

State of Florida



Public Service Commission  
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**DATE:** FEBRUARY 7, 2002

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

**FROM:** OFFICE OF THE GENERAL COUNSEL (C. KEATING) *WCK NCK*  
OFFICE OF MARKET MONITORING AND STRATEGIC ANALYSIS (BASS) *Rob*  
DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (TRAPP) *RT*  
DIVISION OF ECONOMIC REGULATION (BALLINGER) *JM JNJ*

**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:** 02/19/02 - REGULAR AGENDA - POST HEARING DECISION - MOTIONS FOR RECONSIDERATION/CLARIFICATION OF FINAL ORDER - ORAL ARGUMENT REQUESTED ON ISSUE 2

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\GCL\GCO\WP\000824\_R.RCM

CASE BACKGROUND

On June 12, 2001, Florida Power Corporation ("FPC"), Florida Power & Light Company ("FPL"), and Tampa Electric Company ("TECO") (collectively, the "GridFlorida Companies") filed separate petitions in these dockets asking the Commission to determine the prudence of the formation of and their participation in

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GridFlorida, a regional transmission organization ("RTO"). 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 the Commission's review of GridFlorida were established. A full, evidentiary hearing was held October 3-5, 2001, to address those issues. By Order No. PSC-01-2489-FOF-EI, issued December 20, 2001, ("GridFlorida Order") the Commission found the GridFlorida Companies were prudent in proactively forming the GridFlorida RTO but required the GridFlorida Companies to modify GridFlorida to use an independent system operator ("ISO") structure that would not require a transfer of assets.

On January 4, 2002, Reliant Energy Power Generation, Inc. ("Reliant"), Mirant Americas Development, Inc. ("Mirant"), Duke Energy North America ("Duke"), and Calpine Corporation ("Calpine") (collectively, "Joint Movants") filed a joint motion for reconsideration of the GridFlorida Order and joint request for oral argument on the motion. No party filed a response to the Joint Motion. On January 15, 2002, TECO filed a cross motion for clarification of the GridFlorida Order. As of the filing date of this recommendation, no party has filed a response to TECO's cross motion. This recommendation addresses these motions.

The Commission has jurisdiction over this subject matter through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant the Joint Movants' joint request for oral argument on the joint motion for reconsideration of Order No. PSC-2489-FOF-EI?

**RECOMMENDATION:** No. The basis for the joint motion for reconsideration is adequately and thoroughly described within the motion. Oral argument would not aid the Commission in evaluating and comprehending the issues set forth in the joint motion.

**STAFF ANALYSIS:** Contemporaneous with their joint motion for reconsideration filed January 4, 2002, the Joint Movants filed a joint request for oral argument on the motion. In the joint request for oral argument, the Joint Movants state that oral argument would assist the Commission in comprehending and evaluating the issues raised in the joint motion for reconsideration. The Joint Movants further state that "[o]ral argument will provide an opportunity for elaborating on the need to afford an opportunity to submit testimony on physical transmission rights and balanced schedules" which are the subject of the joint motion for reconsideration.

Rule 25-22.058, Florida Administrative Code, provides that a request for oral argument shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Rule 25-22.060, Florida Administrative Code, provides that oral argument on a motion for reconsideration of a final order shall be granted solely at the discretion of the Commission.

Staff recommends that the Commission deny the Joint Movants' request for oral argument. In ruling on the joint motion for reconsideration, the Commission needs only to decide whether it overlooked or failed to consider some point of fact or law when it rendered the GridFlorida Order. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). The joint motion for reconsideration very precisely and thoroughly describes the mistakes of law and fact that Joint Movants' allege as the basis for reconsideration. Oral argument would not provide any additional aid to the Commission in comprehending and evaluating the issues before it.

DATE: February 7, 2002

**ISSUE 2:** Should the Commission grant the Joint Movants' motion for reconsideration of Order No. PSC-01-2489-FOF-EI?

**RECOMMENDATION:** No. The Commission did not overlook or fail to consider any point of law or fact in rendering Order No. PSC-01-2489-FOF-EI.

