest to retain ownership at this time....FPC's facilities will be operated at the same level of efficiency, reliability, and safety, and FPC will receive the same high quality transmission service, whether or not it divests its transmission facilities." (TR 665)

Several aspects of the transfer of assets and the operation and maintenance of the transmission assets are of interest. In response to cross examination, witness Naeve indicated that the transfer of assets for FPL and TECO would take place on the day that commercial operations for GridFlorida begin. (TR 390) Witness Naeve further indicated that the contract under which assets would be transferred will be subject to FERC approval and that the contracts would have to be developed some sufficient time in advance of the target date for commencement of commercial operations for GridFlorida. (TR 390)

The operation and maintenance of any transferred assets will continue by TECO and FPL even after the commencement of operation by GridFlorida. Witness Mennes indicated that FPL and TECO would not turn over operation and maintenance of those facilities until "...we get a warm feeling that GridFlorida could take over those facilities." (TR 427) He further indicates that both FPL and TECO would have maintenance contracts for a period of five years after GridFlorida operations begin. (TR 427) FPC witness Southwick concurred with Commissioner Deason that FPC would continue to own and maintain its transmission assets which would be the under operational control of GridFlorida. (TR 429)

The participants in GridFlorida, for business reasons of their own, have come to different conclusions regarding the benefits of transferring ownership of their transmission assets to GridFlorida rather than simply transferring operational control. While staff appreciates the merits of transferring ownership of transmission facilities to GridFlorida for the purpose of enabling GridFlorida to more easily raise needed capital and facilitating capital expenditures, staff also sees the wisdom of transferring only operational control at this time.

The latter approach recognizes the uncertainties surrounding initiatives by the FERC to more broadly regionalize the scope of

RTOs nationwide and effectively postures the utility for whatever changes in scope may ultimately occur. As both witness Naeve and witness Southwick alluded to in their testimony, there exist several uncertainties at the current time relating to the final form of the electric industry in Florida as well as on a more regional and national scope. As witness Naeve indicated in his summary testimony, "The Commissioners at FERC increasingly are talking about a four RTO solution, having four giant RTOs that span the United States." (TR 137) "In a four-RTO solution, Florida's not a separate RTO. Florida's a part of the Southeast RTO." (TR 191) When questioned as to the impact of a Florida Public Service Commission decision on GridFlorida and its subsequent impact on the FERC initiative to form a Southeast RTO, witness Naeve further states, "...they [FERC] did not order, but they encouraged the GridFlorida Companies to participate in the southeast mediation." (TR 191)

When questioned regarding whether a Florida-only RTO or a Southeastern RTO would be better for the state of Florida, witness Naeve responded, "I think, it's too early to answer that question." (TR 194) Witness Naeve further states that many factors would enter into such an assessment including cost, cost shifting between regions, the structure itself, and the governance of the RTO. (TR 193)

Finally, witness Naeve states that there are risks associated with the FPSC ratifying the GridFlorida proposal in light of the FERC's initiatives regarding more regional RTOs. "There's some risk with that. One risk is merely that you'll form GridFlorida, the Southeast RTO will also be formed and we'll - over time, we'll look at the Southeast RTO and conclude maybe it was a better model. The bigger risk, however, is that you form GridFlorida, you incur all the start-up costs, and then three years later FERC says join the Southeast RTO and you will have all those start-up costs that would have gone into GridFlorida, so there are some risks to saying go forward right now with GridFlorida." (TR 193-4)

It is clear from the testimony of both witness Naeve and witness Southwick that uncertainty and risk accompany the transfer of ownership of transmission facilities to GridFlorida. While it may be difficult to quantify the financial aspect of that risk and uncertainty, it is equally difficult to quantify the benefits of doing so. Repeatedly throughout the hearing, witnesses for all the participating companies indicated that no effort had been made to quantify the approximate dollar amount of benefits that may accrue either to consumers or to the utilities themselves as a result of

participating in GridFlorida. In addition, none of the GridFlorida Companies conducted an evaluation of the costs and benefits associated with transferring operational control or ownership of transmission facilities to GridFlorida when evaluating participation in GridFlorida. (EXH1, p. 22; EXH 3, pp. 69-70) For these reasons, consistent with staff's recommendation in Issue 7, staff recommends that the GridFlorida Companies should not transfer ownership of transmission facilities to GridFlorida, but should instead transfer operational control to an ISO. As noted previously, no transfer of ownership has yet taken place and the plans for continued maintenance of transmission facilities by their current owners is contemplated for at least five years going forward. Thus, whether ownership of transmission facilities is transferred or not has little or no bearing on the operational aspects of the transmission grid in Florida for the foreseeable future.

#### Demarcation of Transmission Facilities

The GridFlorida collaborative effort established the transmission facilities demarcation at 69kV and above. (EXH 24, Staff Data Request No. 4) According to the testimony of the Panel, there were four factors considered by the GridFlorida Companies in determining the demarcation point. These factors are: (1) historically, facilities 69kV and above have been considered to be transmission facilities, from a planning/operations and ratemaking perspective; (2) stakeholders in the collaborative process generally expressed the need for open access to all 69kV and above transmission facilities in Florida; (3) classification of radial facilities as distribution instead of transmission would make access to transmission more complicated than it needs to be; and (4) the rate structure proposed for GridFlorida would result in subsidies across utilities if each utility chose a different demarcation point for facilities to turn over to the RTO. (TR 335-6) The GridFlorida Companies contend that "a uniform demarcation point is a reasonable approach to achieve fairness and equal access to the transmission system of the RTO." (TR 337)

Staff agrees that a uniform demarcation point is necessary to ensure equal access for all participating companies and to ensure that subsidies resulting from different demarcation points do not occur. There is no evidence in the record suggesting that the demarcation point should be something other than 69kV. In addition, this demarcation point has been consistently used by this Commission when determining appropriate cost allocations to distribution, transmission and generation facilities. Therefore, the Commission



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should find the demarcation point of 69kV and above for transmission facilities is reasonable.

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

**RECOMMENDATION:** As discussed in Issue 7, the utilities were prudent to be proactive in responding to Order No. 2000. However, at this time, the Commission should not find that the utilities continued participation in GridFlorida is prudent. The utilities should design an ISO model and bring it to the Commission for review and approval. The utilities should specifically address, in the ISO proposal, the quantification and timing of benefits resulting from the development of an RTO. [Bass]

**POSITION OF THE PARTIES**

**FPC:** Yes. It was prudent for the GridFlorida Companies to submit their own proposal rather than risk being forced to join an existing RTO which they did not develop. If the GridFlorida Companies later were forced to join an existing RTO, they would have minimal input into its essential features. By contrast, there have been considerable benefits to Florida ratepayers resulting from the GridFlorida Companies' decision to form GridFlorida.

**FPL:** Yes. It was prudent for the GridFlorida Companies to submit their own proposal rather than risk being forced to join an existing RTO which they did not develop. If the GridFlorida Companies later were forced to join an existing RTO, they would have minimal input into its essential features. By contrast, there have been considerable benefits to Florida ratepayers resulting from the GridFlorida Companies' decision to form GridFlorida.

**TECO:** Yes. It was prudent for the GridFlorida Companies to submit their own proposal rather than risk being forced to join an existing RTO which they did not develop. If the GridFlorida Companies later were forced to join an existing RTO, they would have minimal input into its essential features. By contrast, there have been considerable benefits to Florida ratepayers resulting from the GridFlorida Companies' decision to form GridFlorida.

**CALPINE:** Yes. The decision to participate in GridFlorida was prudent. While Order 2000 is voluntary, FERC has expressed a willingness to leverage its regulatory authority. As such, the utilities were forced to decide whether to create a regional transmission organization or possibly be ordered to join that of another region. The utilities' decision to take control of the RTO

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process on behalf of Florida ratepayers and shareholders was reasonable and prudent.

**CPV:** Yes.

**DENA:** Yes. The decision to participate in GridFlorida was prudent. While Order 2000 is voluntary, FERC indicated a willingness to leverage its regulatory authority. As such, the utilities were forced to decide whether to create a regional transmission organization or possibly be ordered to join that of another region. The utilities' decision to take control of the RTO process on behalf of Florida ratepayers and shareholders was reasonable and prudent.

**DYNEGY:** (Docket No. 001148-EI only) Given the unique peninsular geography of the State of Florida and the natural market created by that geography and the general policy of FERC to establish and require RTO participation by all FERC regulated utilities, the utility's decision to participate in GridFlorida is prudent.

**ENRON:** Enron supports the Joint Utilities' statement on this issue.

**MIRANT:** Yes. The decision to participate in GridFlorida was prudent. While Order 2000 is voluntary, FERC has indicated a willingness to leverage its regulatory authority. As such, the utilities were forced to decide whether to create a regional transmission organization or possibly be ordered to join that of another region. The utilities' decision to take control of the RTO process on behalf of Florida ratepayers and shareholders was reasonable and prudent.

**RELIANT:** No position.

**PG&E:** Yes.

**PUBLIX:** (Docket No. 000824-EI only) No position.

**TWOMEY, ETAL:** No, not as currently proposed. Based upon the start-up costs predicted by the utilities and the resulting increases in jurisdictional rates, it appears that these utilities' jurisdictional customers will receive net economic detriments by the participation in GridFlorida and that, therefore, each utilities' participation should be found to be imprudent.

**DISNEY:** The answer depends on whether the RTO is properly designed to achieve the benefits expected by FERC. It remains to be seen whether the benefits expected by FERC will be realized and whether a GridFlorida or a Southeastern RTO will be more reasonable.

**SEMINOLE:** Seminole Electric believes that it was not imprudent for FPC, FPL and TECO to participate in GridFlorida. Seminole Electric does, however, take exception to certain key elements of GridFlorida, as set forth in Seminole Electric's pleadings in the proceedings before FERC. In addition, Seminole Electric believes that the Commission will, at a minimum, continue to have jurisdiction over transmission reliability even after a transfer of control to GridFlorida.

**FIPUG:** Yes, however, it would be more prudent for the utilities to participate in a larger more comprehensive RTO and they should be directed to do so.

**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 have to bear the risks associated with having jurisdiction over retail transmission transferred, on the utilities' initiative, to a federal agency.

**STAFF ANALYSIS:** Staff believes that participation in an RTO was a voluntary decision. Notwithstanding the voluntary participation aspect of an RTO, the GridFlorida Companies took the right action to be proactive in the development of an organization that would satisfy FERC's Order No. 2000. It is apparent from past and current actions that the FERC is committed to the implementation of RTOs nationwide. Staff agrees with witness Naeve, that:

... I conclude that the GridFlorida Companies were prudent in concluding that in the long run they had no option but to join an RTO and that in the long run FERC would require them to participate in an RTO. And if they chose not to participate in an RTO at this stage, they would ultimately be forced to participate in one in which they had no opportunity to be involved in the structure and formation and policies of the RTO. (TR 135)

However, staff does not believe that going forward with a Transco would be prudent at this time. The selection of a Transco model versus an ISO model was also voluntary and entirely at the

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discretion of the GridFlorida Companies. There has been no competent quantification of benefits that either the ratepayers or the State of Florida will receive from the operation of a Transco. (See Issues 2 and 3) Staff believes it is premature at this point for the Commission to affirmatively find the utilities' participation in GridFlorida, as proposed as a Transco, to be prudent. The Commission should order the utilities to form an ISO that satisfies the characteristics and functions of an RTO as described in Order No. 2000. (See Issue 7)

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

**RECOMMENDATION:** Based on its authority under the Grid Bill, specifically, Sections 366.04 and 366.05, Florida Statutes, the Commission should require FPC, FPL, and TECO to submit a new RTO filing that conforms their GridFlorida proposal to this recommendation using an ISO model. The GridFlorida Companies should submit this proposal within 90 days following the issuance of the Commission's Order in this phase of the dockets. The filing should specifically identify the costs, the benefits, and the allocation of costs to the utilities based on the benefits received by each. The filing should also address whether the proposed ISO would be a for-profit or not-for-profit entity and include justification for the decision. Specific performance incentives and how they should be incorporated should also be included in the filing. The Commission should find that the "get what you bid" approach is preferable until the GridFlorida Companies can demonstrate that sufficient participants exist in the wholesale generation market and that localized market power has been adequately addressed. The Commission should also require that the concept of physical transmission rights and balanced schedules remain fixed until such time that GridFlorida petitions the Commission and justifies something different. [Trapp, Shafer, Bass, Ballinger]

#### **POSITION OF THE PARTIES**

**FPC:** The Commission should adopt the policy position that the GridFlorida Companies' proactive development of and participation in an RTO is in the best interest of Florida ratepayers. Furthermore, in order to preserve the ability of the GridFlorida Companies to participate in a Florida-only RTO, the Commission should make a swift and unequivocal finding that the formation and operation of GridFlorida is prudent. However, the Commission should also preserve the option of Southeast RTO participation.

