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Blanca S. Bayo, Director
Division of Commission Clerk and Administrative Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32301

**Re: In re: Review of GridFlorida Regional Transmission Organization (RTO) Proposal,
Docket No. 020233-EI**

Dear Ms. Bayo:

Enclosed, please find an original and twenty (20) copies of the Comments of the City of Lakeland, Florida d/b/a Lakeland Electric, Kissimmee Utility Authority, the City of Gainesville, Florida, d/b/a/ Gainesville Regional Utilities, and the City of Tallahassee, Florida, which are being submitted in the above-captioned proceeding. Please date-stamp and return the five (5) extra copies via the enclosed postage pre-paid return envelope. I have also included a diskette containing a WordPerfect version of the comments.

Thank you very much for your assistance and please do not hesitate to contact me at (202) 429-8809 if you have any questions.

Sincerely,



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of GridFlorida)
Regional Transmission)
Organization (RTO) Proposal)
_____)

Docket No. 020233-EI
Filed: May 8, 2002

COMMENTS OF LAKELAND ELECTRIC,
KISSIMMEE UTILITY AUTHORITY, GAINESVILLE REGIONAL UTILITIES,
AND THE CITY OF TALLAHASSEE, FLORIDA,

Pursuant to the procedural schedule adopted by Order No. PSC-02-0459-PCO-EI, these comments are filed jointly and severally on behalf of the City of Lakeland, Florida d/b/a Lakeland Electric (Lakeland), the City of Tallahassee, Florida (Tallahassee), Kissimmee Utility Authority (KUA) and the City of Gainesville, Florida d/b/a Gainesville Regional Utilities (GRU), collectively referred to herein as the Florida Municipal Group (FMG).¹

SUMMARY OF FILING

On December 20, 2001, the Commission issued Order No. PSC-01-2489-FOF-EI. The order generally held that Florida Power Corporation (FPC), Florida Power & Light Company (FPL), and Tampa Electric Company (TECO) – collectively the "GridFlorida Companies" – were prudent in proactively forming the GridFlorida RTO, as that entity was described in documents submitted to the Federal Energy Regulatory Commission (FERC) in FERC Docket No. RT01-67-000,² in response to the FERC's Order No. 2000, *et seq.*³ However, the GridFlorida

¹ The FMG is an *ad hoc* advocacy group. Each member of the FMG has intervened independently in this proceeding and reserves the right to express individual views at any time.

² See *GridFlorida*, 94 FERC ¶ 61,020 (2001) (accepting the GridFlorida filing in part and deferring action in part); 94 FERC ¶ 61,363 (2001), *reh'g*, 95 FERC ¶ 61,473 (2001) (granting GridFlorida provisional RTO status), *reh'g pending*.

³ *Regional Transmission Organizations*, FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), *reh'g*, FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A).

Companies were ordered to modify their proposal so as to follow an Independent System Operator (ISO) model, rather than a for-profit, asset-owning Transco.

Pursuant to this directive, the GridFlorida Companies filed their RTO proposal with this Commission on March 20, 2002. The filing is substantial, consisting of a Compliance Filing, Executive Summary, Cost Estimates, Formation Plan, RTO Articles of Incorporation, RTO Bylaws, Code of Conduct, Information Policy, Participating Owners Management Agreement (POMA), Agency Agreement, Supplemental Services Agreement, Market Monitor Articles of Incorporation, Market Monitor Code of Conduct, Market Monitor Tariff, and Open Access Transmission Tariff (OATT).

Consistent with the December 20, 2001 order, the modified proposal contemplates that the GridFlorida RTO will be structured as an ISO, specifically, a not-for-profit entity that will assume operational control, but not ownership, of transmission facilities within peninsular Florida. In addition to the new ISO structure and various other so-called conforming revisions, the GridFlorida Companies state that the new RTO proposal has been modified from the model filed with the FERC in three other respects: (i) at a transmission customer's option, bundled retail load will be exempt from zonal transmission charges for a five-year transition period; (ii) a get-what-you-bid approach has been adopted for balancing energy and redispatch; and (iii) the GridFlorida planning process has been revised, purportedly following the Midwest ISO model.

On April 3, 2002, the Commission issued Order No. PSC-02-0459-PCO-EI establishing a procedure for reviewing the modified GridFlorida RTO proposal. The order contemplated the filing of these pre-workshop comments by April 26, 2002, a workshop to be held on May 29, 2002, and post-workshop comments. Although not ordered at this time, the Commission did not preclude the possibility that a hearing may be convened following the workshop and comments. On April 12, 2002, Staff issued a memorandum identifying a list of issues to be discussed at the

workshop. On April 17, 2002, a Joint Motion was filed by certain interveners seeking an extension of time (until May 8, 2002) to file pre-workshop comments, as well as an increase in the page limit for comments (from 40 to 60 pages). The request was predicated on the need for additional time to respond to Staff's list of issues. The motion was granted on April 22, 2002 by Order No. PSC-02-0548-PCO-EI.

FMG INTERESTS and PARTICIPATION IN THE RTO DEVELOPMENT PROCESS

As the Commission is aware, each FMG participant is an integrated municipal electric utility owning and operating essentially localized generation, limited transmission, and distribution facilities. Each also operates its own control area.⁴ Unlike many of the other municipal and cooperative utilities integrated within the Florida Reliability Coordinating Council (FRCC) grid, each of the FMG members is essentially self-sufficient, mainly relying on FPC, FPL, and/or TECO not for network service, but instead only for reserve sharing and certain Order No. 888-grandfathered transmission services necessary to receive delivery of generation from remote plants in which they own or share interests and/or for short term transmission service to support short term energy sales or purchases.

Because of their relative self-sufficiency, the FMG participants have adopted a cautious approach to the RTO development process. They each understand the importance of coordinated utility operations and support competition. They are not interested, however, in volunteering for substantial negative cost shifts, or in abdicating control over those planning and operational aspects of their utility system activities that are almost wholly local in nature. The

⁴ KUA and Lakeland presently participate in the Florida Municipal Power Pool (FMPP) with the Orlando Utilities Commission (OUC) and Florida Municipal Power Agency (FMPA). OUC acts as pool operator, and in that capacity performs certain limited system dispatch functions for KUA and Lakeland. KUA has announced its intention, in the near term, to join FMPA's all-requirements project as a result of which its power supply requirements will be managed by FMPA.

