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January 4, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
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Re: Docket Nos.: 000824-EI; 010577-EI and 001148-EI

Dear Ms. Bayo:

On behalf of Reliant Energy Power Generation, Inc., I am enclosing for filing and distribution the original and 15 copies of the following:

- Joint Motion for Reconsideration and Joint Motion for Oral Argument

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Joseph A. McGlothlin

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FPSC-COMMISSION CLERK

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Enclosure

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DOCUMENT NUMBER - DATE  
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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

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Docket No. 000824-EI

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates.

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Docket No. 001148-EI

In re: Review of Tampa Electric Company and the impact of its participation in GridFlorida, a Florida Transmission Company, on TECO's retail ratepayers.

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Docket No. 010577-EI

Filed: January 4, 2002

**JOINT MOTION FOR RECONSIDERATION**

Reliant Energy Power Generation, Inc. ("Reliant Energy"), Mirant Americas Development, Inc., Duke Energy North America, and Calpine Corporation (collectively "Movants") hereby submit their Joint Motion for Reconsideration of Order No. PSC-01-2489-FOF-EI ("the Order"), dated December 20, 2001, and, in support thereof, state the following grounds.

In Order No. PSC-01-2489-FOF-EI, the Commission correctly determined that the formation of a Regional Transmission Organization (RTO) in Florida will lead to benefits in the form of operational efficiencies, the elimination of pancaked rates, and the creation of a market-based, real-time balancing market and ancillary services market. In the Order, the Commission observed that

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an RTO may provide improved regional reliability, more efficient allocation of transmission capacity, improved emergency response, and a more efficient treatment of loop flows. Most importantly, the Commission recognized that the utilities' participation in an RTO will facilitate the development of a more competitive wholesale generation market. On that basis, the Commission determined that the participation of the GridFlorida applicants in the formation of GridFlorida was prudent. Movants strongly commend the Commission for recognizing in Order No. PSC-01-2489-FOF-EI the positive impact that an RTO will have on the creation of a competitive wholesale market, to the ultimate benefit of consumers, and for articulating a policy clearly favoring the formation of an RTO. However, in formulating the Order, the Commission effectuated critical mistakes of law and fact that affect Movants' substantial interests, and require Movants to request the Commission to reconsider certain limited aspects of Order No. PSC-01-2489-FOF-EI.

### **BASIS FOR RECONSIDERATION**

In Order No. PSC-01-2489-FOF-EI the Commission directed the GridFlorida applicants to submit a revised proposal for an RTO based on an Independent System Operator ("ISO") model rather than on the for-profit TRANSCO concept of the original GridFlorida. While the Commission stated that the revised proposal would be the subject of a new docket, it also ordered the GridFlorida applicants to include within the revised proposal the following two specific provisions, which are the subject of this Motion: (1) physical transmission rights-based congestion management rather than financial transmission rights-based congestion management; and (2) a requirement of balanced rather than unbalanced schedules.<sup>1, 2</sup> In the Order, the Commission directed the applicant utilities

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<sup>1</sup>In Order No. PSC-01-2489-FOF-EI the Commission entered rulings and imposed requirements that go far beyond the issues identified in "Phase I". The rulings on the matters identified herein raise the issue of the extent of the Commission's statutory authority to prescribe and mandate particular terms of the RTO. Movants do not object to the further, more detailed consideration of a revised RTO proposal in a new proceeding, as part of the collaborative

not to modify any of these parameters without first seeking and obtaining approval from the Commission. At the same time, the Commission stated that it would not allow parties to address these subjects in the new docket that it intends to open for the purpose of evaluating the revised RTO proposal:

If the GridFlorida Companies believe that certain terms should be included in the modified proposal, but those terms are inconsistent with the findings in this Order, the GridFlorida Companies may address the appropriateness of those terms in their proposal. However, the parties should note that this Commission will not relitigate the issues addressed in this Order. As stated above, we approve the "get what you bid" approach for congestion management until such time as the GridFlorida Companies can demonstrate that sufficient participants exist in the wholesale generation market and that localized market power has been adequately addressed. We also require that the GridFlorida provisions for physical transmission rights and balanced schedules remain fixed until such time as GridFlorida petitions this Commission and justifies a different approach.