**FPL:** The Commission should adopt the policy position that the GridFlorida Companies' proactive development of and participation in an RTO is in the best interest of Florida ratepayers. Furthermore, in order to preserve the ability of the GridFlorida Companies to participate in a Florida-only RTO, the Commission should make a swift and unequivocal finding that the formation and operation of GridFlorida is prudent. However, the Commission should also preserve the option of Southeast RTO participation.

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**TECO:** The Commission should adopt the policy position that the GridFlorida Companies' proactive development of and participation in an RTO is in the best interest of Florida ratepayers. Furthermore, in order to preserve the ability of the GridFlorida Companies to participate in a Florida-only RTO, the Commission should make a swift and unequivocal finding that the formation and operation of GridFlorida is prudent. However, the Commission should also preserve the option of Southeast RTO participation.

**CALPINE:** First, the Commission should memorialize a policy position that recognizes the benefits of a robust, competitive wholesale power market in Florida. Second, the Commission should acknowledge that there remain transmission-related impediments to a competitive wholesale electricity market. Third, the Commission should support the immediate establishment of an independent grid management structure that will ensure the development of competitive wholesale generation markets to increase Florida load's access to generation supply and to promote efficient system operation.

**CPV:** The Commission should adopt an RTO policy that recognizes the benefits of a competitive wholesale power market in Florida and support an independent grid management structure that ensures the development of competitive wholesale generation markets to increase Florida's load access to generation supply and to promote efficiency.

**DENA:** The Commission should memorialize a position that recognizes the benefits of a competitive wholesale power market for Florida. The Commission should also acknowledge that there remain important transmission-related impediments to a competitive market such as the engineering and economic inefficiencies and continuing opportunities for undue discrimination in the operation of the grid. Finally, the Commission should seek to immediately establish an independent grid management structure that will ensure the development of competitive wholesale generation markets.

**DYNEGY:** (Docket No. 001148-EI only) The Commission should (1) recognize the authority of the FERC over RTO formation within Florida, (2) recognize the coercive nature of the requirement that FERC regulated utilities form or join in an RTO, (3) acknowledge that some of the RTO formation costs are prudent cost expenditures, (4) moderate the cost impact of RTO costs on utility rates, and (5) maintain reliable and unbiased transmission availability in a manner which promotes wholesale competition.

**ENRON:** As is stated in this Commission's RTO Briefing Paper, an effective RTO will facilitate the development of a competitive wholesale generation market in Florida. Toward that end, this Commission should prefer functioning markets (with safeguards in place to remedy market abuses) that allow wholesale customers choice of supplier and products.

**MIRANT:** The Commission should memorialize a policy that recognizes the benefits of a competitive wholesale power market for Florida. The Commission should also acknowledge that there remain transmission-related impediments to a competitive wholesale electricity market such as engineering and economic inefficiencies, and continuing opportunities for undue discrimination in the operation of the transmission grid. Finally, the Commission should immediately establish an independent grid management structure that will ensure the development of competitive wholesale generation markets.

**RELIANT:** To maximize savings to consumers, the Commission simultaneously should support GridFlorida and work to increase the depth and liquidity of the wholesale market. Like Reliant Energy, the Commission can support GridFlorida on an overall basis while reserving its right to advocate different positions on specific details.

**PG&E:** The Commission should adopt an RTO policy that recognizes the benefits of a competitive wholesale power market in Florida and support an independent grid management structure that ensures the development of competitive wholesale generation markets to increase Florida's load access to generation supply and to promote efficiency.

**PUBLIX:** (Docket No. 000824-EI only) The Commission should (1) recognize the authority of the FERC over RTO formation, (2) minimize any cost impact of RTO costs on utility rates, and (3) maintain reliable and unbiased transmission availability in a manner which promotes wholesale competition.

**TWOMEY, ETAL:** The Commission should resist the FERC's abuse of authority. It should prohibit the sale or transfer of transmission-related assets and seek state authority to do so if that power is lacking or questioned. If the Commission lacks jurisdiction to legally prevent the sale or transfer of transmission assets or their operational control, it should take the position that any net increases in costs resulting from the



transactions shall be denied from recovery through jurisdictional retail rates.

**DISNEY:** The Commission should encourage formation of a reasonably structured RTO that is fair to and creates benefits for consumers, suppliers and utilities, including non-IOU utilities in Florida.

Walt Disney World recommends that the Commission review the comments filed at FERC by Reedy Creek Improvement District, the Florida Municipal Power Agency and other non-IOU utilities before forming a position on the specifics of the GridFlorida proposal.

**SEMINOLE:** The Commission should not find that the decision by FPC, FPL and TECO to participate in GridFlorida was imprudent. Seminole Electric, while continuing to object to certain key elements of GridFlorida, nevertheless believes that the Commission's finding may be essential to preserving the option of a Florida-specific RTO. In making such a determination, however, the Commission should manifestly express that it retains continuing jurisdiction over transmission reliability.

**FIPUG:** The Commission's policy should be to endorse a larger and more comprehensive southeastern RTO.

**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.

**STAFF ANALYSIS:** In 1992, Congress enacted the Energy Policy Act of 1992 (EPAct) which amended Sections 211 and 212 of the Federal Power Act (FPA). These amendments authorized the FERC to require utilities to transmit power from wholesale power sellers. EPAct also added Section 213 to the FPA. Section 213(a) required that a transmitting utility which refuses to provide wholesale transmission service in accordance with a good faith request must submit a written explanation of its proposed rates, terms, and conditions and an analysis of any physical or other constraints. Section 213(b) required the FERC to enact a rule requiring transmitting utilities to submit annual information concerning potentially available transmission capacity and known constraints. In addition, EPAct established Exempt Wholesale Generators (EWGs) in order to increase competition at the wholesale level of electric generation.

In its implementation of EPAct, the FERC embarked upon rulemaking which ultimately led to its issuing Order No. 888 (April 1996). The FERC elected to invoke a generic requirement, rather than case-by-case, for public utilities to provide non-discriminatory, open access transmission through the functional unbundling of transmission service from generation services. As stated by former FERC Chairman Hoecker:

In implementing the Energy Policy Act of 1992 ("EPAct"), the Commission had made its overall approach clear: "Our goal is to facilitate the development of competitively priced generation supply options, and to ensure the wholesale purchasers of electric energy can reach alternative power suppliers and vice versa." (Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, FERC Stats. and Regs. 32,507 at 32,866 [Order No. 888 NOPR]. In handing down Order No. 888, I believe FERC was responding to the pro-competitive spirit of EPAct and to the major changes that were taking place in the electric industry both as a result of the Public Utility Regulatory Policy Act of 1978 and new market realities. (TR 243)

While not required by Order No. 888, the FERC did express its intention to further explore the use of Independent System Operators (ISOs) to act as neutral operators of the nation's transmission systems. In May 1999, the FERC continued to explore new transmission organizational structures by issuing a Notice of Proposed Rulemaking (NOPR) on Regional Transmission Organizations (RTOs). In December 1999, the FERC issued its Final Rule on RTOs in Order No. 2000.

According to witness Hoecker:

Order No. 2000 was the next logical step to achieving the policy goals that the Commission set in 1996 when it issued Order No. 888, ..... (TR 243)

FERC's actions in Order Nos. 888 and 2000 were based on its broad understanding of developments in the electric power business as well as specific instances where discrimination occurred or was alleged to have occurred. (TR 248)

FERC stated in Order No. 2000 that its "objective ... is for all transmission-owning utilities to place their transmission facilities under the control of an RTO in a timely manner." (Order No. 2000 at 30,993) (Emphasis added) (TR 252)

The question that FERC had to address was how best to achieve its goal of putting all transmission facilities under the control of an RTO. In the past, when FERC has mandated major industry restructuring -- for example, the requirement that both natural gas and electric companies provide open access to pipelines and transmission lines, respectively -- its authority to issue such a generic ruling has been challenged and the validity of the entire program, although later affirmed, left up in the air pending a ruling on appeal. Given that the Federal Power Act fails to specifically mention RTOs and that its RTO initiative would probably lead to litigation, the Commission decided to take a route other than a mandate. (TR 254-5)

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

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

I agree with the Florida staff's view of FERC's intentions, even if I might disagree with its analysis of FERC's authority in this case. In any event, the consequences of refusal to comply with the Commission's policy and a reluctance to participate in an RTO may go well beyond loss of the promised incentive rate treatments or reduction of the flexibility and deference that Order No. 2000 touted as part of RTO formation. Strategic transactions involving a utility that is not

part of an RTO process will almost certainly face an uphill battle for approval at FERC, even if they do not involve RTO matters. (TR 256-7)

It is not often that one can benefit from 20/20 hindsight. In this case, however, it is apparent from past and current actions that the FERC has and currently is embarked upon a mission to institute RTOs nationwide. The steps taken by the peninsular Florida investor-owned utilities to take a proactive stance to comply with Order No. 2000 were reasonable and prudent. In general, staff agrees with witness Naeve, speaking on behalf of the GridFlorida Companies:

... I conclude that the GridFlorida Companies were prudent in concluding that in the long run they had no option but to join an RTO and that in the long run FERC would require them to participate in an RTO. And if they chose not to participate in an RTO at this stage, they would ultimately be forced to participate in one in which they had no opportunity to be involved in the structure and formation and policies of the RTO. (TR 135)

Notwithstanding FERC's resolve to implement RTOs, the FERC did not prescribe a one-size-fits all model. The actual design and organizational structure was left to the utilities' discretion, subject only to the basic RTO characteristics and functions delineated in Order No. 2000.<sup>2</sup> As stated by witness Hoecker:

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<sup>2</sup>FERC Order No. 2000 identified four minimum characteristics and eight essential functions that an RTO should meet. The four minimum characteristics of an RTO are:

1. Independence from market participants;
2. Sufficient scope and regional configuration;
3. Operational authority for all transmission facilities under its control;
4. Exclusive authority for maintaining the short-term reliability of the grid it operates.

The eight functions of an RTO are:

1. Administering its own transmission tariff and transmission pricing system;
2. Developing market mechanisms to manage transmission congestion;
3. Developing procedures which address parallel path flow issues;
4. Serving as provider of last resort for ancillary services;
5. Serving as the OASIS site administrator for all transmission facilities under its control, and performing independent calculations of

(continued...)

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Under Order 2000, RTOs will provide transmission service over a large region. On that basis, the Commission (FERC) has said it will allow RTOs to develop their own innovative solutions to various problems rather than either mandating a single approach or locking in the initial RTO characteristics and functions for the future. (TR 251-2)

As such, the Commission must review each of the various choices made in forming GridFlorida and determine whether, in part and in whole, they are likely to benefit Florida's retail consumers and whether the decision of each of the GridFlorida Companies to participate is prudent.

The GridFlorida Companies contend that they were prudent in the various choices made in forming GridFlorida. Based on the testimony of witness Naeve:

And in particular I mean they were prudent in selecting Peninsular Florida as the scope for the RTO, they were prudent in choosing to have an independent board of directors as opposed to a stakeholder board. And in particular they were prudent in choosing the for-profit transco model as opposed to an independent system operator. (TR 138)

As discussed in the sections that follow, staff agrees in part and disagrees in part.