FMG members have outlined these interests in the GridFlorida stakeholder process, as well as through their *ad hoc* group participation in various RTO-related proceedings before the FERC. Specifically, the FMG members have intervened and actively participated in the FERC's review of the GridFlorida RTO proposal (FERC Docket No. RT01-67-000), a mediation process initiated by the FERC to explore the possible development of a single RTO to serve the entire Southeast (FERC Docket No. RT01-100-000), and various generic FERC proceedings designed to implement, among other things, a standard RTO market design and generator interconnect procedures.

Tallahassee has an additional concern. Although located entirely within the Florida Reliability Coordinating Council (FRCC), Tallahassee's system is connected to the Southern Companies through a Tallahassee-owned 17.5-mile, 230 kV tie line that serves as a north-south link connecting Florida to the southeastern grid. Essentially, Tallahassee is dependent on its integration with both Southern Companies and FRCC for system reliability and economy issues. In light of this configuration, Tallahassee is particularly concerned with "seams" issues that may result from its location on the border of GridFlorida and a Southeastern Electric Reliability Council (SERC) RTO joined by the Southern Companies, such as having to pay pancaked rates to transfer power either north or south. For this reason, in addition to participating in the GridFlorida development process, Tallahassee is also one of a number of FERC non-jurisdictional utilities working with the Southern Companies and Entergy to develop the SeTrans RTO.⁵ Tallahassee has not committed to joining either GridFlorida or SeTrans, but is, instead, representing its interests on both fronts. Indeed, Lakeland, KUA, GRU, and Tallahassee will not

⁵ The SeTrans RTO has been described to the FERC in a series of documents, oral statements, and monthly status reports filed under the label "SeTrans RTO" in FERC Docket Nos. RT01-100, RT01-75, and RT01-77. Information about SeTrans is available on its Internet website (www.setransgrid.com).

make their decisions regarding RTO membership until they possess all of the data and information necessary to evaluate how the interests of their retail customers are best served.

EXECUTIVE SUMMARY OF COMMENTS

The FMG members are using these comments for several purposes. First, the comments are intended to provide the Commission with a brief overview of the FMG members' interests and history of participation in the RTO development process, both in the GridFlorida stakeholder forum and in proceedings before the FERC. Second, the FMG wishes to register its support for the Commission's decision to require GridFlorida RTO to follow an ISO model and to encourage the Commission to continue its proactive role with regard to GridFlorida's development. Finally, these comments specifically respond to Staff's request for input on a list of issues, as well as identify a variety of related issues that warrant discussion at the Commission workshop scheduled for May 29, 2002. Some of the more critical issues discussed in the comments include:

- ▶ *Commission Participation* - The FMG encourages the Commission to conduct a comprehensive review of the GridFlorida filing in this proceeding, notwithstanding that certain issues fall within the FERC's exclusive jurisdiction. Comments also outline a number of alternatives that would permit the Commission to have greater involvement in the formation of the RTO, as well as in its operation.
- ▶ *ISO Board Structure* - GridFlorida should be required to revise its Formation Plan and related documents to ensure that the Board is truly representative of stakeholders, particularly Florida's utilities, and not subject to "capture" by individual stakeholder sectors.
- ▶ *Controlled Facilities* - The rigid "69-kV-and-above" standard used to determine which facilities a participating owner is required to turn over to the RTO is unreasonable, forcing Florida's utilities to choose between joining the RTO and relinquishing operational control of facilities that are critical to the performance of retail distribution or staying out of the RTO altogether.
- ▶ *Transmission Planning* - The Commission should consider whether it is appropriate for GridFlorida to become the final authority when determining what transmission facilities are constructed. The FMG specifically objects to the RTO

possessing unilateral and unchecked discretion to direct a participating owner to invoke eminent domain rights.

- ▶ *Congestion Management* - The Commission should evaluate GridFlorida's "Physical Transmission Rights" model for congestion management against the standards being developed by the FERC. The FMG generally supports GridFlorida's commitment to preserve and protect existing uses in the allocation of firm transmission rights.
- ▶ *Installed Capacity Requirements* - The FMG opposes rigid installed capacity requirements. Rather than adopting such requirements, the Commission should determine whether existing utility planning and forecasting practices and obligations are sufficient to ensure long-term generation adequacy.
- ▶ *Balanced Schedules* - The FMG supports balanced schedule requirements as an important tool designed to ensure short-term reliability. However, the Commission should recognize the need for flexibility when determining the permissible alternatives for load serving entities to secure needed generation resources.
- ▶ *Pancaked Rates for Non-Participating Owners* - The Commission must ensure that Florida retail customers are not subject to artificial penalties that are designed to encourage participation in GridFlorida, but fail to reflect cost causation principles. Thus, GridFlorida's proposal to assess non-participating owners a pancaked rate should be rejected.
- ▶ *"Seams" Issue* - A critical issue in this proceeding is the impact of RTO formation on the FRCC/SERC interface. The Commission must ensure that entities, such as Tallahassee, who are located on the seam and dependent upon power originating in both the FRCC and SERC, are not penalized or unable to continue existing operations as a result of the development of separate RTOs for the FRCC and SERC.

COMMENTS

Below, the FMG members have identified various components of the revised GridFlorida RTO proposal that they either contest or upon which they believe further discussion is warranted. For the most part, the comments are intended to track the list of issues outlined by Commission Staff. Wherever possible, the FMG has attempted to outline its positions with regard to specific issues, as well as to offer the Commission alternatives to the GridFlorida proposal, but there are several issues upon which further discussion is required before a

position can be stated. The FMG hopes to have those issues addressed at the workshop and expects to clarify its views in post-workshop comments.

A. THE ROLE OF THE COMMISSION IN THE RTO DEVELOPMENTAL PROCESS

Staff's April 12, 2002, memorandum requested comments on the role the Commission should play in GridFlorida. Before addressing this issue within the context of specific components of the revised filing, the FMG members will state prefatorily that they each endorse the initiative taken by the Commission in convening this proceeding even as the FERC's RTO-building efforts continue in parallel. Obviously, the Commission's authority to direct GridFlorida's development is limited to the extent that the FERC possesses exclusive jurisdiction over wholesale transmission rates and services provided by public utilities subject to regulation under the Federal Power Act. For the purpose of the upcoming workshop, however, the Commission should not be particularly concerned with where its jurisdiction ends and the FERC's begins, or permit such concerns to deter a full and comprehensive review of all issues here. Indeed, this is neither the forum for debating jurisdictional issues, nor the stage of the process at which the parties should be particularly concerned with such issues.