Order No. PSC-01-2489-FOF-EI, at page 24.

In requiring the GridFlorida applicants to incorporate these specific provisions in the revised proposal -- and, more particularly, in ruling in advance that *the subjects would not be issues in the proceeding conducted to evaluate the revised RTO proposal* -- the Commission failed to consider that it was exceeding the scope of the proceeding, as defined by the petitions for relief filed by the GridFlorida applicants and by the issues approved in Prehearing Order No. PSC-01-1959-PHO-EI. By failing to consider the limitations on the parameters of the proceeding that the Commission had

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federal/state process that the Commission endorses in Order PSC-01-2489-FOF-EI. It is Movants' hope and expectation that, after receiving and considering a full evidentiary record on the subjects of this Motion the Commission will adopt views on the subjects that will render the issue of the extent of the Commission's authority moot. However, Movants reserve the right to contest the Commission's authority to mandate specific terms -- especially on the basis of the limited evidence of record -- if necessary to protect their interests.

<sup>2</sup>The method of energy balance settlement is a component of the mechanism for congestion management. Accordingly, in the new proceeding the Commission should also evaluate the relationship of the "receive-what-you-bid" pricing mechanism and alternatives to the overall analysis of congestive management.

prescribed earlier, the Commission made a mistake of law that denied Movants the fundamental elements of due process: notice and an opportunity to present evidence and argument on matters and issues that affect their substantial interests. The Administrative Procedures Act guarantees these procedural rights to parties. This mistake of law compels the Commission to reconsider this aspect of Order No. PSC-01-2489-FOF-EI. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962); Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); see Order No. PSC-98-1080-FOF-EI, issued in Docket No. 980001EI on August 10, 1998; Order No. PSC-00-2190-PCO-TP, issued on November 17, 2000 in Docket No. 981854-TP. The same mistake of law caused the Commission to enter findings without the benefit of adequate evidentiary support, and to short-circuit, to Movants' detriment, the very collaborative process that the Commission sought in the Order to endorse and support.

## **ARGUMENT**

I. Mistake of Law. Fundamentally, a party is entitled to notice that an agency may take a particular action and an opportunity to present evidence and argument on "all issues involved." See Sections 120.569 and 120.57, Florida Statutes. In this case, notice that the Commission might endeavor to prescribe and mandate such details as physical transmission rights-based congestion management and the requirement that all schedules be balanced at the time of submittal was not provided in any of the proceedings that led to the hearing, including the petitions of the GridFlorida companies (that provide the scope of this Phase 1 proceeding) and the prehearing activities in which the Commission identified the issues on which it would act.

A. Early Activities. On May 3, 2001, the Commission Staff recommended that the Commission review the decision to join an RTO in general and to form and participate in

GridFlorida in particular. The recommendation raised the issue of the prudence ". . . of subjecting . . . retail and wholesale load to GridFlorida," as well as issues respecting the costs and rates of GridFlorida.

On May 11, 2001 the GridFlorida applicants filed a Joint Motion to Establish a Separate Generic Docket to Determine on an Expedited Basis the Prudence of Formation and Participation in GridFlorida, Inc. The Commission's ruling on this motion was memorialized in Order No. PSC-01-1372-PCO-EI, issued on June 27, 2001. In this order, the Commission granted the joint motion in part and denied it in part. The Commission noted that the utilities differed with respect to the amount of transmission facilities owned, the decision to transfer ownership or control of transmission assets, as well as levels of costs and of benefits.

The Commission stated:

Having chosen the form and function of GridFlorida through the collaborative process, each regulated utility must now demonstrate that its decision to participate in GridFlorida is in the best interests of its retail customers. (Page 3).