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<sup>2</sup>(...continued)

Available Transmission Capability (ATC) and Total Transmission Capability (TTC);

6. Providing objective monitoring of markets it operates or administers;

7. Planning, and directing or arranging, necessary transmission expansions, additions, and upgrades; and

8. Ensuring the integration of reliability practices within an interconnection region.

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## Conformance to FERC RTO Characteristics

### 1. Sufficient Scope and Regional Configuration

Staff does agree that Peninsular Florida is an appropriate starting point for an RTO region. Florida's peninsular geography has motivated its electric utilities to be highly interconnected with each other because the region is considered an "ending point" of the nation's electric transmission grid. Because of our relative isolation from national trading hubs, the Florida electric utility industry has a history of cooperating with each other through the Florida Reliability Coordinating Council (FRCC) to coordinate transmission and maintain reliability. This cooperation is critical because the generation necessary to meet Florida's growing demand must be: (1) built within the state, (2) interconnected to the existing transmission network, and (3) delivered in a reliable manner on the state's internal electric transmission grid. To date, interties with the rest of the nation are relatively few and peninsular Florida can only import, at a maximum, less than 10 percent of its total peak demand (summer 2001) over the high-voltage transmission system. Moreover, past studies indicate that it would be extremely costly to significantly increase peninsular Florida's import capability, and any increase will likely require improvements to contiguous systems located outside the state. While staff believes that we should be ever mindful of opportunities to enhance the capacity and utilization of the state's transmission interface with the rest of the nation, current demographic and economic conditions point to peninsular Florida as being a natural market region. (TR 292, 678-681)

### 2. Independence from Market Participants

Staff also agrees that it is in the overall public interest for a peninsular Florida RTO to be governed by an Independent Board of Directors. The management of the RTO by an independent board with none of the members having any connections to any of the member companies or any other market participant is a necessary step to (1) dispel any notions of discrimination, (2) ensure that the transmission services provided by the RTO are fair and equitable, and (3) meet the needs of Florida's electric ratepayers in a safe, adequate, reliable, and cost effective manner.

Staff also concurs with the formation of an Advisory Committee consisting of a broad array of stakeholders. The Advisory Committee should be authorized to:

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1. Make presentations to the Board at regularly scheduled Board meetings on matters that a majority of the representatives of the Advisory Committee agree are of sufficient importance to merit Board attention;
2. Prepare and submit written recommendations and reports, at any time, to the Board and senior management of the RTO;
3. Meet and confer with senior management of the RTO on matters of concern or interest to the Advisory Committee; and
4. Have reasonable and timely access to information concerning the operation of the RTO. (TR 324)

In order to ensure that the management and operation of the RTO is independent, neither the Board or the management of the RTO should be obligated to accept the recommendations of the Advisory Committee. The purpose of forming an Advisory Committee is to give stakeholder's a formal avenue for providing their advice to the Board. While the Board should give appropriate consideration to this advice, it should not be bound by any specific actions recommended by the Advisory Committee. Further, staff recommends that any interaction between the Board and the Advisory Committee be conducted in full public view with appropriate opportunity for public input. (TR 326)

Staff also believes that the Board should be responsible for justifying its actions to the FPSC. As discussed elsewhere in this recommendation, GridFlorida will be an electric utility subject to the FPSC's jurisdiction under Chapter 366, Florida Statutes. As such, GridFlorida and its management will be held responsible for the prudence of the actions they take that impact upon the FPSC's jurisdiction. One of staff's principal concerns is that, should the FPSC approve the formation of GridFlorida, the Board should not be able to take unilateral action to change the organizational structure or operation of GridFlorida without the FPSC's prior review regarding prudence and public impact.

### 3. Operational Authority for All Transmission Facilities Under Its Control

The GridFlorida Companies propose that GridFlorida be structured as a for-profit transmission owning company (Transco).

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Their selection of a Transco model as opposed to an independent system operator (ISO) is based on their belief that the Transco model provides the best incentives for efficient operation because it aligns (1) the ownership of transmission assets with the operation of those assets, (2) the responsibility of planning for expansion with the responsibility for investing in that expansion, and (3) the responsibility for investing capital and recovery of the capital investment with the responsibility for rate design. (TR 138)

Relative Benefits of a Transco vs. an ISO

Notwithstanding this shared opinion of the GridFlorida Companies' witnesses, no concrete evidence was offered substantiating the claim that a for-profit Transco would result in greater benefits to the citizens of Florida than some other form of RTO. Also, despite its support for an overall for-profit Transco model, Florida Power Corporation has decided not to transfer the ownership of its transmission assets to GridFlorida. Instead, it will use the services of GridFlorida to operate its transmission system much in the same way as an ISO would. Therefore, in reality, GridFlorida, as proposed, is a hybrid Transco/ISO model.

When questioned about the relative differences between a Transco and an ISO, former FERC Chairman Hoecker offered the following opinion:

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

A. I think, there are important benefits to be gained from either method of organization. (TR 296)

During cross examination, witness Naeve was asked:

Q. With regard to savings, you mentioned several areas there might be savings that would incur (sic) as a result of GridFlorida. In parts of the country where RTOs have been in place for some time, have those savings occurred and could you give some examples? (TR 145)

Witness Naeve's response was:



A. Well, first, I would say that there are no RTOs operating yet. There are some ISOs, independent system operators, and independent operators can be deemed by FERC to be RTOs, but none have as yet been found to be RTOs and have started operation as RTOs yet. These independent system operators were established and began commercial operation before Order 2000. Order 2000 imposed some additional requirements on them that were not part of ISOs at the time, so each of them had to make compliance filings to come into compliance with Order 2000, and those are in the works now. So in the not too distant future I expect FERC will approve some of the existing ISOs with changes to be functioning RTOs. (TR 145)

The question is have there been savings with respect to the operation of these institutions, and even though they are not precisely RTOs, I think many of them like PJM and others function very close to the way that an RTO would function. And I'm not aware of any studies that have attempted to quantify what the savings are, if there are savings. I think a variety of people believe that there have been operational benefits by the creation of the RTO, but I have not seen any quantification of what those savings are. (TR 145-6)

Staff believes that the potential for customer benefits are equally likely under an ISO model as a Transco model.

#### Divestiture of Existing Transmission Assets

The plan to establish GridFlorida as a for-profit Transco represents a fundamental change in the structure of the electric industry in Florida. It is a decision which is deeply imbued with the public interest. Once the GridFlorida Companies divest themselves of the ownership of their transmission facilities, it is unlikely they would be able to reverse that decision.

TECO witness Ashburn:

Q. Once Tampa Electric transfers the ownership of its transmission assets to GridFlorida, is there any mechanism set up in the GridFlorida proposal that would allow Tampa Electric to regain ownership of its transmission assets under any circumstance?

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A. I assume a circumstance could be that Tampa Electric goes back to GridFlorida and seeks to buy them. That's a circumstance. But there's nothing specifically written into any of the documents that allows -- gives the right to repurchase or something like that. (TR 909)

FPL witness Mennes:

Q. Is there any way if Florida Power and Light divests its assets into GridFlorida and later is dissatisfied with GridFlorida, other than buying back the assets, that it could regain ownership of the assets?

A. That sounds like an issue to keep Washington, D.C. employed, but I would doubt it. Not that I know of. (TR 979-80)

Staff believes that it would be premature at this time to allow the divestiture of existing transmission assets in the state. While the GridFlorida Companies have speculated that, in the long term, a for-profit Transco will be cost-effective, there is no quantitative evidence in the record to substantiate such speculation. The GridFlorida Companies have been unable or unwilling to determine the magnitude or timing of benefits associated with GridFlorida. The only attempt to quantify the potential savings associated with GridFlorida was presented by Witness Mechler on behalf of Reliant Energy Power. Witness Mechler testified that:

Because the cost of generation is 18 times greater than the total costs of transmission, only a very small reduction in generation cost is needed to outweigh incremental RTO cost. In fact, a 23% increase in transmission costs, per some numbers for TECO, would require only a 1.3 % decrease in generation cost to offset those increases. (TR 771-2)

However, witness Mechler also admitted, "The extent of the savings will be a function of the level of competition in the wholesale market." (TR 772)

At present, competition in the wholesale market is limited to incumbent generation companies and to a limited class of Independent Power Producers willing to risk building peaking units which are exempt from Power Plant Siting laws in the hope that a

Florida competitive wholesale market will develop. (TR 266-7) Peninsular Florida does not currently support a fully competitive wholesale generation market. To date, true wholesale sales continue to be a relatively small portion of investor-owned utility sales and are predominantly conducted between Florida's utilities. A Florida RTO will initially do little to foster further competition in wholesale generation markets than exists today. The proposed ancillary services market represents less than 2 percent of the total energy market in peninsular Florida. Moreover, while an effective RTO may be necessary to the efficient workings of a competitive wholesale generation market, it is an insufficient condition toward the development of such a competitive wholesale generation market.

Further work is needed to establish a statewide competitive wholesale generation market in Florida. Working toward this goal, the Governor has established the Energy 2020 Study Commission to examine Florida's current energy infrastructure and to propose an energy plan and strategy for Florida's future. Recommendations by the Study Commission will be considered by the Florida Legislature whose responsibility it is to decide whether Florida's laws should allow for the appropriate development of a competitive wholesale generation market in Florida.

Given this current state of flux, staff believes that it would be premature to allow the divestiture of existing transmission assets in the state. While we do not recommend foreclosing the eventual movement to a Transco RTO model, staff does recommend that the adoption of an ISO at this time appears to be a prudent first step in adopting an RTO for peninsular Florida. Absent the current opportunity to realize benefits of competition, an ISO would capture benefits associated with integrated transmission planning, operations, and pricing. An ISO at this time may also make it attractive for Florida's municipal electric utilities and rural electric cooperatives to participate in an RTO (thus increasing GridFlorida's operating control of Florida's transmission from 83% to up to 100%). (EXH 8) Currently, some municipal electric utilities and rural electric cooperatives are restricted from selling and transferring assets.

For-Profit or Not-For-Profit

Witness Naeve, on behalf of all the GridFlorida Companies, testified that the GridFlorida companies considered both a for-profit Transco structure and a not-for-profit ISO and opted for a

for-profit Transco structure. Among the reasons cited by witness Naeve for selecting the for-profit Transco were increased cost control and accountability, the incentive to operate more efficiently, direct accountability to shareholders for performance and profitability, financial stability and access to capital necessary to fund construction and maintenance of the transmission system. (TR 120-3)

However, FPC witness Southwick, FPL witness Mennes, and TECO witness Ramon, have all indicated that they believe a not-for-profit ISO structure could provide all of same operational, planning, and congestion management benefits as a for-profit Transco. (TR 451, 418, 419) In addition, witness Hoecker, on behalf of the GridFlorida Companies concurred and further indicated his belief that a not-for-profit ISO could meet FERC's criteria for an RTO. (TR 296)

Thus, the choice between a for-profit and a not-for-profit RTO is not critical to achieving compliance with FERC or achieving benefits for the electric industry in Florida, but is rather a philosophical choice over which structure will provide the most efficient and cost effective entity for achieving those objectives. Staff does not disagree that the profit motive is a strong incentive to operate efficiently in a competitive environment. However, since any RTO will operate as a regulated monopoly, the incentives provided by the competitive forces will be lacking. It is not clear in this instance whether a for-profit Transco is pressured to perform anymore efficiently than a not-for-profit ISO.

Staff believes that operating efficiency is a major concern for any utility and is a central concern regarding RTOs. For that reason it is important that in the absence of competitive pressures or profit motive, performance measures and incentives should be developed for the RTO, regardless of structure. The GridFlorida Companies understandably made no attempt in their testimony to identify what, if any, measures could be taken to improve or provide incentive for a not-for-profit ISO. Thus, the record is not sufficiently developed for staff to conclude whether a not-for-profit ISO or a for-profit Transco is preferable.

Staff has taken the position in Issue 5 that it is not appropriate for the GridFlorida Companies to transfer ownership of their transmission assets to GridFlorida at this time. Therefore, at least one advantage to the GridFlorida structure identified by witness Naeve is substantially weakened. That is, without

substantial assets of its own, GridFlorida's relative financial strength would be lessened.

As previously discussed, staff supports an ISO structure for GridFlorida at this time. Whether GridFlorida, operating as an ISO, does so as a for-profit or as a not-for-profit entity is not of major concern for staff. However, staff recommends that the GridFlorida Companies shall, as a component of a required ISO proposal, address whether the proposed ISO would be a for-profit or not-for-profit entity. In addition, justification should be provided for the decision and specific performance incentives and how they should be incorporated should be included in the proposal.