The Commission's review and assessment of RTO issues in this proceeding has the potential to materially influence the FERC's ultimate resolution of certain overlapping issues within its jurisdiction. The FERC has indicated that it will issue a Notice of Proposed Rulemaking (NOPR) in Docket No. RM01-12-001 this summer addressing the various components of a standard RTO market design. The instant proceeding would seem a valuable forum for the Commission to evaluate market design issues in anticipation of presenting a comprehensive list of recommendations to the FERC in comments on the market design NOPR. The FERC has already issued a Notice of Proposed Rulemaking on generator interconnection

standards,⁶ a subject upon which this Commission has solicited specific input in a separate proceeding.⁷ Likewise, the Commission's review of such issues in this proceeding could impact how the state's investor owned utilities (IOUs) implement the FERC's ultimate directives.

Finally, this Commission has extensive jurisdiction under the Grid Bill to ensure the adequacy of the state's transmission grid.⁸ This authority is directly impacted by various elements of the GridFlorida filing, principally, the planning and operational protocol. The Commission should not hesitate to conduct a thorough review of these issues.

In short, the FMG members believe that the GridFlorida developmental process would be furthered significantly by a comprehensive review by the Commission of the entire GridFlorida RTO proposal in this proceeding. The FMG supports the Commission's decision to conduct this review, at least initially, *via* a workshop and comment process. First and foremost, the RTO process has been a learning process, and GridFlorida's new filing raises a host of new issues and a further opportunity to explore some that remain outstanding in the FERC GridFlorida compliance proceeding, all of which FMG members would like answered before they pass judgement. While a workshop should provide a forum to begin this process, the Commission should not, however, foreclose the possibility of more formal proceedings.

⁶ See *Standardization of Generator Interconnection Agreements and Procedures*, 99 FERC ¶ 61,086, slip op. issued in Docket No. RM02-1-000 (April 24, 2002).

⁷ On April 24, 2002, the Commission convened a workshop on generator interconnection standardization. (Undocketed)

⁸ The provisions of Chapter 366, Florida Statutes, referred to as the Grid Bill consist of Sections 366.04(2), 366.04(5), 366.05(7), and 366.05(8). Among other things, these provisions afford the 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 for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." FLA. STAT. ch. 366.04(5) (2001).

B. ISO GOVERNANCE, STRUCTURE, AND FORMATION

Staff's April 12, 2002, memorandum requested comments on various RTO structure and governance issues. Below, the FMG members comment on those issues most relevant to them.

1. ISO Structure (Commission's Role, Not-For-Profit Issue, etc.)

The December 2001 order made the fundamental determination that GridFlorida should not operate as a for-profit asset-owning Transco. Instead, the Commission directed the GridFlorida Companies to reconfigure the RTO as an ISO, leaving to them to propose what that ISO should look like. The GridFlorida Companies responded by proposing a fairly typical ISO structure under which participating transmission owners will relinquish operational control of their facilities to a not-for-profit, non-transmission-owning entity governed by a stakeholder-selected independent board.

The FMG members support this structure, and it is certainly preferable to a Transco. At the same time, however, the Commission should be aware that there are other ISO structures available. Notably, since GridFlorida's footprint will likely encompass only portions of a single state, it has alternatives that may not be available to other RTOs.

Options for Greater Commission Involvement - The opportunity for this Commission to participate in the GridFlorida RTO is certainly greater than what may be available to other state Commissions. Indeed, the Commission already possesses substantial oversight authority with regard to transmission planning,⁹ it has enacted generating reserve requirements,¹⁰ and

⁹ See FLA. STAT. ch. 366.04(2), 366.04(5), 366.05(7), and 366.05(8) (generally referred to as the "Grid Bill," the provisions outline much of the Commission's authority over transmission planning and operation).

¹⁰ See Order No. PSC-99-2507-S-EU (December 22, 1999) (approving a settlement under which the GridFlorida Companies committed to reaching a 20 percent reserve margin by 2004).

annually reviews utilities' ten-year plans.¹¹ The Commission should ensure that these mechanisms survive the state's transformation into an RTO.

Beyond merely ensuring that the Commission's planning review authority is preserved, the Commission may also want to explicitly carve out a role for itself in the ISO structure. Several alternatives are available to the Commission. First, the Commission could outline a role for itself in the RTO's stakeholder process. One alternative discussed by other RTOs is for state commissions to function in unofficial advisory roles to the stakeholder Advisory Committee and RTO board.¹² Second, the Commission could seek to oversee the functions of the Market Monitor, or even function as the Market Monitor.¹³ Third, the Commission could assert itself into the process used to select the GridFlorida's Board of Directors, such as by requiring a Commission Staff person(s) to sit on or advise the Board Selection Committee.¹⁴ For example, the Chair of the Public Utilities Commission of Texas serves as an *ex officio* non-voting member of ERCOT's Board of Directors.¹⁵ Finally, the State of Florida could enact legislation creating a

¹¹ See FLA. ADMIN. Code ch. 25-22.

¹² This option was specifically endorsed by Order No. 2000 as one avenue for state commission participation in RTO activities. See Order No. 2000 at 31,074-75.

¹³ The Commission has previously, in comments to the FERC, expressed an interest in playing a role in market monitoring, largely because the infrastructure needed to perform market monitoring already exists with the Commission. See Late Filed Comments of the Florida Public Service Commission at pp. 20-21, filed in FERC Docket No. RT01-67-000 on November 27, 2000.

¹⁴ For example, the New York ISO's board selection process contemplates that two members of the board Selection Committee will be employees of the New York State Department of Public Service selected by the New York Public Service Commission. See Article 5.02 of the New York ISO Agreement, available at <<http://www.nyiso.com/services/agreements.html>> (last visited on April 23, 2002).

¹⁵ See Section 3.2(a)(7) of the Amended and Restated Bylaws of Electric Reliability Council of Texas, available at <<http://www.ercot.com/AboutERCOT/PublicDisclosure/ByLaws.htm>> (last visited on April 24, 2002).

state-owned, not-for-profit entity to function as the ISO and assume operational control of transmission facilities located within the state. Such legislation could provide a role for the Commission.