In Order No. PSC-01-1372-PCO-EI, the Commission signaled its intent to review-- in separate ratemaking dockets -- the prudence of participating in, and the costs of, GridFlorida. Referring to the utilities' concern over the possibility of the disallowance of costs and their decision to halt RTO development activities pending the Commission's decision on prudence, the Commission agreed to expedite that portion of the ratemaking exercises in an initial "Phase 1" proceeding:

Each utility will file a petition specifically setting forth the issues it wants the Commission to decide, and the relief it seeks. Each petition should indicate the decisions that the utility believes it needs to proceed forward on the implementation of GridFlorida. The burden is on the utilities. We direct Staff to work with the companies to determine the MFRs necessary to support the examination of the RTO related issues in this expedited portion of the proceedings. (Page 5)

Each of the GridFlorida applicants filed such a petition on June 12, 2001. The petitions were virtually identical. FPC's petition was typical of the others. At page 5, FPC asserted that a finding of prudence by this Commission ". . . is a necessary prerequisite to Florida Power's continued participation in the formation of GridFlorida . . . The Commission's action in these dockets has had the effect of arresting each company's participation in GridFlorida given the possibility of future disallowance of each company's GridFlorida - related costs on grounds of imprudence."

Florida Power identified the following questions in its petition:

- a. Is Florida Power's decision to participate in a RTO the most prudent alternative in light of FERC's Order No. 2000?
- b. Is the GridFlorida proposal advanced by Florida Power, FPL and Tampa Electric prudent, given the parameters established by FERC in its Order No. 2000?
- c. What are the benefits to the State of Florida associated with the GridFlorida proposal advanced by Florida Power, FPL and Tampa Electric for the formation and operation of a RTO?
- d. What are the estimated costs to Florida Power's retail customers for its participation in GridFlorida, and how should these costs be recovered?
- e. What factors support Florida Power's decision to transfer operational control of its transmission facilities of 69 kV and above to GridFlorida while retaining ownership?

B. Prehearing Activities Relating to the Utilities' Petitions. The Commission's practice is to conduct extensive prehearing procedures designed to apprise all parties and the Commission of the scope of the proceeding. In this proceeding, Prehearing Order No. PSC-01-1959-PHO-EI identified the following issues (and delimited the scope of Phase I accordingly):

- ISSUE 1: Is participation in a regional transmission organization (RTO) pursuant to FERC Order No. 2000 voluntary?
- ISSUE 2: What are the benefits to Peninsular Florida associated with the utility's participation in GridFlorida?

- ISSUE 3: What are the benefits to the utility's ratepayers of its participation in GridFlorida?
- ISSUE 4: What are the estimated costs to the utility's ratepayers of its participation in GridFlorida?
- ISSUE 5: Is FPC's decision to transfer operational control of its transmission facilities of 69 kV and above to GridFlorida while retaining ownership appropriate?
- ISSUE 6: Is the utility's decision to participate in GridFlorida prudent?
- ISSUE 7: What policy position should the Commission adopt regarding the formation of GridFlorida?
- ISSUE 8: Is Commission authorization required before a utility can unbundle its retail electric service?
- ISSUE 9: Is Commission authorization required before a utility can stop providing retail transmission service?
- ISSUE 10: Is Commission authorization required before FPC can transfer operational control of its retail transmission assets?
- ISSUE 11: Is a Regional Transmission Organization for the Southeast region of the United States a better alternative for Florida than the GridFlorida RTO?

Order No. PSC-01-1959-PHO-EI at pages 17-97.

Significantly, none of the issues identified prior to the hearing served, by any stretch of the imagination, to apprise parties of the possibility that the Commission would undertake to make prescriptive -- and *preemptive* -- determinations regarding such matters as the relative merits of physical versus financial transmission rights-based congestion management, or the relative merits of balanced schedule requirements and unbalanced schedules with market-based balancing. For this reason, Movants, who have strong views regarding the technical and economic merits of each of these subjects (which they have asserted to the Stakeholder Advisory Committee, on the basis of which they have on-file protests at the FERC, and which they intend to advocate to the independent



RTO Board), presented no testimony on either of these important topics. Indeed, so clearly delineated were the boundaries of the case that in testimony Reliant Energy witness Robert Mechler referred to the debate over physical and financial transmission rights as beyond the scope of the proceeding. The purpose of his reference was to illustrate that, like Reliant, the Commission could support the formation of GridFlorida as a matter of general policy and still retain the ability to object to individual details during the FERC's consideration of the filing. (See TR- 761-762.)