#### State/Federal Jurisdiction

Staff also believes that the transfer of transmission assets to a Transco would have the affect of transferring rate setting jurisdiction over the retail component of transmission away from the FPSC and to the FERC. It is not clear, from the record however, that the same result would occur under an ISO model where ownership of the transmission facilities is retained by the individual companies and where the ISO is used to provide operational services of the integrated transmission grid.

During cross examination, GridFlorida witness Naeve expressed his opinion that, regardless of whether transmission assets or operational control was transferred to GridFlorida, the FERC would assume jurisdiction over the retail component of transmission service provided to the distribution company:

Q. Does FERC currently have jurisdiction over the transmission component of electric energy sold at retail?

A. ...the answer is in FERC's view if at the state level the state unbundles service to retail customers so that retail customers do not buy generation directly from their utility supplier, but instead buy generation from multiple generators, multiple sources, in that world in which the state itself has chosen to unbundle, FERC has taken the position that their jurisdiction over transmission service extends down to the retail customer.

In a situation in which the State has chosen not to unbundle, FERC takes the position that their jurisdiction extends only to the provision of transmission service to

the distribution company. So, FERC has taken the position that their jurisdiction kind of depends on what the state chooses to do. (TR 161)

Witness Naeve went on to clarify:

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

Certainly as to the allocation of those costs among customers you retain jurisdiction. I do think, though, that if GridFlorida were to be formed and FERC were to approve a transmission rate for GridFlorida, and that those costs were to incurred by the distribution companies, I don't think you would be able to second guess the prudence of those costs and deny pass-through of those costs on that basis. (TR 142-3)

In his direct testimony, FPC's witness Southwick stated:

Q. How will the revenue requirements associated with FPC's transmission facilities be determined?

A. FPC plans to develop a formula that calculates its total revenue requirements annually associated with all of its transmission facilities. Such a formula would employ cost data from the preceding calendar year and incorporate a true up provision to reflect the actual costs incurred during the year. A formula mechanism would insure that FPC is neither under-recovering nor over-recovering its transmission facilities' costs. (TR 996-7)

Clearly, regardless of whether transmission assets or operational control only is transferred to GridFlorida, the companies intend to ask the FERC to set the revenue requirements for retail transmission services. They believe that this is the inevitable result of RTO formation. Staff, however, disagrees with the basic tenet put forth by the GridFlorida Companies.

The FERC did not, either in Order No. 888 or in Order No. 2000, undermine or supplant the state's retail ratemaking authority. Under Sections 205 and 206 of the FPA, under which the FERC derives its primary source of authority, the FERC may not usurp state authority in this area. What the FERC has said is that there are only two conditions under which ratemaking authority over retail transmission is transferred from State jurisdiction to FERC jurisdiction. These two conditions are:

1. Where the State has adopted retail competition resulting in the unbundling of retail rates; and
2. Where the State (or its utilities) voluntarily transfer retail ratemaking authority to the FERC.

The Florida Legislature has not enacted retail competition. Neither has the Florida Legislature authorized the FPSC to transfer its retail ratemaking authority to the FERC. As a result, retail transmission service continues to be a bundled service in Florida and the jurisdiction to establish retail transmission revenue requirements and cost recovery continues to be within the purview of the FPSC.

The distinction between bundled vs. unbundled services and rates was explained and clarified in great detail during the hearing. (TR 139-142, 159-161, 188-190, 222-3)

Witness Naeve summed it up best by stating:

... [T]he term unbundling, I think, is used sometimes with a lack of precision. It can mean more than one thing. And one thing unbundling means is unbundling of charges and rates, so that a utility may offer a bundled service but they simply separately state the different costs of different components of that service, and that is an unbundling of rates.

It is a separate matter to have an unbundling of services. And in an unbundling of services, customers are allowed to choose services so they can buy generation from one party, transmission from another, distribution from another, and so forth. Unbundling of services typically is associated with retail access. (TR 140)

But then, witness Naeve went on to argue:

What I'm saying in this testimony is by joining an RTO that does not cause an unbundling of retail services with respect to services or actually with respect to rates. The rate charges that a distribution company incurs for generation, and in this case they will incur charges for transmission from the RTO and then they will have their own costs for distribution, the Florida Commission is still free to -- they will be provided on a bundled basis to the retail customer by the distribution company, and it's up to the Florida Commission as to whether they unbundle the rates or do not unbundle the rate charges. (TR 141)

In this last argument, witness Naeve seems to be saying that notwithstanding the fact that transmission services have not been unbundled in Florida (because retail access has not been authorized), the FERC would still have rate setting authority over the RTO. Witness Naeve clarified his position further in his direct testimony where he stated:

...FERC has required entities that retain ownership of their transmission facilities to nevertheless take transmission service for retail load from the RTO. Therefore, all transmission facilities of the GridFlorida Companies must be included in GridFlorida's rates, whether those facilities have been divested to GridFlorida or ownership of the facilities is retained by the GridFlorida Companies. While there may be a number of ways to reflect this fact in the GridFlorida Companies retail rates, the transfer of ownership of transmission facilities to GridFlorida should make no difference in how retail rates are determined. (TR 122)

While the staff agrees that the FERC will ultimately set the overall transmission rate charged by the RTO, we disagree that the FERC has any authority to set the retail component of the transmission rate or dictate how those revenue requirements are recovered through the rates paid by retail customers. Under current Federal and State law, this authority is exclusively the responsibility of the FPSC. Staff agrees with the Office of Public Counsel, that in the absence of legislative directives, the policy of this State contemplates continued retail regulation of retail transmission services. If the effect of participation in GridFlorida undermines current State law, staff believes that the Commission has no choice but to find participation in GridFlorida



imprudent. The staff believes, however, that this need not be the case.

Under a Transco model, it would be difficult, if not impossible, for the FPSC to retain its ratemaking and cost control jurisdiction over the retail component of transmission. In essence, approval of the Transco model constitutes a "voluntary" transfer of authority to the FERC. However, under an ISO model, where the ownership of transmission assets is retained by the individual companies, the FPSC would continue to set the revenue requirements needed to support retail transmission service and retain oversight over cost control and cost recovery. The State determined retail transmission revenue requirement would then be an input into the FERC ratemaking process, to which may be added the appropriate and prudently incurred management and operating costs of the ISO. It should be noted, that pursuant to the Procedural Order in these dockets, staff intends to pursue this issue further in Phase 2, the rate setting and cost recovery phase of these dockets.

The GridFlorida Companies also testified that they have taken steps to keep the FPSC involved in the planning and reliability processes that GridFlorida will follow. Specifically, the FPSC will:

1. Have access and input into the Stakeholder Advisory Committee (TR 357)
2. Be involved with the regional transmission planning process (TR 338; EXH 4; TR 367)
3. Be asked to approve an Installed Capacity and Energy (ICE) provision (TR 354)
4. Continue to exercise its jurisdiction in the citing of transmission lines (TR 367)

While staff generally concurs with these inclusions, it should be made clear that the inclusions in no way bind the Commission in the exercise of its jurisdiction. Under Federal and State law, the States have been granted exclusive authority to regulate retail electric services, including bundled retail transmission, bulk power supply planning, and power plant and transmission line siting. Under Florida law, specifically those sections known as the Grid Bill, GridFlorida will be an electric utility subject to

the FPSC's jurisdiction. As such, it is up to the FPSC, as guided by the Florida Legislature, to determine how it will discharge its regulatory responsibilities over a new wholesale provider just as we have for the existing wholesale providers in Florida such as Seminole Electric and the Florida Municipal Power Authority. While staff generally agrees with the processes of FPSC input into the planning and reliability aspects of GridFlorida, the FPSC should make it clear that this in no way affects the FPSC's ability to regulate GridFlorida in a manner consistent with Florida law. This may include the adoption of additional regulatory proceedings or changes to what is currently included in the GridFlorida documentation.

Southeast RTO

Considerable focus was directed during the hearings toward the latest pronouncements by the FERC encouraging participation in larger RTO regions. Specifically the FERC has stated its opinion that only four RTO's should be established within the continental US and that peninsular Florida should be part of a Southeast RTO. During the hearings, the Commissioners solicited advice on what strategy the FPSC should take with regard to the FERC's latest leanings. Witness Hoecker was asked:

Q. If we go forward and allow the formation of GridFlorida and articulate that our expectation and our acknowledgment would be that that would be a transitional step towards FERC's requirement to create regional RTO's  
.....

A. I think, you're in a position to have some influence over how the FERC thinks about the future here.

What I hear you saying is that there are sort of two options here, that you end up with a GridFlorida peninsular Florida RTO or a Southeast RTO, in which case, maybe GridFlorida becomes an initial step that exists for some years and makes all this investment worthwhile, in some sense. I think, FERC be very interested in that although, you know, I think, your question is, you know, is GridFlorida, in your estimation, viable -- is it prudent on a stand-alone basis. (TR 309-10)

Q. To the extent the Florida utilities have to end up participating in that bargaining [for a Southeast RTO],

if you will, is it best to send them into that or posture them to have a Florida option out there? Is that a pretty good way to send them in?

A. That's my belief. (TR 311)

Witness Ramon stated, "The bottom line of all this is that we need the equivalent of a GridFlorida, even if there's a regional Southeast, from just an operational and reliability -- being close to your customers, grant access, and being close to the Commission for siting purposes."

Witness Naeve:

I think there are many good reasons to have a GridFlorida and not a GridSouth. It is quite possible, as I said earlier, that once the Southeast RTO is designed and completed, we would look at the Southeast RTO and we would look at the GridFlorida proposal, and we would conclude that GridFlorida is the better approach, and I think we should preserve that option of being able to choose between the two.

There is some risk that FERC would try to compel us to just not go forward with GridFlorida and to join the Southeast RTO. I think, in part, the willingness of FERC to allow us to continue to have GridFlorida would depend in large part on how strongly all the Florida participants feel about GridFlorida. You know, if each of the Florida participants and the Florida Commission strongly believes that there should be a separate Florida RTO, that's our best chance of having it, and maybe under those circumstances, with that sort of uniform approach, we would have a good chance of retaining it and getting FERC to go along with it. If there was division among the GridFlorida Companies, and in particular, if the Florida Commission didn't express strong feelings for GridFlorida, then I think the chance of us being able to go forward with GridFlorida is not very good. (TR 396-7)

Staff agrees that it is imperative for this Commission to determine whether a peninsular Florida RTO is in the best interests of Florida's electric consumers. Based on the foregoing discussion, staff believes that, at least initially, a peninsular Florida RTO does make sense and is likely to be in the best

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interests of Florida. However, as discussed previously, staff believes that, at this time, an ISO model should be adopted in lieu of a Transco model. Pending action by the Florida Legislature, should a competitive wholesale generation market develop, then and only then should consideration be given to the movement to a Transco model involving the transfer of existing transmission assets. Staff also recommends that the GridFlorida Companies would be prudent to evaluate participation in a larger Southeastern RTO.

#### 4. Exclusive Authority for Maintaining the Short-term Reliability of the Grid It Operates

Staff concurs with the GridFlorida Companies' proposal for GridFlorida to assume the responsibility of Security Coordinator for peninsular Florida in order to ensure short term reliability of the transmission grid. The execution of these responsibilities would be subject to reliability standards set by the Florida Electric Reliability Coordinating Counsel and the FPSC's jurisdiction under the Grid Bill. (TR 393-5, 413)

#### Conformance to FERC RTO Functions

Irrespective of the type of RTO selected, Florida's utilities and the FPSC should strive to achieve the goal of protecting the retail ratepayers from rate volatility, rate increases, and reduced reliability. In light of the current state of flux in the industry and at the FERC, the previously mentioned goal is paramount. The following three initial market designs associated with complying with the FERC required RTO functions are a strong foundation for achieving this goal.

##### 1. Balanced Schedules

As the name suggests, a balanced schedule is one where a utility commits sufficient resources to meet its projected demand, including reserves, for the next day. (TR 491) A balanced schedule approach limits the amount of spot energy transactions that will occur and therefore, limits price volatility. An unbalanced schedule is one where the utility relies upon the spot market for meeting some or all of the projected demand on its system. The GridFlorida Companies have proposed utilizing a balanced schedule approach for the day-ahead market. However, the GridFlorida Companies also acknowledged that GridFlorida could change to an unbalanced market design without any approval of the FPSC. (TR 493, 494)

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In an effort to transition to a more competitive generation market, any RTO should start with balanced schedules as a foundation. As experience is gained and market participation increases, the RTO can evolve to accommodate such changes. In addition, however, the GridFlorida Companies should be required to seek FPSC approval before changing from the proposed balanced schedule approach in order to insure that retail ratepayers are not adversely affected.