For-Profit Versus Not-for-Profit ISO - The December 20, 2001, order left unresolved the issue of whether the ISO should be structured as a for-profit or not-for-profit entity. GridFlorida followed the not-for-profit approach and Staff's April 12, 2002, memorandum requested comments on the issue.

Frankly, so long as an ISO model is followed, rather than a Transco model, the FMG members have no strong feelings regarding whether a for-profit or not-for-profit structure is selected. The "for-profit" ISO structure is a rather new concept being pursued by some other RTOs, including Tallahassee, the Southern Companies, and others as part of the SeTrans RTO effort. Under this approach, participating transmission owners and stakeholders (and, presumably, the Commission as well) would essentially select and hire an outside entity – the Independent System Administrator or ISA – to serve as the ISO. Similar to GridFlorida ISO's structure, the SeTrans ISA would not own assets, but would, instead, assume operational control of transmission facilities and be paid a fee to manage those facilities.

Although the SeTrans ISA structure sacrifices the stakeholder board (or stakeholder-selected board) concept, it would ensure that an established independent entity is entrusted with the state's transmission facilities. The SeTrans ISA structure also highlights an incentive concept designed to encourage efficient and reliable grid operations. Specifically, in addition to a flat management fee, stakeholders would develop performance incentives that would enable the ISA to increase its profits if those incentives are met. Such incentives could, for example,

be tied to reliability and cost benchmarks.¹⁶ Variations of such incentives, in the form of salary bonuses, could be utilized in a not-for-profit ISO structure as well.

2. Selection and Make-Up of the ISO's Board

If the as-filed ISO approach is retained, the FMG members suggest modifying the board selection and director qualification process delineated in the Formation Plan, RTO Articles of Incorporation, and RTO Bylaws.¹⁷ As proposed, the seven-member GridFlorida board would be selected pursuant to a majority vote of a nine-member Board Selection Committee from a slate of 12 to 15 candidates put together by a search firm. The Board Selection Committee will consist of three IOU representatives, and up to six-other representatives from the various stakeholder sectors. Precise board member qualifications are not provided; instead, the qualification provisions merely list general requirements, such as directors must be similarly qualified to other directors of similarly sized corporations and must reflect a mix of backgrounds and experiences.¹⁸

¹⁶ The SeTrans ISA concept is discussed further in a variety of presentations posted on the RTO's website (www.setransgrid.com), particularly in a presentation summarizing the history of the SeTrans effort (<http://www.setransgrid.com/docs/history.pdf>).

¹⁷ The Board Selection process is discussed by Article III of the Formation Plan. Article VII of the RTO's Articles of Incorporation generally outlines the role of the Board of Directors in the management of the RTO. Article III of the RTO's Bylaws provides further information regarding the role of the board, and also specifies instances in which director independence may be questioned.

¹⁸ Article III of the Formation Plan provides a comprehensive outline for selecting the RTO's Board of Directors. Section 3.2 of Article III states that directors must "have qualifications equivalent to those of directors of corporations with equivalent or larger revenues and assets than anticipated for GridFlorida, Inc. and shall reflect, as much as practicable, a mix of backgrounds and experience (including, as appropriate, experience in areas such as finance, accounting, engineering, utility regulation, system planning or operations, utilizing transmission services, and/or commercial market trading or risk management); provided, however, that experience in the electric industry is not a prerequisite to serving as Director of GridFlorida, Inc. In addition, those persons selected as directors of GridFlorida, Inc. shall be of a caliber that will engender credibility in the marketplace and provide GridFlorida, Inc. with quality and experienced leadership."

The FMG is concerned that this process could facilitate “capture” of the board by certain stakeholder coalitions.¹⁹ Specifically, while the board is to consist of seven members, each director is to be selected by a majority vote of a nine-member committee (*i.e.* a vote of at least five of the committee members). As the IOUs are automatically entitled to three votes, they require only two other votes to form an absolute majority. If such a “coalition” forms and holds together, it would be able to appoint all seven board members, essentially negating participation by the four non-coalition members of the selection committee.

Other ISO structures have gone beyond merely permitting a stakeholder committee to select the board, taking steps to ensure that the board is responsive to stakeholder interests and entrusted with the expertise deemed necessary to efficiently and fairly operate the grid. For example, PJM’s seven-member board requires one member to be familiar with the operations of transmission dependent utilities, one member to have experience with transmission planning and operation, and one member to have expertise with commercial markets and training. The remaining four members must have experience with corporate leadership and/or finance, accounting, engineering, or utility regulation.²⁰ The Midwest ISO employs a similar structure designed to ensure Board diversity; it requires its 7-member board to include members with qualifications in four categories.²¹

¹⁹ In Order No. 2000, the FERC generally noted that an RTO’s board should not become isolated from stakeholders. See Order No. 2000 at 31,074. Although this discussion was largely in the context of ensuring that all stakeholder sectors have sufficient access to the board, the concern is even more pronounced when determining the make-up of the board and expertise of directors.

²⁰ See Section 7.2 of the Operating Agreement of PJM Interconnection, available on PJM’s website <www.pjm.com> (last visited April 23, 2002). The Operating Agreement itself can be accessed by clicking on the “Manuals and Documents” link. There is also a presentation on “PJM Governance Information” that can be accessed by clicking on the “Who We Are” link.

²¹ Specifically, four directors are to have experience in corporate leadership, one
(continued...)

PJM and the Midwest ISO are examples of ISO's that have retained non-stakeholder boards, but utilize director qualification provisions to shape the make-up of the board. Another concept is the "stakeholder board" in which an actual cross-section of market participants sits on the Board of Directors.²² This approach has lost popularity, likely because it was adopted by the California ISO and cited as a one of a number of flaws in that market structure.²³ However, ERCOT has successfully employed a type of stakeholder board consisting of 25 members drawn from generator, transmission and distribution, retail sales, wholesale sales, and consumer stakeholder sectors.²⁴ (Also, as noted above, the Chair of the Public Utilities Commission of Texas serves as an *ex officio* non-voting member of ERCOT's Board of Directors.)