This motion is premised on the mistake of law -- i.e., findings and rulings that exceeded the scope of identified issues -- that led the Commission to violate Movants' rights to procedural due process. However, Movants submit that the Commission should also be concerned that the same mistake of law led the Commission to enter findings and rulings based on a record that is wholly inadequate for the purpose of formulating informed positions on these subjects.

The evidence concerning physical and financial transmission rights-based congestion management makes the point. In a presentation that obviously was intended only as a cursory overview, the "panel" of witnesses testifying for the GridFlorida applicants stated that the application to FERC provided for physical transmission rights. (TR- 346 ). The following quotation comprises the *entire treatment* of the alternative of financial rights that was presented by the panel that addressed the "market design" of GridFlorida:

This is in contrast to a "financial rights" system used by some other RTOs where transmission customers do not have the right to physically transmit power between any two points in the system, but are placed in the same financial position as if they did possess such physical rights. (TR-346).

No other party submitted testimony or evidence on this subject.

During the Staff's questioning of the panel of witnesses Naeve, Ramon, Southwick and Mennes, it developed that one GridFlorida witness favored physical transmission rights over

financial rights as a matter of perceived relative simplicity. Another witness' company strongly *preferred financial transmission rights over physical transmission rights* and agreed to the preliminary use of physical rights on "Day One" simply as an accommodation, given the ongoing collaborative decision-making process in which stakeholders and the independent Board of GridFlorida would have an opportunity to alter the beginning design (subject to FERC approval). A third witness said he didn't understand the alternative of financial transmission rights! (TR-363; 520).

Even if one were to put to one side the issue of notice and opportunity to address the subject that underlies this Motion for Reconsideration, the limited, superficial, one-sided, and inconsistent nature of the (uncontested) testimony of record on the subject should lead the Commission to refrain from forming any views regarding the relative merits of physical and financial transmission rights-based congestion management without first *requiring* a far more extensive evidentiary record on the subject.<sup>3</sup>

Again, the evidence submitted at hearing in response to the issues identified by the Commission contains no analysis regarding the relative merits of balanced and unbalanced scheduling. The sole reference to unbalanced schedules indicates that mechanisms exist with which reliability can be ensured within that model.<sup>4</sup> (TR-492-494)

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<sup>3</sup>Elsewhere in the Orders the Commission acknowledged the insufficiency of the record to enable it to address certain subjects, such as the pros and cons of "for profit" and "not-for-profit" ISOs.

<sup>4</sup>The following exchange took place between Staff Counsel and the witness for the applicant utilities:

Q: With an unbalanced schedule, is it correct that the resources are not fully committed or reserved to meet all expected loads?

A: No. But, you know, GridFlorida's position is that, you know, we're dealing with balanced schedules, not unbalanced schedules. Other RTOs, you know, provide for submittal of unbalanced schedules, *and they deal with the reliability aspect of that in different ways, through balanced resources and those sorts of things*, but the model for GridFlorida is balanced schedules.

As with the example of physical transmission rights, the Commission formed its conclusion in the absence of a fully developed record. In doing so, it violated Movants' due process rights and jeopardized the ability to develop a truly competitive wholesale market.

II. Resulting Mistake of Fact. The purpose of a motion for reconsideration is to bring to the attention of the agency some point of law or fact which it overlooked or failed to consider when it rendered its order. Diamond Cab, *supra*. Reweighing the evidence is not a sufficient basis for reconsideration. State v. Green, 105 So. 2d 817 (Fla. 1<sup>st</sup> DCA 1958). This Joint Motion for Reconsideration is not an attempt to reweigh the evidence, because there is no evidence to reweigh. Joint Movants have already identified the mistake of law that resulted in a denial of due process. In this section, Joint Movants will identify the facts that the Commission failed to consider -- because there was no opportunity to develop them in Phase 1. Given the procedural opportunity, Movants would offer testimony supporting their position that the different models of financial transmission rights-based congestion management and allowing unbalanced schedules with market-based balancing would better serve the objective of a competitive market while assuring reliability to ratepayers. Movants submit that, unless the Commission reconsiders its Order and affords them (and others) the opportunity to develop the evidentiary record on these points, the same unsupported,

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Q: And I guess to get to my point, could GridFlorida move to an unbalanced schedule?