## 2. Market Clearing Price vs. "Get What You Bid"

Utilizing market-based approaches for congestion management was encouraged by the FERC in Order 2000. (TR 345) Any variations in load or generation availability beyond the balanced schedules create a spot market for energy. A similar spot market for energy occurs when a transmission interconnection becomes overloaded or congested. Both situations can be handled through a market-based mechanism. Originally, the GridFlorida Companies suggested a clearing price methodology to determine the balancing/congestion energy price. (TR 350) A clearing price methodology stacks bidders in order of their price bid until the required generation, in MWs, is achieved. The highest accepted bid becomes the clearing price and is paid to all generators who were selected. A clearing price methodology is one method to self-regulate a market if there are sufficient market participants without market power. Under a "get what you bid" approach, bidders are selected in order of their price bid until the required generation, in MWs, is achieved. Unlike a clearing price methodology, each generator is paid its bid price and the buyer of such balancing energy would pay an average price of all bids. (TR 502)

For a clearing price methodology to work properly, there needs to be sufficient sellers without market power. The FERC realized these shortcomings of the Florida market when the FERC rejected the clearing price method proposed by the GridFlorida Companies. (TR 350) In response to the FERC's concerns, the GridFlorida Companies have proposed two alternatives for the balancing energy and congestion pricing market. Alternative A would utilize a clearing price concept, but limit generators who had cost-based rates to only collect up to their cost-based rate. All other generators would receive the higher clearing price for energy balancing and congestion management. (TR 350-1) Alternative B would implement a "get what you bid" approach for all generators. Utilities with cost-based rates would be capped at their cost. (TR 351-2) Under

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either alternative, the cost for such energy will likely be recovered through one of the existing cost-recovery clauses.

While Alternative A seems to solve the market power issue, it does not address the problem of having too few participants in the market to make a clearing price method valid. In addition, market power will likely re-emerge as market power can pop-up at any time with little notice. (TR 501) The FERC recently approved an amendment to PJM's ISO that would grant authority to the ISO to cap a generator at cost if that generator became a must-run unit and therefore had local market power. (TR 501-12) The GridFlorida Companies stated that the current proposal did not attempt to address local market power issues, such as must-run units. (TR 512) However, the GridFlorida Companies did ask the FERC to grant the new Market Monitor Company the authority to deal with such issues without any specific recommendations. (TR 512-3) Utilities that currently have cost-based rates may in fact receive market-based rates for the new "balancing energy service" when such rates are filed for approval with the FERC. (TR 499-501) In other words, based on a rate yet to be filed, current cost-based utilities such as FPL and FPC could have market-based rates for balancing energy and receive the clearing price, just like the original proposal.

Alternative B is a simple "get what you bid" approach. Regardless of whether the seller has market or cost-based rates, the bids are prioritized from lowest to highest bid until sufficient energy is committed. Each seller will be paid what was bid and the buyer pays an average of all the bids. While this approach does not mitigate localized market power issues, it does limit the exposure of the buyer of balancing/congestion energy. In keeping with the "first step" approach of the entire staff recommendation, staff would recommend that the "get what you bid" approach is preferable for all transactions until the GridFlorida Companies can demonstrate that sufficient participants exist and that localized market power has been adequately addressed.

### 3. Physical Transmission Rights vs. Financial Transmission Rights

With any RTO, the control of the transmission facilities will be in the hands of an independent entity. As such, the allocation of existing transmission capacity must recognize current contractual and statutory obligations. The GridFlorida Companies have identified two methods of transmission capacity allocation, physical and financial rights. Under a physical rights system, customers are allocated capacity rights based on the physical

capacity of the system. Under a financial rights system, the customer is placed in the same financial position as if they did possess the physical rights. (TR 346) The GridFlorida Companies have chosen a physical transmission rights method for simplicity and additional security for serving retail load. (TR 346, 519-520) Staff concurs with this selection of transmission capacity allocation. The GridFlorida Companies further refined the transmission capacity allocation to "manage congestion through 'flowgates', which are the transmission facilities that are most likely to be subject to significant congestion based on both past experience and an analysis of proposed future uses of the system. The rights to transmit power through a flowgate are called Physical Transmission Rights (PTRs)." (TR 346-7) PTRs will be allocated annually in amounts necessary to preserve existing uses. (TR 348) If a utility does not use a PTR, the amount of capacity can be sold pursuant to an auction, with the revenues being credited to the GridFlorida transmission rate for all transmission customers. (TR 347-8)

The GridFlorida Companies are in the process of identifying the "flowgates" from which PTRs will be allocated. It is possible that no facilities are identified as "flowgates" and therefore, no PTRS would be allocated. This fact is important because if congestion occurs across a predetermined "flowgate", then the costs of congestion are socialized to all transmission customers. If congestion occurs elsewhere in the system, or if no "flowgates" are identified, then congestion costs are borne only by the affected parties. (TR 472) If this occurs, localized market power could become a problem. As mentioned previously, the GridFlorida Companies have not developed procedures to deal with localized market power on a real time basis. The Commission should also require the concept of physical transmission rights to remain fixed until such time that GridFlorida petitions the FPSC and justifies something different.

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

**RECOMMENDATION:** Under the GridFlorida proposal, the GridFlorida Companies are not unbundling their retail electric service. Thus, the question of whether Commission authorization is required before electric retail rates can be unbundled is not presented in this proceeding. However, the effect of the GridFlorida proposal will be to convey ratemaking jurisdiction over the transmission portion of retail rates to FERC. Whether the Commission can approve a proposal that results in a transfer of its jurisdiction is addressed in Issue 10. [Keating]

**POSITION OF THE PARTIES**

**FPC:** The GridFlorida Companies intend to continue providing bundled retail electric service to their respective retail ratepayer groups subsequent to the commercial operation of the proposed GridFlorida RTO. The GridFlorida Companies will be customers of GridFlorida under the RTO tariff, not their retail customers. Therefore, the question of whether Commission authorization is required before retail electric rates can be unbundled is not raised under the factual circumstances presented in this proceeding.

**FPL:** The Commission should adopt the policy position that the GridFlorida Companies' proactive development of and participation in an RTO is in the best interest of Florida ratepayers. Furthermore, in order to preserve the ability of the GridFlorida Companies to participate in a Florida-only RTO, the Commission should make a swift and unequivocal finding that the formation and operation of GridFlorida is prudent. However, the Commission should also preserve the option of Southeast RTO participation.

**TECO:** The Commission should adopt the policy position that the GridFlorida Companies' proactive development of and participation in an RTO is in the best interest of Florida ratepayers. Furthermore, in order to preserve the ability of the GridFlorida Companies to participate in a Florida-only RTO, the Commission should make a swift and unequivocal finding that the formation and operation of GridFlorida is prudent. However, the Commission should also preserve the option of Southeast RTO participation.



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**CALPINE**: This issue is moot insofar as FPL, FPC and TECO will continue to provide bundled retail electric service to their retail customers.

**CPV**: No position.

**DENA**: This issue is moot insofar as FPL, FPC and TECO will continue to provide bundled retail electric service to their retail customers.

**DYNEGY**: (Docket No. 001148-EI only) Since FERC has established its jurisdiction over the formation and form of GridFlorida, Commission authorization is not required before the utility can unbundle its retail electric service with respect to transmission. The Commission's authority with respect to the rates charged at the retail level for transmission by the retail provider of bundled or unbundled services remains intact even with formation of the RTO.

**ENRON**: Enron supports the Joint Utilities' statement on this issue.

**MIRANT**: This issue is moot insofar as FPL, FPC and TECO will continue to provide bundled retail electric service to their retail customers.

**RELIANT**: No position.

**PG&E**: No position.

**PUBLIX**: (Docket No. 000824-EI only) No position.

**TWOMEY, ETAL**: Yes.

**DISNEY**: IOUs' retail distribution service tariffs must be filed with the Commission. FRC has indicated that final delivery to an end user generally entails local distribution.

**SEMINOLE**: No position.

**FIPUG**: No, but the Commission should mandate it as a matter of policy.

**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.

**STAFF ANALYSIS:** The GridFlorida Companies, Calpine, Duke, Mirant, and OPC provided argument on this issue in their post-hearing briefs.<sup>3</sup> Each of these parties identified FERC Order No. 888 and a decision on an appeal of Order No. 888, Transmission Access Policy Study Group v. FERC, 225 F. 3d 667 (D.C. Circuit 2000) ("TAPS"), as the source of the distinction between FERC's jurisdiction over bundled and unbundled retail service. (GridFlorida Brief, p.43; Calpine Brief, pp. 31-32; OPC Brief, pp.9-17) In Order 888, FERC stated, in pertinent part:

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. Under the FPA, the Commission's jurisdiction over sales of electric energy extends only to wholesale sales. However, when a retail transaction is broken into two products that are sold separately (perhaps by two different suppliers: an electric energy supplier and 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 FPC, is exclusively within the jurisdiction of [FERC]. 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.

(OPC Brief, pp.9-11)

The TAPS court upheld this distinction, stating:

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<sup>3</sup>Because the briefs of Calpine, Duke, and Mirant are substantially the same on this issue, only Calpine's brief and arguments are cited for the sake of efficiency.

A regulator could reasonably construe transmissions bundled with generation and delivery services and sold to a customer for a single charge as either transmission 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 to which we must also defer . . .

TAPS, 225 F. 3d at 694. (Calpine Brief, p.31; OPC Brief, p.10)

OPC goes on to cite FERC Order No. 888-A at page 143:

Nor is our decision to 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 in 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.

(OPC Brief, p. 13)

Here, OPC asserts that it is not completely clear what FERC means when it says it obtains jurisdiction only when unbundling occurs voluntarily or as a result of a state retail program. OPC asserts that GridFlorida and several intervenors appear to interpret this provision in the narrow sense that FERC jurisdiction attached when either the utility voluntarily allows its customers to choose their generation provider or when the state enacts retail competition by law. However, OPC suggests that under a broader interpretation, the term voluntary could mean any action by the utility which results in FERC having jurisdiction over a matter traditionally regulated by the state. Thus, what is unclear to OPC is what is necessary to effect an unbundling to FERC. (OPC Brief, pp.14-15)

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The GridFlorida Companies and Calpine take the position that no unbundling of retail sales has taken place in this case because the GridFlorida Companies will continue to provide bundled retail service to their customers. (GridFlorida Brief, p.41-44; Calpine Brief, p.32) The GridFlorida Companies state that there will be a change in the way that individual services that make up the bundled retail service is procured, but no change in the bundled service provided. (GridFlorida Brief, p. 43) The GridFlorida Companies also state that there will be a change in the Commission's ability to review the costs that they incur in acquiring the transmission service that is included in bundled rates, because the transmission rates charged by GridFlorida will be under FERC's exclusive jurisdiction. (GridFlorida Brief, p.44) According to Calpine, the price of the bundled retail service will still be within the jurisdiction of this Commission. (Calpine Brief, p.32)

Staff agrees with the GridFlorida Companies' and Calpine's understanding that the GridFlorida Companies will continue to offer bundled retail electric service to their customers and that only the means of procuring one component of that service will change. However, regardless of FERC's statements in Order Nos. 888 and 888-A that its jurisdiction does not attach absent an unbundling, it will effectively take jurisdiction over the transmission component of the GridFlorida Companies' "bundled" retail service by approving GridFlorida. Thus, the question becomes whether the Commission can approve a proposal that results in a transfer of its jurisdiction. That question is addressed in Issue 10, following.