Without necessarily copying any of these other formats or advocating a stakeholder board, the FMG suggests that the Commission consider taking steps to ensure that the GridFlorida board is, in fact, representative of all Florida utilities. It strikes the FMG that there are three different types of electric utilities under state law that will turn their facilities over to the ISO – municipal electric utilities, cooperative utilities, and investor owned utilities – and that

²¹(...continued)

director is to have experience with the operation of electric transmission systems, one director is to have experience with transmission planning, and one director is to have experience in commercial markets and trading and associated risk management. See Article III.A.2 of the Agreement of Transmission Facilities Owners to Organize the Midwest ISO, available at <http://www.midwestiso.org/documents/to_miso_agreement.pdf> (last visited April 23, 2002).

²² See generally Order No. 2000 at 31,073-74 (describing stakeholder and non-stakeholder boards without specifically mandating either).

²³ See *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California ISO and PX*, 93 FERC ¶ 61,121 at 61,359-60, 61,363-64 (2000).

²⁴ See Section 3.2(a) of the Amended and Restated Bylaws of Electric Reliability Council of Texas, available at <<http://www.ercot.com/AboutERCOT/PublicDisclosure/ByLaws.htm>> (last visited on April 24, 2002).

each should have a voice in ISO operations and be represented to some extent on the ISO's board. The Commission should consider and discuss at the workshop whether GridFlorida's director qualification or board selection provisions should be revised accordingly. For example, the director qualification criteria could be revised to provide that at least one director would have experience with Florida IOU systems, another would have experience with Florida municipal systems, and a third would have experience with Florida cooperative systems. Alternatively, the Commission could expand the Board Selection committee and/or take other steps to protect against the type of "capture" outlined above.

3. Public Openness

Staff's April 12, 2002, memorandum requested comments on the meetings that would be open to the public under the RTO's governance structure. The FMG has identified two specific issues warranting discussion under this heading.

First, Section 4 of the RTO Bylaws states that Board of Director meetings will generally be open to the public, and that such meetings may be conducted *via* conference call. However, Section 7 of the Bylaws inconsistently suggests that the only individuals that are entitled to participate in conference call meetings are members of the Board of Directors or any committee thereof. Thus, conducting Board of Director meetings *via* Section 7 conference calls would potentially close such meetings to the public. The FMG members believe this loophole should be closed. Although they do not object to conducting Board of Director meetings *via* conference call or other electronic mediums (such as broadcast over the Internet), all such meetings should be open to the general public, or at least to all *bonafide* stakeholders.

Second, Section 2.3.1 of the RTO Information Policy vests the Market Monitor with the unilateral discretion to determine that certain information for which public disclosure is ordinarily permitted may be detrimental to the operation of the market and, therefore, should not be made

public. In such cases, the RTO will not disclose the information and will make an appropriate filing at the FERC to amend the Information Policy. The FMG objects to entrusting such absolute discretion to the Market Monitor. Instead, decisions to withhold information should be subject to Commission review.²⁵ Alternatively, a process could be developed whereby the stakeholder Advisory Committee is provided a redacted explanation regarding the information the Market Monitor seeks to withhold, with the Advisory Committee then afforded the opportunity to petition the Commission to compel disclosure.

4. Market Monitor

Article VI of the Formation Plan contemplates the establishment of a separate Market Monitor corporation, along with independent procedures for selecting and appointing a separate Board of Directors. The Commission should evaluate whether it is necessary to go through the entire start-up process to establish a Market Monitor. As noted above, this is a role the Commission may want to assume. Alternatively, GridFlorida should simply hire an established, outside firm to perform the market monitoring function.

5. Definition of “Controlled Facilities”

Section 2.5 of the POMA defines “controlled facilities” as meaning “all of the 69 kV and above electric facility or facilities in the FRCC region, owned or leased by a PO, as provided in Attachment Q of the GridFlorida OATT.” Other provisions of the POMA – specifically Sections 1.1.1, 2.26, 3, and 7.7 – obligate participating owners to turn operational control over all such “69 kV and higher” facilities to the RTO, unless very limited exceptions are implicated, such as

²⁵ The “Energy 2020 Study Commission” recognized that, while the Commission’s jurisdiction with regard to RTO rates may be limited, the Commission should monitor the true competitiveness of wholesale markets, specifically by gaining “access to the books and records of market participants that are in possession of information relative to market problems.” The Final Report of the Florida Energy 2020 Study Commission at p. 75, available at http://www.myflorida.com/myflorida/government/taskandcommissions/energy_commission/ (December 2001). Enabling the Market Monitor to unilaterally decide which documents to withhold from public availability obviously contradicts this objective.

an operational transfer would compromise the tax-exempt status of a facility or participating owner. For most purposes, however, the “69 kV and higher” standard establishes a bright-line test for determining what facilities a participating owner is obligated to transfer to the RTO.

In the December 20, 2001 order, the Commission stated “that a uniform demarcation point is necessary to ensure equal access for all participating companies” and noted that “there [was] no evidence in the record suggesting that the demarcation point should be something other than 69 kV.”²⁶ Although the FMG generally agrees with the Commission’s conclusion that the definition of transmission facilities should not be set so as to arbitrarily dictate which transmission owners and transmission facilities are eligible to come under the RTO’s umbrella, the FMG also asserts that the December 20, 2001, order did not consider a serious concern that was not fully vetted in Docket No. 001148-EI, and that is explained below. The FMG asks that the Commission consider this issue with an open mind in this proceeding, recognizing that the definition of Controlled Facilities remains a disputed issue in GridFlorida’s RTO proceeding before the FERC,²⁷ as well as an issue that the FERC is likely to consider as part of its effort to develop a standard RTO market design.

Specifically, the FMG members object to a bright-line obligation to turn over all facilities nominally rated 69 kV or above on the grounds that the standard does not adequately characterize facilities as transmission or distribution, and would potentially compromise a utility’s ability to perform its distribution function. As noted, each FMG member operates a transmission and distribution system that, although interconnected with one or more

²⁶ See Order No. PSC-01-2489-FOF-EI at 17.