**STAFF ANALYSIS:**

**I. Standard of Review**

The applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision-maker in rendering its order. Diamond Cab Co. V. King, 146 So.2d 889 (Fla. 1962). The mere fact that a party disagrees with the order is not a valid basis for reconsideration. Id. Further, reweighing of the evidence is not a sufficient basis for reconsideration. State v. Green, 104 So.2d 817 (Fla. 1st DCA 1958).

**II. Argument of the Parties**

By Order No. PSC-01-2489-FOF-EI, the Commission required the GridFlorida Companies to file a modified RTO proposal that conforms the GridFlorida proposal to the findings of the Order and uses an ISO structure in which each utility maintains ownership of its transmission facilities. In its Order, the Commission required, among other things, that GridFlorida's provisions for physical transmission rights (PTRs) and balanced schedules remain fixed until such time as GridFlorida petitions the Commission and justifies a different approach. The Commission further stated it will not relitigate the issues addressed in the GridFlorida Order when it reviews the modified GridFlorida proposal.

The Joint Movants argue that the Commission, by requiring the GridFlorida Companies to incorporate PTRs and balanced schedules in the modified GridFlorida proposal and precluding litigation on those matters, failed to consider that it was exceeding the scope of its GridFlorida review proceedings, as defined by the GridFlorida Companies' petitions for relief filed June 12, 2001, and by the issues approved in Order No. PSC-01-1959-PHO-EI. The Joint Movants argue that the Commission thus made a mistake of law that denied them "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 Joint Movants further argue that this mistake of law caused the Commission to enter findings without the benefit of adequate evidentiary support.

The Joint Movants assert that 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. The Joint Movants assert that in this case, notice that the Commission might consider and mandate details such as PTRs and balanced schedules was not provided in any of the proceedings that led to the hearing, including the GridFlorida Companies' petitions and the prehearing activities in which the Commission identified the issues on which it would act. The Joint Movants contend that none of the issues identified prior to hearing served to apprise the parties that the Commission would consider making determinations regarding the relative merits of PTRs versus financial transmission rights or the relative merits of balanced schedule requirements versus unbalanced schedules. The Joint Movants assert that for this reason they presented no testimony on either topic, although they have strong views on the merits of each subject.

The Joint Movants argue that this mistake of law led the Commission to enter findings and rulings based on a record that is inadequate for the purpose of formulating informed positions on the relative merits of these subjects. The Joint Movants assert that the testimony presented on the subjects of PTRs and balanced schedules was limited to a superficial treatment of these subjects and was necessarily one-sided because the Joint Movants lacked the opportunity to address these subjects. In their motion, the Joint Movants assert that, given the procedural opportunity, they could have offered testimony to support 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.

The Joint Movants ask that the Commission reconsider its findings concerning PTRs and balanced schedules and provide the opportunity for a full evidentiary hearing on these matters. Alternatively, the Joint Movants ask that the Commission reconsider its GridFlorida Order and rephrase it to express a preliminary preference for PTRs and balanced schedules subject to further review, analysis, and determination within the Commission's review of the modified GridFlorida proposal.

DATE: February 7, 2002

### III. Analysis

#### A. Mistake of Law

In Order No. PSC-01-1372-PCO-EI, issued June 27, 2001, in which the Commission established a proceeding to review the GridFlorida Companies' formation of and participation in GridFlorida, the Commission stated at page 3:

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.

By Order No. PSC-01-1485-PHO-EI, issued July 16, 2001, as modified by Order No. PSC-01-1641-PHO-EI, issued August 10, 2001, the issues to be addressed in this proceeding were established. Among the eleven issues identified were the following:

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 7 was not among the preliminary issues identified by staff or the GridFlorida Companies. The Joint Movants and CPV Atlantic, Inc., requested that this issue be included for resolution. In its Comments on Proposed Issues, filed July 12, 2001, Reliant noted that this issue was not included in staff's proposed issue list and argued for its inclusion:

Reliant respectfully submits that the issue of the appropriate policy position relative to GridFlorida should be restored to the issue list. During the agenda conference of May 29, 2001, [the] Commission emphasized that one purpose of this proceeding is to develop the Commission's ability to provide guidance to the 2020 Energy Policy Committee with respect to GridFlorida, as well as to provide input to the Florida Legislature on the subject. . . . Clearly, the Commission intends to fashion a policy position based on its evaluation of the record formed and the arguments advanced during these

DATE: February 7, 2002

proceedings. . . . To omit the issue that addresses the policy position that the Commission intends to develop would be to deny Reliant Energy's due process rights in this regard.