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

**RECOMMENDATION:** Under the GridFlorida proposal, the GridFlorida Companies will continue to provide retail transmission service as part of their bundled retail service. Thus, the question of whether Commission authorization is required before these utilities can stop providing retail electric service is not presented in this proceeding. However, the effect of the GridFlorida proposal would be to convey to FERC substantial jurisdiction over the retail transmission service provided by these utilities. Whether the Commission can approve a proposal that results in a transfer of its jurisdiction is addressed in Issue 10. [Keating]

**POSITION OF THE PARTIES**

**FPC:** This issue is inapposite because the GridFlorida Companies intend to continue providing bundled retail electric service to their respective retail ratepayer groups subsequent to the commercial operation of the proposed GridFlorida RTO. The way that the transmission component will be procured by the GridFlorida Companies will change, but the GridFlorida Companies will continue to include transmission service in the bundled retail service that they provide.

**FPL:** This issue is inapposite because the GridFlorida Companies intend to continue providing bundled retail electric service to their respective retail ratepayer groups subsequent to the commercial operation of the proposed GridFlorida RTO. The way that the transmission component will be procured by the GridFlorida Companies will change, but the GridFlorida Companies will continue to include transmission service in the bundled retail service that they provide.

**TECO:** This issue is inapposite because the GridFlorida Companies intend to continue providing bundled retail electric service to their respective retail ratepayer groups subsequent to the commercial operation of the proposed GridFlorida RTO. The way that the transmission component will be procured by the GridFlorida Companies will change, but the GridFlorida Companies will continue to include transmission service in the bundled retail service that they provide.

**CALPINE:** This issue is moot.

**CPV**: No position.

**DENA**: This issue is moot.

**DYNEGY**: (Docket No. 001148-EI only) To the extent that retail transmission service is being terminated by one provider and turned over to a FERC approved RTO, the Commission's authorization is not required. The rates charged to the retail customer for transmission service by the retail electric service provider are subject to Commission authorization.

**ENRON**: Enron supports the Joint Utilities' statement on this issue.

**MIRANT**: This issue is moot.

**RELIANT**: No position.

**PG&E**: No position.

**PUBLIX**: (Docket No. 000824-EI only) No position.

**TWOMEY, ETAL**: Yes.

**DISNEY**: FERC has jurisdiction over transmission in interstate commerce; states have jurisdiction over local distribution and transmission that does not entail interstate commerce. FERC has taken a broad view over its jurisdiction. The jurisdictional boundaries are an issue currently on appeal to the United States Supreme Court.

**SEMINOLE**: No position.

**FIPUG**: Yes, the Commission has the obligation to assure the reliable delivery of electricity. The Commission should determine whether GridFlorida will provide such reliability. To protect retail consumers, the Commission should state that any authorization it provides in this phase is conditioned upon its ability to protect consumers in Phase II.

**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.

**STAFF ANALYSIS:** This issue is substantially the same Issue 8 and all the arguments presented in Issue 8, likewise, apply to this issue. The GridFlorida Companies, Calpine, and OPC provided argument on this issue in their post-hearing briefs.<sup>4</sup> Both the GridFlorida Companies and Calpine indicate that this issue is closely related to Issue 8 in that the GridFlorida Companies will continue to provide retail transmission service as part of their bundled retail service. (GridFlorida Brief, pp.44-45; Calpine Brief, pp. 32-33) The GridFlorida Companies further state that none of them currently provide retail transmission service as a separate service. (GridFlorida Brief, p.45) OPC's arguments are so intertwined among Issues 8, 9, and 10 that staff cannot discern any specific arguments from OPC on this specific issue.

Staff agrees with the GridFlorida Companies' and Calpine's understanding that the GridFlorida Companies will continue to provide retail transmission service as part of their bundled retail service to their customers. Only the means of procuring that service will change. Thus, the question of whether Commission authorization is required before these utilities can stop providing retail electric service is not presented in this proceeding. However, the effect of the GridFlorida proposal will be to convey to FERC substantial jurisdiction over the retail transmission service provided by these utilities. Whether the Commission can approve a proposal that results in a transfer of its jurisdiction is addressed in Issue 10.

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<sup>4</sup>Because the briefs of Calpine, Duke, and Mirant are substantially the same on this issue, only Calpine's brief and arguments are cited for the sake of efficiency.

**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?

**RECOMMENDATION:** Yes. While the Commission's statutory authority does not expressly require Commission approval for a transfer or ownership or operational control of a utility's transmission assets, such authority is necessarily implied from the provisions of Chapter 366. [Keating]

**POSITION OF THE PARTIES**

**FPC:** No. There is no provision in Chapter 366, Florida Statutes or elsewhere in the Florida Statutes that requires Commission approval of the transfer of ownership or control of transmission facilities by a public utility or an electric utility.

**FPL:** No. There is no provision in Chapter 366, Florida Statutes or elsewhere in the Florida Statutes that requires Commission approval of the transfer of ownership or control of transmission facilities by a public utility or an electric utility.

**TECO:** No. There is no provision in Chapter 366, Florida Statutes or elsewhere in the Florida Statutes that requires Commission approval of the transfer of ownership or control of transmission facilities by a public utility or an electric utility.

**CALPINE:** No position.

**CPV:** No position.

**DENA:** No position.

**DYNEGY:** (Docket No. 001148-EI only) To the extent that control of retail transmission is being turned over to GridFlorida or another FERC approved RTO, the Commission's authorization is not required. The accounting treatment of the transfer of those assets in the rate design of FPC is subject to Commission authorization. To the extent ownership of retail transmission assets is being transferred pursuant to a FERC approved RTO, the Commission's authorization is not required. The accounting treatment of the transfer of those



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assets in the rate design of FPL and TECO are subject to the approval of the Commission.

**ENRON**: Enron supports the Joint Utilities' statement on this issue.

**MIRANT**: No position.

**RELIANT**: No position.

**PG&E**: No position.

**PUBLIX**: (Docket No. 000824-EI only) No position.

**TWOMEY, ETAL**: Yes.

**DISNEY**: See Position on Issue 9.

**SEMINOLE**: No position.

**FIPUG**: Yes.

**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.

**STAFF ANALYSIS**: Only the GridFlorida Companies, FIPUG, and OPC provided argument on this issue in their post-hearing briefs. The GridFlorida Companies argue that this Commission does not have authority to approve or disapprove a decision by any one of the GridFlorida Companies to sell or transfer operational control of its transmission assets to GridFlorida. FIPUG and OPC argue that this Commission does have such authority.

The GridFlorida Companies argue that Chapter 366, Florida Statutes, contains no provision that would give the Commission jurisdiction over the approval of a decision by any one of the GridFlorida Companies to sell or transfer operational control of transmission assets. The GridFlorida Companies assert that Section 366.04, Florida Statutes, sets out the scope of the Commission's

regulatory jurisdiction over public utilities and electric utilities but does not contain any provision governing the sale or transfer of a public utility or electric utility's assets. The GridFlorida Companies also assert that Section 366.05, Florida Statutes, defines the regulatory powers of the Commission but does not contain any provision giving the Commission the power to review a sale or transfer of operational control of such assets. The GridFlorida Companies state that they have not identified any other statute, regulation, or decision under Florida law that would suggest that the Commission has this jurisdiction. Therefore, they conclude, the Commission does not have jurisdiction to review the decisions of public or electric utilities to sell or transfer operational control of transmission assets. (GridFlorida Brief, p.46)

In addition, the GridFlorida Companies assert that the decision to authorize the sale or transfer of operational control of their transmission assets is arguably subject to the exclusive jurisdiction of the FERC under Section 203 of the Federal Power Act, which states in part:

No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the [FERC] . . . without first having secured an order of the [FERC] authorizing it to do so.

The GridFlorida Companies argue that because FERC has jurisdiction over the transmission of electric energy in interstate commerce and because the facilities that the GridFlorida Companies intend to sell or transfer control over are utilized in interstate commerce, FERC has jurisdiction over the sale or transfer of operational control of those facilities. (GridFlorida Brief, pp. 46-47)

OPC and FIPUG argue that the provisions of Chapter 366, Florida Statutes, grant the Commission jurisdiction over the transfer of ownership or control of the GridFlorida Companies' transmission assets. Both OPC and FIPUG cite Section 366.05(1) which provides the Commission authority to order a utility to make repairs, improvements, or additions to its facilities as necessary to promote the convenience and welfare of the public and secure adequate service or facilities to those that are entitled to such. (OPC Brief, p. 24; FIPUG Brief, p. 13) OPC also cites Section 366.01, Florida Statutes, which defines the Commission's regulation of public utilities as an exercise of the police power of the state for the protection public welfare and provides for the liberal

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interpretation of the provisions of Chapter 366 to accomplish that purpose. OPC reads these two provisions together to suggest that the Commission should "jealously guard against attempts to divest it of any of its powers and responsibilities." (OPC Brief, p. 24)

FIPUG cites additional provisions of the "Grid Bill" from Chapter 366, Florida Statutes, in support of its argument. FIPUG cites Section 366.04(2)(c), Florida Statutes, which provides the Commission authority to require electric power conservation and reliability within a coordinated grid. FIPUG also cites Section 366.04(5), Florida Statutes, which empowers the Commission with jurisdiction over the planning, development, and maintenance of a coordinated grid to assure an adequate and reliable source of energy in Florida. Finally, FIPUG cites Section 366.05(8), Florida Statutes, which empowers the Commission to require installation or repair of necessary facilities, including generation or transmission facilities, to correct inadequacies with respect to the grid. FIPUG argues that these provisions assure that the Commission has authority to require its authorization prior to the transfer of any electric utility's transmission assets to an RTO. (FIPUG Brief, p. 13) FIPUG further states that such authorization is necessary to ensure the reliability and integrity of Florida's grid. (FIPUG Brief, p. 13)

OPC asserts that the lack of explicit statutory authority over the sale or transfer of control of the GridFlorida companies' transmission assets "is of no moment." OPC states that the Commission did not have express 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. (OPC Brief, p.27) OPC cites City Gas Company v. Peoples Gas System, Inc., 182 So. 2d 429 (Fla. 1965) as an example of how the Florida Supreme Court has upheld the Commission's exercise of authority in an area where it did not have explicit authority. In that case, the Commission determined that although it did not have explicit authority to approve territorial agreements, its approval of such an agreement was required because the agreement would "limit to some extent the Commission's power to require additions and extensions to plant and equipment reasonable necessary to secure adequate service to those reasonable entitled thereto." The Court upheld the Commission's decision, concluding that "the commission has adequate implied authority under Ch. 366 to validate agreements such as the one before us." (OPC Brief, pp. 27-28).

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OPC asserts that while the GridFlorida Companies are not proposing to stop providing electric service, "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." (OPC Brief, p.29) OPC concludes that the Commission's approval of this proposal is essential but cannot be provided "because the result would effectively divest the Commission of the oversight it is expected to maintain." (OPC Brief, p.29)

An administrative agency has only such powers as are expressly or by necessary implication granted by statute. See, e.g., Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1<sup>st</sup> DCA 1995). A statutory grant of power or right carries with it by implication everything necessary to carry out the power or right and make it effectual and complete. The Deltona Corporation v. Florida Public Service Commission, 220 So. 2d 905 (Fla. 1969).

Staff believes that the provisions of Chapter 366 necessarily imply the Commission's jurisdiction over the sale or transfer of control of transmission assets used by the GridFlorida Companies to provide retail electric service and that such jurisdiction is necessary to make its powers effectual and complete. As cited above, Sections 366.04(2)(c), 366.04(5), 366.05(1), and 366.05(8), Florida Statutes, give the Commission jurisdiction to ensure a reliable coordinated electric grid providing an adequate source of energy in Florida and, if necessary, to order the repair or construction of facilities to meet that end. Perhaps most relevant to this case is the jurisdiction granted in Section 366.04(5), Florida Statutes. That section gives this Commission jurisdiction over "the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy . . . in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." (Emphasis added.)

The Commission cannot meet its responsibility to maintain a coordinated electric power grid in Florida if utilities subject to its jurisdiction can unilaterally give away control or ownership of the very facilities that comprise the grid. Transmission facilities are an essential element of any electric power grid. At the very least, Commission approval is required before control or ownership of those facilities is transferred in order for the

Commission to assure itself that it has satisfied its statutory mandate to maintain a coordinated electric power grid in Florida to assure an adequate and reliable source of energy in the state and to avoid uneconomic duplication of facilities. The City Gas case cited by OPC provides a good example of the Florida Supreme Court's understanding that this type of jurisdiction, while not explicit, is necessarily implied by the statute to make the Commission's powers effectual and complete.