²⁷ On April 27, 2001, the FMG filed a Request for Clarification or Rehearing in the GridFlorida proceeding, Docket No. RT01-67-000, reiterating its concerns regarding the 69 kV standard. On June 28, 2001, the FERC issued an order indicating that it would address such rehearing requests in a future order. See *GridFlorida*, 95 FERC ¶ 61,473 at 62,693 (2001). To date, the FERC has not yet issued any such order.

transmission systems owned by others, is largely localized in nature. Lakeland, for example, operates a series of facilities having a voltage level at or in excess of the 69 kV standard that perform no discernable transmission function. By means of these facilities, Lakeland is able to interconnect twenty-one (21) retail distribution stations serving 100 percent of Lakeland's load. Most of these 21 retail distribution substations are loop-connected to each other for the sole purpose of providing added reliability of service to Lakeland's retail customers. None of the looped connections are necessary to serve load; all of Lakeland's retail load can be served radially. These same distribution facilities also directly connect all of Lakeland's generation sources to its network for the sole purpose of serving Lakeland's retail load.

Because of the localized function of these facilities, FMG members do not see that any legitimate RTO purpose would be served by requiring that their operation be turned over to GridFlorida. All that would result is that FMG members would have to undergo a layer of bureaucracy in the form of RTO review and approval every time they elect to expand and/or modify the use of such facilities. Certainly, to the extent that the management of GridFlorida wished to dispute the functional classification of a particular facility sought to be withheld by a participant, FMG would be willing to let this Commission or the FERC act as arbitrator. Moreover, FMG members understand that, by retaining operational control of these facilities (except to the extent covered by an Agency Agreement), they would be reducing the level of revenue requirement that they would otherwise be entitled to under GridFlorida's pricing structuring; this would be their choice. Finally, FMG members would be perfectly willing to consider any 69 kV and above facilities they may withhold from active RTO control under the POMA to be within the scope of the associated Agency Agreement. This would mean that the RTO would be permitted to direct the participating owner to provide third-party transmission

service by means of these facilities in certain circumstances, and subject to agreement as to a compensatory incremental rate for such service.

FMG members are each interested in GridFlorida participation, provided the price of that participation is not an undue loss of control over those systems upon which their retail constituents are directly dependent. Rather than force non-IOU transmission providers such as the FMG members to adhere to the artificial demarcation lines drawn by the GridFlorida Companies, the better course is to permit each new participant, in the first instance, to designate those facilities that it offers to contribute on Exhibit A to that participating owner's POMA. Disputes over whether facilities so listed should be excluded or facilities not listed should be added – to the extent such disputes cannot be resolved through negotiation between the RTO and the individual utility – can, as observed earlier, be referred to the FERC or the Commission for disposition.

6. Agency Agreement

GridFlorida's proposed Agency Agreement provides a mechanism by which the RTO may provide one-stop shopping to transmission customers *via* use of a utility's distribution facilities. The FMG requests clarification regarding two issues.

First, there is some ambiguity as to whether only entities participating in GridFlorida may execute the Agency Agreement with the RTO. This ambiguity is attributable to (i) the POMA and OATT's general use of the term "participating owner," as contrasted to the Agency Agreement's use of the term "transmission owner," and (ii) the Agency Agreement's failure to include a provision explicitly stating that only GridFlorida participating owners may execute the agreement, or that non-participating owners may execute the agreement as well. If the intent is for only GridFlorida members to execute the Agency Agreement, then these ambiguities should be clarified. Notably, Section 7.10 of the POMA, which describes the Agency Agreement,

should be modified to merely reference the Agency Agreement so as to eliminate any confusion or inconsistency regarding the description of the Agency Agreement in the POMA and the Agency Agreement's actual wording.

Second, on a related issue, the GridFlorida Companies should clarify whether the Agency Agreement, or a substantially similar agreement, may serve as the vehicle under which utilities may decline to join GridFlorida, but nonetheless avoid the pancaked charges contemplated by Schedule 7, Section 5 of the OATT (discussed further below). Such pancaked charges are applicable to non-participating transmission owners, and they are avoidable if the owner permits the RTO to use facilities at non-pancaked rates. An Agency Agreement would seem to be a sufficient means to eliminate pancaking, provided costs and revenues are appropriately and equitably allocated by the agreement.

C. PLANNING AND OPERATIONS

Pursuant to Staff's April 12, 2002 memorandum, below the FMG has identified planning and operations issues that should be reviewed in this proceeding.

1. THIRD PARTY EMINENT DOMAIN RIGHTS

As this Commission stressed in comments to GridFlorida's FERC filing in Docket No. RT01-67, the Commission – and not the FERC – is the entity centrally responsible for ensuring the reliability of Florida's transmission grid.²⁸ In those comments, the Commission outlined its considerable jurisdiction under the Grid Bill over the planning, development, and maintenance of a coordinated electric grid throughout Florida.

The Commission's comments to the FERC also questioned whether the GridFlorida Transco, as then proposed, would possess the authority to apply for siting and exercise

²⁸ See Late Filed Comments of the Florida Public Service Commission at pp. 8-9, filed in FERC Docket No. RT01-67-000 on November 27, 2000.

eminent domain authority.²⁹ The Commission raised this concern after noting that only one transmission line need determination had been made in the last 10 years (FPC's Fisher Springs - DeBary 230 kV line). In response to this comment, the FERC suggested that GridFlorida would be permitted to assert eminent domain authority through the divesting and participating owners.³⁰

The concern expressed by the Commission with regard to the GridFlorida Transco's eminent domain authority appears to be more pronounced under an ISO structure, since there are no divesting owners to "transfer" their eminent domain authority to the RTO, as suggested by the FERC. Specifically, if a participating owner elects to complete a project deemed necessary by the RTO, then the utility's eminent domain authority would be implicated and there is no eminent domain problem. By contrast, an eminent domain problem could arise if the designated participating owner declines the RTO's invitation to build a project, prompting the RTO to contract with another participating owner or third party, e.g. merchant transmission company, to build the facility. In this case, the third-party may not be able to acquire eminent domain authority.³¹

²⁹ See *id.* at p. 18.

³⁰ See *GridFlorida*, 94 FERC at 63,366-67.

³¹ The RTO's use of eminent domain authority was discussed in the Energy 2020 Commission's Final Report. It noted that limited transmission facilities may be constructed to connect a new generator to the Florida grid pursuant to the Power Plant Siting Act, See FLA. STAT. ch. 403.501-.518, and that transmission lines which are 230 kV or larger, cross a county line, and are 15 miles or longer in length may be constructed pursuant to the Transmission Line Siting Act, See FLA. STAT. ch. 403.52-.5365. The report went on to note, however, that the RTO would likely not qualify as an applicant under the various eminent domain provisions in Florida law because the RTO would likely not qualify as an electric utility, municipality, county, electric cooperative, joint operating agency, or a combination thereof. See Final Report of the Florida Energy 2020 Study Commission, *infra* note 25 at p. 93. Presumably, these same issues arise if a third-party merchant transmission provider, as contrasted to a state utility, seeks to construct a facility at the RTO's request.