The entire GridFlorida proposal was filed as an exhibit to the prefiled testimony of the GridFlorida Companies in this proceeding. The GridFlorida proposal is a comprehensive RTO proposal that includes provisions, among many others, concerning market design. In addressing market design, the GridFlorida proposal included provisions for PTRs and balanced schedules. Given the comprehensive nature of the GridFlorida proposal and its potential effects on retail ratepayers in terms of rates and reliability, the Commission conducted a comprehensive review of GridFlorida necessary to determine whether each utility's decision to participate in GridFlorida was in the best interests of its retail ratepayers. In evaluating the GridFlorida proposal and rendering its Order, the Commission reviewed and took policy positions on several aspects of the proposal, including the provisions for PTRs and balanced schedules.

In essence, the Joint Movants' argument is that the Commission exceeded the scope of this proceeding because specific issues were not identified related to the PTR and balanced schedule provisions of GridFlorida. The Joint Movants assert that this constitutes a mistake of law that requires the Commission to reconsider its GridFlorida Order. Staff disagrees.

In addressing Issue 7 and determining what policy position to take concerning GridFlorida, it was entirely reasonable for the Commission to evaluate all aspects of the GridFlorida proposal, including specific provisions that could impact Florida's retail ratepayers. Under the standard proposed by the Joint Movants, the Commission, to avoid making a mistake of law requiring reconsideration, could have done little more than make a generic policy statement either supporting or not supporting the formation of GridFlorida. Such a review would have provided little guidance to the 2020 Energy Policy or the Florida Legislature concerning the subject of GridFlorida. Further, such a generic statement could not adequately capture a policy position concerning a detailed, comprehensive RTO proposal. Indeed, accepting the Joint Movants' argument, the Commission could not have ruled upon the merits of an ISO structure versus the proposed transco structure, the central

component of the Commission's GridFlorida Order, because such details were not listed as separate issues.

Issue 7, which the Joint Movants themselves requested be included for consideration in this proceeding, asked the Commission to provide a policy position on a detailed, complex RTO proposal. The entire GridFlorida proposal was offered as an exhibit to prefiled testimony in this proceeding. Included in that proposal, among other things, were provisions for PTRs and balanced schedules. The Commission undertook an exhaustive evaluation of the proposal on an expedited basis in order to address the issues set forth for resolution. Every party to the proceeding had the opportunity to do the same and to present whatever evidence it deemed appropriate to support a particular policy position. The Joint Movants each took positions supporting the formation of GridFlorida generally, but did not challenge any specific components of GridFlorida, including PTRs or balanced schedules.

B. Mistake of Fact

As stated above, the Joint Movants argue that the evidence presented concerning PTRs and balanced schedules was only superficial and was one-sided because they lacked the opportunity to address these subjects. The Joint Movants assert that this led the Commission to enter findings and rulings based on a record inadequate for the purpose of formulating informed positions on the relative merits of these subjects. The Joint Movants argue that the Commission failed to consider several facts that would support financial transmission rights over PTRs and unbalanced scheduling over balanced schedules.

As also stated above, all parties had an opportunity to address the subjects of PTRs and balanced schedules in this proceeding. The Joint Movants did not address those subjects and cannot argue now, as a basis for reconsideration, that the Commission made a mistake of fact by failing to consider facts that the parties failed to put into evidence.