The GridFlorida Companies argument that FERC arguably has exclusive jurisdiction to approve the sale or transfer of operational control of these facilities under Section 203 of the Federal Power Act is not supported by any FERC decision or court opinion cited in the GridFlorida Companies' brief. Further, the portion of Section 203 cited does not indicate that FERC is the exclusive forum for such a decision. It would not be unusual for FERC's jurisdiction to be non-exclusive; many state laws expressly provide for state approval of utility mergers and asset transfers that FERC may also review.

The possibility of non-exclusive jurisdiction appears even more likely if the GridFlorida Companies are correct that they will continue to be providing bundled retail service. The portion of Section 203 cited by the GridFlorida Companies provides that FERC's approval is required for facilities subject to its jurisdiction. According to the GridFlorida Companies, as discussed in Issue 8, FERC, in Order 888, claimed it does not have jurisdiction over transmission to retail customers when transmission is sold at retail as part and parcel of the delivered product called electric energy. (GridFlorida Brief, p.42-43) Thus, one can draw a logical conclusion that state approval is required for transfer of transmission facilities providing transmission service that is not under FERC's jurisdiction.

In sum, the provisions of Chapter 366 necessarily imply this Commission's jurisdiction over the sale or transfer of control of transmission assets used by the GridFlorida Companies to provide retail electric service, and such jurisdiction is necessary to make the Commission's powers to maintain a coordinated electric power grid in Florida effectual and complete.

#### Florida Public Service Commission Jurisdiction over GridFlorida

After resolving the question of whether Commission approval is required for the GridFlorida Companies to transfer ownership or

control of their transmission facilities to GridFlorida, another question arises: What jurisdiction would this Commission have over GridFlorida if it is approved? The GridFlorida Companies, Calpine, Duke, Mirant, FIPUG, and OPC address this question in their post-hearing briefs, and Staff addresses the question below.

The GridFlorida Companies have submitted that "it is an open question of law as to whether the Commission would have jurisdiction over the GridFlorida RTO." (GridFlorida Brief, p.52) The GridFlorida Companies state that they "recognized that the Commission may lack regulatory authority over GridFlorida after transmission functions are transferred from the GridFlorida Companies to GridFlorida, and addressed this by developing the GridFlorida RTO proposal to . . . [accommodate] the Commission's jurisdictional concerns to the extent possible. (GridFlorida Brief, p.52) With respect to the Commission's Grid Bill jurisdiction cited above, the GridFlorida Companies state that GridFlorida will assume a number of responsibilities over the grid. As discussed in Issue 7, these accommodations include, among other things, the rights to provide input into the decision making processes for the expansion of facilities and reliability planning and the review of reports the Commission may require from the individual GridFlorida Companies. (GridFlorida Brief, pp.53-56). The Commission should be aware that these accommodations largely come in the form of tariff provisions that can be modified by GridFlorida upon the approval of FERC but do not require this Commission's approval.

Calpine states that it is not clear that this Commission will play any direct role in regulating GridFlorida. (Calpine Brief, p.37) Calpine asserts that FERC will have the authority to set the rates charged by GridFlorida and will have direct authority over the form, function, and structure of RTOs approved pursuant to Order No. 2000. (Calpine Brief, p.37) Calpine claims that this Commission will continue to have jurisdiction over the siting of transmission facilities in the state and the bundled retail rate. (Calpine Brief, pp.37-38) However, the GridFlorida Companies assert that the Florida Supreme Court's decision in Tampa Electric Company v. Garcia may lead to the conclusion that GridFlorida would not qualify as an "electric utility" for purposes of the Commission's transmission siting authority because the RTO would provide only wholesale services. Calpine also claims that this Commission will have responsibilities related to reliability of the Florida grid concurrent with FRCC. (Calpine Brief, p.38)

Based on the panel's testimony, FIPUG states that GridFlorida was developed to maintain the Commission's jurisdiction over planning and reliability at a level on par with the Commission's present jurisdiction. (FIPUG Brief, p. 15) Also based on the panel's testimony, FIPUG states that the Commission would retain the power to order GridFlorida to build transmission facilities in order to ensure system reliability. (FIPUG Brief, p.15)

In its brief, OPC cites FPL's construction of two 500 kV transmission lines down the East Coast of Florida at the Commission's request to bring in "coal by wire" from Southern Company, cites the accelerated cost recovery provided by retail ratepayers, and asks whether FPL has always had the ability to transfer those "backbone transmission assets" out of the Commission's jurisdiction at anytime to anyone it chose. OPC answers the question by asserting that the Commission's jurisdiction is the same now as it was then, only the FERC's pronouncements have changed. (OPC Brief, p.25) OPC further states that while FERC may be able to preempt the Commission's jurisdiction, it has not done so yet, and, as things now stand, this Commission must regulate Florida's investor-owned electric utilities as the Florida Statutes direct. (OPC Brief, p.25) Thus, OPC argues that while the Commission's permission is required for the GridFlorida Companies to transfer their assets out of the Commission's jurisdiction, that permission cannot be granted because the result would effectively divest the Commission of the oversight it is expected to maintain. (OPC Brief, p.29)

As stated above, the Commission's "Grid Bill" authority in Sections 366.04(2)(c), 366.04(5), and 366.05(8), Florida Statutes, gives the Commission jurisdiction to ensure a reliable coordinated electric grid providing an adequate source of energy in Florida and, if necessary, to order the repair or construction of facilities to meet that end. Those provisions, by their terms and by necessity, apply to all electric utilities in the State. Section 366.02(2), Florida Statutes, defines "electric utility" as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." Clearly, GridFlorida, as proposed, fits this definition; GridFlorida would be an investor-owned electric utility which owns and operates a transmission system within the state. As such, the Commission would have jurisdiction over GridFlorida under those provisions of the Grid Bill.

This Commission's jurisdiction over the siting of transmission facilities may be impacted. While the Commission would certainly have authority to conduct a need determination proceeding for each of the individual GridFlorida Companies, the precedent set in the Florida Supreme Court's decision in Tampa Electric Company v. Garcia may lead to the conclusion that the Commission would not have the authority to conduct a need determination proceeding for GridFlorida. Given the Court's decision and the similar histories of the transmission line and power plant siting and need determination statutes, GridFlorida may not qualify as an "applicant" for purposes of the Commission's transmission siting authority. This remains an open question of law. The GridFlorida proposal does include tariff provisions that would effectively allow the Commission to approve or require the construction of transmission lines through the individual GridFlorida Companies as applicants. The Commission should recognize that, however likely or unlikely, these provisions could be changed with only FERC's approval.

The greatest impact GridFlorida would have on the Commission's authority would be in the area of ratemaking. Pursuant to its ratemaking powers in Sections 366.04, 366.05, and 366.06, Florida Statutes, the Commission has jurisdiction to set revenue requirements for, among other things, the transmission facilities that would be transferred to GridFlorida. Under the GridFlorida proposal, FPL and TECO would transfer ownership of those facilities to GridFlorida, and the revenue requirements for those facilities would be set by FERC and recovered through a FERC-approved rate. Thus, while this Commission would continue to have jurisdiction over the bundled retail rate, the transmission component of that rate would be established by FERC. This Commission would continue to set the revenue requirements for FPC's transmission facilities which would be reflected in the FERC-approved rate.

As stated above, this Commission is a creature of statute and may exercise only those powers conferred expressly or impliedly by statute. In other words, the Commission's jurisdiction is that authority expressly or impliedly conferred by statute. It is what it is. An agency's inaction cannot deprive it of jurisdiction conferred upon it. See, e.g., State ex rel Triay v. Burr, 84 So. 61, 74 (Fla. 1920); United States v. Morton Salt Co., 338 U.S. 632, 647 (1950); United States v. American Union Transport, 327 U.S. 437, 454, n.18 (1946). Further, private parties cannot by agreement deprive an agency of the jurisdiction conferred upon it.



See, South Lake Worth Inlet Dist. v. Town of Ocean Ridge, 633 So.2d 79, 89 (Fla. 4th DCA 1994).

Based on this principle, nothing that the Commission does in this docket will directly alter the statutory authority it has been granted. Whether the Commission gives its blessing to the GridFlorida proposal or not, the Commission's statutory authority will remain the same. The Commission can interpret and exercise its jurisdiction but cannot give it away. However, if and when FERC approves GridFlorida and GridFlorida becomes operational, FERC will assume jurisdiction over the rates for transmission service provided by GridFlorida as part of the retail bundle sold by the GridFlorida Companies, because such transmission service will become transmission in interstate commerce. (GridFlorida Brief, p.44) It is the GridFlorida Companies' voluntary action, regardless of the prudence of that action, that creates what is effectively a transfer of jurisdiction. Thus, the Commission should recognize that while its blessing of GridFlorida will not directly impact the Commission's jurisdiction, it will further a proposal that, if approved by FERC, will have the effect of transferring away certain ratemaking jurisdiction and potentially impacting the Commission's transmission line siting jurisdiction.

#### FERC Authority to Mandate Participation in RTOs

In their briefs, the GridFlorida Companies, Calpine, Duke, and Mirant<sup>5</sup> argue Sections 205 and 206 of the Federal Power Act ("FPA") provide a basis for FERC to mandate utilities' participation in an RTO. The GridFlorida Companies state that Section 205 precludes utilities from "mak[ing] or grant[ing] any undue preference or advantage to any person or subject[ing] any person to any undue prejudice or disadvantage." The GridFlorida Companies state that Section 206 authorizes FERC to act when "any rule, regulation, practice, or contract . . . is unjust, unreasonable, unduly discriminatory or preferential." The GridFlorida Companies and Calpine assert that Sections 205 and 206, together, give FERC authorization to impose a broad range of remedies for discriminatory behavior. (GridFlorida Brief, p.50; Calpine Brief, pp.33-35)

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<sup>5</sup>Because the briefs of Calpine, Duke, and Mirant are substantially the same on this issue, only Calpine's brief and arguments are cited for the sake of efficiency.

The GridFlorida Companies and Calpine assert that FERC is not limited under FPA Sections 205 and 206 to penalties applied to individual utilities as a result of specific discriminatory behavior. In support of this assertion, the GridFlorida Companies and Calpine cite FERC's Order No. 888, under which FERC, relying on Section 205 and 206, required all jurisdictional transmission owners to file open access transmission tariffs providing for open access transmission service. The GridFlorida Companies and Calpine state that Order No. 888 was based upon a generic finding that open access was required to eliminate discrimination, not on specific findings of discriminatory behavior by all electric utilities. (GridFlorida Brief, p. 50, citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,669-673 (1996); Calpine Brief, pp.33-35)

The GridFlorida Companies and Calpine note that Order No. 888 was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Circuit 2000) ("TAPS"). The GridFlorida Companies and Calpine indicate that the court, in that decision, rejected claims that FERC lacked authority to order utilities to provide open access transmission service. The GridFlorida Companies quote the court as stating that FERC has "broad authority to remedy unduly discriminatory behavior through a generic open access requirement." (GridFlorida Brief, p. 51, citing TAPS) The GridFlorida Companies and Calpine indicate that the court relied heavily upon its previous ruling in Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Circuit 1987) ("AGD"), where the court upheld similar provisions of the Natural Gas Act to issue a generic order requiring interstate gas pipelines to provide open access transportation. (GridFlorida Brief, p. 51; Calpine Brief, pp.34-35)

The GridFlorida Companies claim that the holdings in TAPS and AGD cannot be limited to the proposition that FERC can require open access transmission or transportation service. The GridFlorida Companies state that in neither case was there statutory language that specifically provided for open access service. Instead, they assert, the court upheld in each case FERC's reliance on general statutory authority to issue generic rules requiring jurisdictional utilities to take certain action. The GridFlorida Companies and Calpine indicate that there is no reason to believe that the same general grants of authority in Sections 205 and 206 of the FPA would not also justify FERC mandating RTO participation. (GridFlorida Brief, p.51; Calpine Brief, p.37)

Staff disagrees with the conclusion reached by the GridFlorida Companies and Calpine. FERC does not have express statutory authority to mandate participation in an RTO. Further, neither FERC nor any court of competent jurisdiction has issued any order indicating that FERC has jurisdiction to mandate participation in an RTO. While the TAPS court has held that Sections 205 and 206 of the FPA gave FERC authority to require the generic remedy of requiring open access transmission tariffs based on a generic finding that open access was required to eliminate discrimination, those Sections do not give FERC the authority to require utilities to transfer control of their transmission assets and system operating responsibilities to an RTO. Sections 205(a) and (b) of the FPA allow FERC to remedy undue discrimination "with respect to any transmission or sale subject to the jurisdiction of [FERC]." (OPC Brief, p.17) The TAPS decision upheld FERC Order No. 888, which was limited to finding FERC jurisdiction over wholesale transmissions and unbundled retail transmissions. Mandating participation in an RTO would have direct and substantial impacts, as discussed above, on the provision of state-regulated bundled retail services.