The modified GridFlorida RTO filing proposes a remedy to this problem. While generally basing its planning protocol on the Midwest ISO model,³² GridFlorida has proposed its own eminent domain language. In Section VII of GridFlorida's Planning Protocol (Attachment N of the OATT), newly proposed language states that, once the RTO has determined that facilities are needed, designated participating owners will be afforded the first opportunity to construct those facilities. If the designated owner declines to construct a facility, then the RTO may pursue other alternatives, such as the solicitation of other transmission owners or "others," presumably third parties, to complete the project. Finally, the provision states that the designated owner that declines to construct a facility may, nonetheless, be obligated to facilitate an alternate arrangement by applying for any necessary certificates or deploying its own eminent domain authority.

Although this provision certainly clarifies how the RTO may indirectly exert eminent domain authority, the FMG questions whether it is a lawful and/or the appropriate clarification. The concern is that a Florida utility may be obligated to support a proposed facility in a condemnation proceeding, even when the facility is not designed to benefit the utility's own customers or the utility simply does not support the project. Although the entity responsible for operating and planning the system (*i.e.* the RTO) must have an avenue for enforcing a decision that new facilities are needed, there seems to be an inherent conflict in requiring an utility to defend in court an RTO-mandated taking that the utility may not support.

One solution to this conflict is to ensure that a third party acquires eminent domain authority when it commits to build a facility deemed necessary by the RTO. Indeed, this is precisely the solution proposed by the Governor's Energy 2020 Commission, adjusted to reflect

³² Appendix B to the Midwest ISO's Transmission Owners Agreement lists the ISO's Planning Protocol. The attachment is available on the Midwest ISO's website at: <http://www.midwestiso.org/documents/to_miso_agreement.pdf>(last visited May 6, 2002).

the ISO construct.³³ The FMG, therefore, recommends that the Commission determine what stand-alone statutory revisions are needed to accomplish this solution and proceed to have them proposed to the Florida legislature.

In the meantime, until legislative solutions are realized, the Commission should require the RTO to pursue several interim steps between assigning a project to a third party and instructing the designated participating owner to initiate condemnation proceedings. First, if a designated participating owner questions an RTO determination that a facility is needed, the RTO should be required to provide a written explanation justifying its determination. Second, if the designated participating owner declines the RTO's invitation to build a facility on the grounds that the facility is not needed, then the RTO (and/or alternative participating owner or third-party designee willing to construct the project) should be required to initiate a proceeding before the Commission to ensure that a proposed facility is, in fact, required to correct an inadequacy in the grid.³⁴ This interim step would enable the Commission to remain the final authority with regard to facilities constructed within Florida, while at the same time providing the designated participating owner with a forum to present its arguments. It is also similar to the remedy proposed to deal with situations in which a third party cannot be located and the RTO seeks to compel the designated participating owner to construct a facility. Finally, Attachment N should affirmatively state that an alternative participating owner or third party that has agreed to construct a facility in the place of a designated participating owner must engage in all

³³ See Final Report of the Florida Energy 2020 Study Commission, *infra* note 25 at pp. 11, 92-93 (recommending that the RTO, then envisioned as a Transco, be afforded eminent domain authority).

³⁴ Section 366.05(8) of the Public Utilities code empowers the Commission "to require installation or repair of necessary facilities, including generating plants and transmission facilities," upon a finding "that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry[.]"

reasonable efforts to negotiate any necessary property rights from affected landowners before requiring the designated participating owner to initiate condemnation proceedings.

2. TIMING FOR "ANNUAL TRANSMISSION PLANNING PROCESS"

Attachment N, Exhibit N.1 of the GridFlorida OATT outlines an "Annual Transmission Planning Process" under which the RTO will initiate the process *via* a request for data, provide an interim plan, accept comments, conduct a planning conference, and post a final plan. The timeline for this process is as follows:

- ▶ *At a Time Determined by the ISO* - the ISO will initiate its "Annual Transmission Planning Process" by posting a notice and request for data.
- ▶ *60 Days* - time period for network customers to provide information regarding the customers' expected usage of the system for the next 10 years.
- ▶ *Seven Months* - time period for the ISO to analyze data provided by network customers and post an initial plan.
- ▶ *30 Days* - time for comments to be filed on the initial plan.
- ▶ *Two Weeks* - deadline for ISO to convene a Planning Conference.
- ▶ *Ten Weeks* - time following Planning Conference for RTO to finalize plan.
- ▶ *Eleven Months* - duration of entire process.

The FMG suggests two revisions designed to add clarity and transparency to the process. First, the plan should be revised to specify an exact date for the process to begin and end each year. This would eliminate the ambiguity of the current "[a]t the time determined by the Transmission Provider" and within eleven months deadlines. Second, the current timeline is specified in a mixture of days, weeks, and months. For the sake of uniformity, all of these deadlines should be based on days. Alternatively, exact dates could be delineated.

3. Generator Interconnect Procedures

Section 6.5.1 of the POMA includes cursory language regarding generator interconnect procedures.³⁵ Standing alone, this section of the POMA leaves much to be desired in the form of details, raising issues such as which entity will own the interconnect facilities and execute the interconnection agreement. These issues are generally clarified by Section IV of the OATT.

For the sake of clarity, the FMG suggests that Section 6.5.1 of the POMA be revised to expressly provide that all interconnections will be governed by the OATT. Section 6.5.1 of the POMA notes that “[t]he rights and obligations of GridFlorida with respect to the interconnection of generation facilities to the Controlled Facilities are described in more detail in the GridFlorida OATT and the Planning Protocol.” The FMG suggests replacing the words “described in more detail in the” with the phrase “are governed in all respects by” to clear up any doubt as to which document is the final authority.

D. Market Design

Staff’s April 12, 2002, memorandum requested comments on market design issues, specifically identifying the use of physical transmission rights, method for determining flowgates, and pricing of ancillary services as issues that will be discussed at the workshop. Below the FMG has outlined its basic position on these issues.