A: Only through a process that involves the board, the advisory committee **[including -Movants]**, the market monitor, and a filing with the FERC.

Q: Okay. So it would require a decision of the board and then approval by FERC?

A: Yes.

Q: And it wouldn't require any approvals from this Commission?

A: Only through the market monitoring discussion that we had earlier. You know, there's provisions for working with the Florida Public Service Commission through the market monitor.

(TR-493-494 ) (emphasis provided).

flawed findings will impede the development of the very competitive wholesale market that the Commission, through the Order, sought to facilitate.

A. Physical Transmission Rights versus Financial Transmission Rights-Based Congestion Management.

The Order dispenses with the enormously important issue of electricity markets congestion management in two short paragraphs. Few topics in the energy industry have stirred more debate and analysis on the local, regional and national level and are more essential to the effective function of competitive markets than congestion management. Yet, because of the limited scope of the proceeding, the only evidence in the record supporting a physical transmission rights paradigm is the GridFlorida Companies' proposal (along with all the filed GridFlorida documents) pending before the Federal Energy Regulatory Commission which is being administratively protested by Movants. Congestion management was not an issue in this proceeding and as such, witnesses did not address it in their testimony and the Commission lacks sufficient facts on which to render an opinion.

To adequately consider the subject of physical versus financial rights, it would be essential to examine the alternatives of locational marginal pricing (LMP) and financial transmission rights (FTRs) used in numerous regions around the country and being seriously considered as a national standard by the Federal Energy Regulatory Commission. If congestion management had been an issue in the proceeding, some or all of the Movants could have submitted factual testimony demonstrating that LMP and FTRs provide market-based real-time congestion management and energy balancing that ensure full and efficient use of the transmission system in real-time, enhance commercial trading and wholesale competition, and support system reliability at higher efficiencies. LMP is consistent with a variety of market designs for forward markets. Movants could also have demonstrated to the Commission that congestion management through LMP and FTR is the only

approach to running a real-time balancing market and pricing system that overcomes the administrative withholding inherent in physical rights-based congestion management systems. But the Commission has none of these and many, many other facts bearing on congestion management before it, because the ultimate choice of the congestion management mechanism was not identified as an issue in the proceeding.

As demonstrated herein, by entering findings that exceeded the scope of identified issues, the Commission overlooked or failed to consider that it was precluding parties from addressing a myriad of important facts regarding congestion management. This portion of the Order should be reconsidered and a full and fair evidentiary hearing held on the matter. In the alternative, the Commission should reconsider its Order and rephrase it as expressing a preliminary preference for one congestion management system over another based on the limited record before it, pending further analysis within the RTO collaborative process.

B. Balanced Schedules. Like PTRs, the Order excises a discrete portion of the GridFlorida proposal as filed at the FERC on balanced schedules and, without identifying an issue or taking evidence on the subject in the proceeding, purports to make a final determination on the merits. The Order states that any RTO is to start with balanced schedules and Commission approval shall be required to change therefrom. Order No. PSC-01-2489-FOF-EI, page 20. There is a dearth of facts to support this ruling. Like PTRs, the choice of balanced or unbalanced schedules was not identified as an issue in the Phase I proceeding.

A balanced schedule, as the Order indicates, is one in which forecast supply (or generation) equals the level of demand (or load) the transmission customer forecasts at the time of its submittal. Arguments for and against prohibition of unbalanced schedules have raged for years. The instant