Both FERC and the courts have recognized that FERC's jurisdiction does not extend to transmission provided as part of bundled retail service. As cited above, FERC noted in Order No. 888 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. Under the FPA, the Commission's jurisdiction over sales of electric energy extends only to wholesale sales.

The GridFlorida Companies and Calpine have argued, as noted above, that the GridFlorida Companies will continue to provide bundled retail service. The TAPS court upheld the jurisdictional line drawn by FERC in Order No. 888. Further, in its brief, OPC cites FERC's brief at the U.S. Supreme Court in Cases Nos. 00-568 and 00-809, where, at page 21, FERC stated that it resolved this jurisdictional question 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." (OPC Brief, p. 18) In addition, the U.S. Court of Appeals for the Eight Circuit recently held that FERC cannot directly or indirectly interfere with state regulation

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of retail service. Northern States Power Company v. FERC, 1999 U.S. App. LEXIS 9069.

The Commission should also recognize that the TAPS decision, upon which the GridFlorida Companies and Calpine rely, is on appeal to the U.S. Supreme Court, leaving open the possibility that it will be reversed or modified. (Calpine Brief, p.37) As Calpine notes, this is an area of the law which in flux. (Calpine Brief, p. 37). Still, as far as FERC and the courts have gone in defining FERC's jurisdiction, they have not gone as far as even implying that FERC has authority to mandate participation in an RTO.

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

**RECOMMENDATION:** No. At this time, it would not appear advantageous to the GridFlorida Companies and their respective ratepayers to discard the notion of a peninsular Florida RTO in favor of joining a regional RTO. However, the utilities should continue to participate in discussions regarding the creation of a Southeast RTO in anticipation that the FERC may one day mandate all FERC-regulated utilities to join a regional transmission organization.  
[Bass]

**POSITION OF THE PARTIES**

**FPC:** Whether a larger regional RTO is an appropriate alternative for Florida utilities will depend, in large measure, on how a larger regional RTO is structured. In the meantime, the expeditious approval of GridFlorida as a prudent alternative for electric utilities in Florida is necessary if the possibility of a Florida-only RTO is to be preserved.

**FPL:** Whether a larger regional RTO is an appropriate alternative for Florida utilities will depend, in large measure, on how a larger regional RTO is structured. In the meantime, the expeditious approval of GridFlorida as a prudent alternative for electric utilities in Florida is necessary if the possibility of a Florida-only RTO is to be preserved.

**TECO:** Whether a larger regional RTO is an appropriate alternative for Florida utilities will depend, in large measure, on how a larger regional RTO is structured. In the meantime, the expeditious approval of GridFlorida as a prudent alternative for electric utilities in Florida is necessary if the possibility of a Florida-only RTO is to be preserved.

**CALPINE:** Greater RTO scope can provide substantial benefits. Just as the existing operations and pancaked tariffs introduce cost and complication that interfere with market efficiencies that could be delivered to consumers, RTOs with scopes smaller than the natural markets they fall within may diminish the full market efficiencies that would otherwise be available. However, if implementation of a larger RTO faces significant delays, the Commission could approve GridFlorida as a transitional step toward a Southeastern RTO.

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**CPV**: No position.

**DENA**: A southeastern RTO is critical to the development of a Florida wholesale market. Centralization of transmission functions will enhance economies of scale, correctly reflect natural markets, ensure truly non-discriminatory transmission service and instill confidence in the market that will support needed capital investment. Smaller RTO's may develop incompatible structures and systems which do not reflect wholesale market trading patterns. However, the Commission could approve GridFlorida as a phase in the development of a Southeastern RTO.

**DYNEGY**: (Docket No. 001148-EI only) No position.

**ENRON**: Yes. This Commission should support a proactive effort by the Joint Utilities to join a Southeast RTO. Historically, single-state ISOs are at a greater risk for market flaws. A Southeast RTO will sustain and improve electric reliability, allow greater access to regional supplies, alleviate market power concerns and improve economic efficiency across the Southeast region to the benefit of all Floridians.

**MIRANT**: A southeastern RTO is critical to the development of a Florida wholesale market. Centralization of transmission functions will enhance economies of scale, correctly reflect natural markets, ensure truly non-discriminatory transmission service and instill confidence in the market that will support needed capital investment. Smaller RTO's may develop incompatible structures and systems which do not reflect wholesale market trading patterns. However, the Commission could approve GridFlorida as a phase in the development of a Southeast RTO.

**RELIANT**: Timing is the paramount consideration. Presently, GridFlorida appears to offer the quickest route to the realization of the benefits that an RTO will afford. The Commission should support the formation of GridFlorida until sufficient information is available to demonstrate that the Southeast RTO would be better for ratepayers.

**PG&E**: PG&E advocates and supports the development of a SERTO that contains many of the market design and market structure features contained in the original GridFlorida Model. A SERTO is necessary to develop the wholesale market in the Southeast. Such an organization will provide the attendant liquidity, risk management,

and cost-efficiency benefits necessary for competitive wholesale markets and reduced costs to consumers.

**PUBLIX:** (Docket No. 000824-EI only) Yes. Publix believes a multi-state RTO provides better benefits to electric utility customers because of the resulting improved transmission facilities into the state of Florida. Further, there would be more generating utilities involved which would increase overall electricity supply. However, Publix recognizes that since inadequate progress has been made on the formation of a multistate RTO, it is impossible to tell at this time.

**TWOMEY, ETAL:** The answer is not clear, but should depend in large part on which alternative is the most "cost-effective." If a regional RTO would supply the same, or greater, benefits and at a smaller cost to jurisdictional customers, than it should prevail over GridFlorida. Unfortunately, less is known about potential costs/benefits of the regional RTO than the state model. Critically, the Commission should resist an unthinking rush to the GridFlorida model solely to avoid the alternative of a regional RTO being imposed, which alternative is not at all clear or likely.

**DISNEY:** There are potential advantages to each approach. However, it is premature to answer this question. The answer depends on whether the benefits expected by FERC will be realized, on whether a Southeastern RTO materializes, and on the terms of operation and service proposed for it.

**SEMINOLE:** Seminole Electric believes that information upon which to base a comparison between the Southeast RTO and GridFlorida is currently unavailable. Consequently, Seminole Electric takes no position on this issue.

**FIPUG:** Yes. Florida's regulated utilities should be encouraged to join the more robust southeastern RTO, advocated by FERC, rather than the weaker GridFlorida.

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

**STAFF ANALYSIS:** On July 12, 2001, the FERC issued a series of orders which, on the whole, expressed their dissatisfaction with the limited progress being made toward the development of RTOs nationwide pursuant to Order No. 2000. The FERC concluded that the geographic scope of the RTO filings before it were not sufficient

to encompass the natural markets for bulk power that existed in different regions of the country. The FERC expressed its opinion that there should be a focus on developing four (4) RTOs nationwide. These four RTOs should encompass the Western, Midwestern, Northeastern and Southeastern regions of the country. With respect to the southeast, the FERC issued a separate order initiating mediation for the purpose of facilitating the formation of a single RTO for the Southeastern United States. This order required proposers of various RTOs within the Southeast to meet with a FERC appointed administrative law judge (ALJ) presiding over the mediation process. The FERC encouraged, but did not require, GridFlorida to participate in the proceedings.

The mediation began on July 17, 2001. On September 10, 2001, the ALJ released her final report for the Southeast RTO. Her recommendation entails forming a multi-tiered RTO encompassing ten Southern states, including peninsular Florida. The other states included are Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. While the ALJ's recommended RTO model follows the overall form of a for-profit Transco and incorporates many of the elements of GridFlorida, there are a number of added features. The most significant is the proposed formation of an Independent Market Administrator (IMA) who would be responsible for the day-to-day operational authority of the transmission system.

On September 26, 2001, FERC Chairman Pat Wood issued a memorandum (EXH 5) proposing that FERC initiate, under Section 206, a rulemaking on market design and market structure, to translate the eight RTO functions in Order No. 2000 into concrete protocols for the RTO organizations. Workshops to begin this process were convened on October 15, 2001. Chairman Wood suggests that the operational date of December 15, 2001 in Order No. 2000 be changed to be the date by which all jurisdictional utilities must either elect to join an approved RTO organization or have all market-based rate privileges by any corporate affiliate be prospectively revoked, following a Section 206 investigation. Chairman Wood further recommends that no mergers be approved relating to entities who do not become part of an operational RTO. And for a public utility that chooses not to be part of an RTO, FERC should take a hard look at the transmission rates they are permitted to charge to ensure that they are just and reasonable and recognize the interdependence of the power grid.



FERC Commissioner-led workshops began on October 15, 2001. The purpose of the workshops is to focus on core subject areas, such as congestion management, cost recovery, market monitoring, transmission planning, business and reliability standards, nature of transmission rights, etc. It is expected that this Section 206 proceeding will yield a new *pro forma* tariff to replace the Order No. 888 OATT.

There still remains a high degree of uncertainty associated with a Southeast RTO. While the FERC Mediation ALJ filed a report at FERC that contained a proposed governance model and recommendations regarding some of the other issues involving a Southeast RTO, there still remain numerous issues to be resolved. At this point, it is impossible to determine what the rate impact of participation in a Southeast RTO would be on Florida ratepayers, how congestion management would affect Florida, or how a Southeast RTO would direct operations in Florida. (TR 192-193)

The GridFlorida participants contend that they are continuing to actively participate in the Southeast RTO process. (TR 409) Witness Naeve testified that, if GridFlorida is to be merged into a Southeast RTO, then it is important to ensure that the two RTOs have compatible structures, market designs, and rates. If the rates and market designs are incompatible and the structures of the corporation are different, then integration becomes very hard. (TR 409) However, Mr. Naeve goes on to explain that the operation of GridFlorida would be turned over to an independent board, and once that happens, the participating companies have no control over GridFlorida. Likewise, FERC requires that the Southeast RTO also have an independent board. If GridFlorida were to be merged into a Southeast RTO, the independent boards only would dictate under what terms and conditions the RTOs would be combined. (TR 410)

At this time, it would not appear advantageous to the participating utilities and their respective ratepayers to discard the notion of a peninsular Florida RTO in favor of joining a regional RTO. The benefits are not clear and the possibility that a regional RTO would not adequately recognize and incorporate the unique characteristics of Florida in planning and operating decisions warrants concern. However, the utilities should continue to participate in discussions regarding the creation of a Southeast RTO in anticipation that the FERC may one day mandate all FERC-regulated to join a regional transmission organization.

DOCKET NOS. 000824-EI, 001148-EI, 010577-EI  
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**ISSUE 12:** Should these dockets be closed?

**RECOMMENDATION:** No. Docket No. 000824-EI (FPC) and Docket No. 001148-EI (FPL) should remain open to permit the Commission to complete its rate review for the respective companies. In addition, if the Commission approves staff's recommendation in Issue 7, which requires the GridFlorida Companies to file a proposal for an RTO that is in the form of an ISO, then Docket No. 010577-EI should also remain open.

**STAFF ANALYSIS:** Docket No. 000824-EI (FPC) and Docket No. 0001148-EI (FPL) should remain open to permit the Commission to complete its rate review for the respective companies. In addition, if the Commission approves staff's recommendation in Issue 7, which requires the GridFlorida Companies to file a proposal for an RTO that is in the form of an ISO, then Docket No. 010577-EI (TECO) should also remain open. This will allow the Commission to address the merits of the ISO proposal and to assess the impacts to each participating utility its ratepayers within the individual dockets.