Staff recognizes that the evidence presented on the subjects of PTRs and balanced schedules is largely one-sided. It appears likely that the record on these subjects could have been more fully developed through evidence that the Joint Movants suggest they would have offered had they believed these subjects to be within the scope of this proceeding. Regardless, staff believes that the



DOCKET NOS. 000824-EI, 001148-EI, 010577-EI  
DATE: February 7, 2002

Commission did not make a mistake of law or fact in reaching a policy position based on the evidence presented on these subjects because these subjects were raised in the testimony and exhibits of the GridFlorida Companies and thus were subject to rebuttal by the Joint Movants. If the Commission believes that additional evidence may be helpful in fully understanding and evaluating these subjects, the Commission may reconsider the relevant portions of the GridFlorida Order as part of its review of the modified GridFlorida proposal due to be filed March 20, 2002, or as part of a separate proceeding on reconsideration.

**ISSUE 3:** Should the Commission grant Tampa Electric Company's cross motion for clarification of Order No. PSC-01-2489-FOF-EI?

**RECOMMENDATION:** The Commission should grant TECO's cross motion for clarification, in part, to reconfirm that it did not vote on Issue 10 as listed in the Prehearing Order. TECO's request that the Commission correct a clerical error in Order No. PSC-10-2489-FOF-EI is moot because the requested correction has already been made in an Amendatory Order.

**STAFF ANALYSIS:** In its cross motion for clarification, TECO asks the Commission to clarify two matters addressed in the GridFlorida Order. First, TECO asks the Commission to clarify that it did not vote on Issue 10 identified in the Prehearing Order. Second, TECO asks the Commission to correct a clerical error in the GridFlorida Order.

Concerning the first matter, Issue 10 asked the Commission to determine whether Commission authorization is required before a utility can sell or transfer operational control of its retail transmission assets. As reflected in the Commission's vote sheet from the November 7, 2001, Agenda Conference, the Commission chose not to vote on Issue 10. TECO points to two excerpts from the GridFlorida Order that it asserts create "sufficient ambiguity to create the impression that the Commission has decided Issue No. 10 in the affirmative. . ." as follows:

. . . we believe that certain aspects of GridFlorida are not in the best interests of Florida's retail ratepayers at this time, most particularly the transfer of ownership of transmission assets that would take place under GridFlorida. (p.4, GridFlorida Order)

. . . we believe that it would premature to allow divestiture of existing transmission assets in this state. (P.13, GridFlorida Order)

Staff believes that these excerpts simply reflect the Commission's decision, based on the evidence adduced at hearing, that the transfer of assets proposed under GridFlorida is not in the best interests of Florida's retail ratepayers at this time. Clearly, as evidenced by the Commission's vote sheet, the Commission did not vote on Issue 10, and, therefore, the

GridFlorida Order should not be interpreted as rendering a decision on that issue.

Concerning the second matter, TECO identifies a clerical error in the GridFlorida Order. On page 11, the date "May 1, 2001" should read "May 31, 2001." Staff recognized this error and, as of the date of this recommendation, the error has been corrected through an Amendatory Order. Thus, this portion of TECO's cross motion is moot.

As a procedural matter, staff is concerned that TECO's cross motion for clarification may not be appropriate. Rule 25-22.060(3), Florida Administrative Code, allows for cross motions for reconsideration to be filed following a motion for reconsideration, but does not provide for cross motions for clarification following a motion for reconsideration. However, because the Commission has the discretion to clarify its orders on its own motion and may wish to clarify its GridFlorida Order, staff has addressed TECO's cross motion for clarification on the merits.

DOCKET NOS. 000824-EI, 001148-EI, 010577-EI  
DATE: February 7, 2002

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** As set forth in Order No. PSC-2489-FOF-EI, Docket No. 000824-EI and Docket No. 001148-EI should remain open to permit the Commission to complete its pending rate reviews in those dockets for Florida Power Corporation and Florida Power & Light Company, respectively, and Docket No. 010577-EI should be closed.

**STAFF ANALYSIS:** As set forth in Order No. PSC-2489-FOF-EI, Docket No. 000824-EI and Docket No. 001148-EI should remain open to permit the Commission to complete its pending rate reviews in those dockets for Florida Power Corporation and Florida Power & Light Company, respectively, and Docket No. 010577-EI should be closed. Pursuant to the GridFlorida Order, a new generic docket will be opened to address the modified RTO proposal required by the GridFlorida Order.