Order doesn't begin to ascertain the issues, or the facts surrounding the debate. Given the decision to convene the new proceeding to consider the revised RTO, Movants should be afforded the opportunity to provide testimony supporting their view that, while balanced schedule requirements are intuitively appealing because of the illusion of enhanced grid reliability and perceived simplicity, they in fact have little or no impact on grid reliability given the high degree of difficulty in meaningful enforcement. Movants would have the opportunity to show that such requirements have a discernable adverse impact on market participant entry; disadvantage load serving entities with smaller or more concentrated power supply portfolios; compromise the efficient use of the grid; create administrative complexity; and restrict the access of competing power supply options in the intraday wholesale market, all to the detriment of the objective of creating a truly competitive wholesale market. Movants would offer evidence supporting their position that a mechanism allowing unbalanced scheduling with market-based balancing would better protect reliability while increasing market liquidity. Movants could also demonstrate that reliability is not any higher, and indeed may be lower under a balanced schedule model and that the cost saving opportunities that would otherwise be available through the efficient, open procurement of spot market resources is lost through the administrative restriction imposed by a balanced schedule requirement.<sup>5</sup>

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<sup>5</sup>By way of further example, the FERC recognized the value of market based incentives versus administrative restrictions in its Concept Discussion Paper For An Electric Industry Transmission and Market Rule by FERC Staff dated December 17, 2001. Among other things, that analysis provides a market based alternative to a balanced schedule requirement. It states that a day-ahead market would make it easier for market participants to develop day-ahead schedules that can be honored during real-time operations. As such, day-ahead schedules would be a more accurate forecast of real-time operation, so the grid operator can more easily operate the grid reliably while not impeding access to the market by suppliers who are not also load serving entities. A day-ahead energy market would also facilitate demand-side price response because buyers would be able to respond to price signals and make adjustments in activities. The benefits of this model are not premised on a requirement that market participants submit balanced schedules. On the contrary, the FERC staff analysis is premised on market participants not being required to submit balanced schedules but having financially binding day-ahead obligations and the ability to schedule bilateral transactions or self-supply as an alternative. Concept Discussion Paper, page 7.

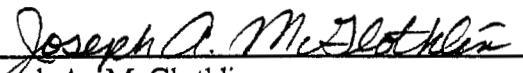
As demonstrated herein, the Commission failed to consider a multitude of important facts regarding balanced schedule requirements. It should reconsider the finding on balanced schedules and provide the opportunity for a full and fair evidentiary hearing on the matter. In the alternative, the Commission should reconsider its Order and rephrase it as expressing a preliminary preference for balanced schedules based on the limited record before it and subject to further review, analysis and determination within the RTO collaborative process.

In sum, many points of fact were overlooked by the Commission when it rendered its order on physical transmission rights and balanced schedules. Based on well-established law, those portions of the order should be withdrawn, reconsidered and litigated *ab initio* or phrased as preliminary agency preferences rather than final agency action. In addition, having acknowledged the existence of a parallel, federal collaborative process regarding standardized market design, the Commission should take into account the potential adverse effect of a premature ruling on market design.

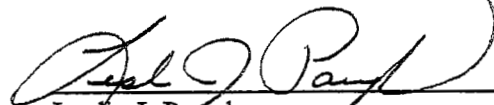
## CONCLUSION

When it required the GridFlorida applicants to prepare and submit a revised RTO proposal, the Commission announced that it would open a new docket within which to consider the revised proposal. In the same Order, the Commission recognized that the record of this proceeding was insufficient to enable it to make an informed decision on certain subjects. Elsewhere in the Order, the Commission even invited the Petitioners to propose terms and conditions that are "inconsistent" with the Order. In addition to constituting a denial of Movants' rights as parties, the Commission's conclusory, preemptive treatment of the subjects of this Motion is at odds with the more reasoned and reasonable approach the Commission took with similarly undeveloped subjects. Given the

Commission's decision to conduct a new evidentiary proceeding on the revised RTO proposal, its findings on these issues are especially premature and unwarranted. The Commission must reconsider its Order and indicate that it will consider testimony on any issue to which the revised RTO proposal gives rise, both to afford Movants the procedure rights to which they are entitled as a matter of law and to enable the Commission to formulate informed, knowledgeable, and appropriate positions on matters of critical importance to the realization of its objective of a competitive wholesale market.

  
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**CERTIFICATE OF SERVICE**  
**DOCKETS 001148, 000824 AND 010577**

I HERBY CERTIFY that a true and correct copy of the Joint Motion for Reconsideration has been furnished by \*Hand-delivery and U.S. Mail to the following parties on this 4th day of January, 2002.

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