1. Congestion Management (Physical v. Financial Rights)

Transactions Covered by Transmission Rights - GridFlorida’s congestion management model is outlined in Attachment P to the OATT. The model contemplates the use of “Physical Transmission Rights,” as opposed to “Financial Transmission Rights,” and is as primarily

³⁵ Obviously, these procedures are likely to change to reflect final rules that may ultimately be developed by the FERC or this Commission. As noted, the FERC has issued proposed rules and this Commission recently convened a workshop on interconnection standards.

designed to ensure that transmission right holders possess a physical right to transfer electricity through points of constraints (flowgates) in order to serve their customers.³⁶ The Commission's December 20, 2001 order endorsed the use of this model. It contrasted the Physical Rights Model, under which "customers are allocated capacity rights based on the physical capacity of the system[,] with a Financial Rights System, under which "the customer is placed in the same financial position as if they possessed the physical rights."³⁷ The Commission adopted the Physical Rights Model "for simplicity and additional security for serving retail load."³⁸

The FMG generally supports the GridFlorida model, primarily because it is designed to ensure that existing transmission customers are able to secure access to the transmission capacity they need to serve native retail load, and that the model encourages price certainty by not forcing right holders to compete for capacity in an open market. In short, under the model,

³⁶ In light of the evolving nature of congestion management vocabulary, adequately defining the terms "Physical Rights Model" and "Financial Rights Model" is difficult. In general, the FMG understands that a Physical Rights Model protects the right to utilize capacity on transmission facilities between designated sources and sinks or through flowgates. Specifically, the full capability of a designated facility is calculated, then allocated as transmission rights. If a transmission right is utilized in the scheduling process, the holder of the right is contractually entitled to an allocation of power and energy being transferred through a facility. Standing alone, a Physical Rights Model does not address congestion since, theoretically, the model only governs the allocation of transmission rights up to the transfer capability of designated facilities; a supplemental mechanism is required to allocate costs arising from the redispatch of generation resources on the load side of congested point.

By contrast, the FMG understands that a Financial Rights Model contemplates that the transmission right holder would be entitled to revenue derived from the use of a facility covered by the right. In a pure Financial Rights model, all transmission capacity would be offered to all market participants, regardless of whether a participant possesses a transmission right. The market participant actually acquiring the capacity (presumably through a bidding process) would be required to pay for the use of that capacity, with revenue then allocated to the entity holding a transmission right to the capacity. The value of such capacity generally turns on the level of congestion implicated to complete a specific transaction. Locational Marginal Pricing (LMP) methodologies calculate this value by comparing the difference between energy prices at two points.

³⁷ See Order No. PSC-01-2489-FOF-EI at p. 22.

³⁸ *Id.*

Florida utilities allocated transmission rights will know what capacity they are entitled to and what such capacity will cost.

The FERC appears to be embracing these same objectives, at least with regard to its understanding of transmission rights utilized in day-ahead markets. Specifically, in a Staff Discussion Paper issued on March 15, 2002, the FERC outlined a new "Network Access Service" that it intends to propose later this summer and discussed how transmission rights would function under the service.³⁹ The central feature of the model is that transmission right holders would possess a firm entitlement to transfer power between sources and sinks or through flowgates covered by their transmission rights. These rights would be recognized and honored in a day-ahead market; transactions covered by transmission rights that are scheduled in the day-ahead market would be exempt from paying real-time congestion costs, thereby ensuring price certainty:

A customer can achieve price certainty for Network Access Service by acquiring transmission rights. A transmission right allows the customer to schedule power from specific source(s) and sink(s) without having to pay congestion for service between those points.⁴⁰

* * *

Every day, the transmission operator would develop a schedule for use of the transmission system for each hour of the next day. The schedule would accommodate the requests of customers with transmission rights and those without, as well as transmission needed for delivery of purchases and sales made through the centralized energy spot market . . . Customers with transmission rights who want transmission service between their designated source and sink points [or through their designated flowgates] would schedule their desired service between those specific points, and would be charged for

³⁹ See *FERC Working Paper on Standardized Transmission Service and Wholesale Electric Market Design*, slip op. at p. 9, Unreported Working Paper issued in Docket No. RM01-12, available at <<http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/e-1finalSMD.PDF>> (March 15, 2002) ("FERC Discussion Paper").

⁴⁰ *Id.* at 8.

losses but not congestion . . . Transmission rights are either source-and-sink-specific or flowgate-specific[.]⁴¹

In short, based on this explanation in an admittedly preliminary Staff document, it appears likely that the FERC's proposed standard market design will include the use of transmission rights that, if invoked in a day-ahead market, would serve to protect a customer's physical right to transfer power between a source and sink or through a flowgate without paying congestion costs. (The Discussion Paper requested comments on whether the transmission rights should be flowgate specific or linked to source/sink combinations.)

GridFlorida's Physical Transmission Rights model appears conceptually similar to the FERC Discussion Paper, at least with regard to capacity covered by transmission rights. The FMG urges the Commission to recognize, however, that congestion management is very much a work-in-progress at the FERC, as well as throughout the industry, and that more attractive alternatives may emerge in the future. For example, as competition develops, RTOs may make greater use of Financial Transmission Rights. The Commission and GridFlorida should, therefore, closely monitor developments at the FERC and with regard to other RTOs and be prepared to react accordingly. Notably, there may be value in ensuring that, in the long-run, Florida's market structure is at least compatible with the market structure developed by the SERC RTO (SeTrans) neighboring GridFlorida to the north. Thus, the GridFlorida model should be sufficiently "expandable" to accommodate market evolution and phase-in market advancements without market interruption.

Flowgate Transactions Not Covered by (or in Excess of) Transmission Rights - The FERC Discussion Paper goes one step further than the scheduling of power in a day-ahead market, however, to recognize the use of Locational Marginal Pricing (LMP) for transactions

⁴¹ *Id.* at 9.

that are not scheduled in the day-ahead market or are otherwise not covered by transmission rights. For such transactions, a customer may be required to pay congestion costs calculated pursuant to LMP methodology:

The alternative to predetermined transmission prices under transmission rights is for the Network Access Service customer to schedule service by agreeing to pay for any congestion costs of a particular transaction. Congestion costs occur when the capacity of the grid is limited and it is not possible to transfer more energy across the grid from the customer's intended source to sink without compromising grid reliability. In this situation, the transmission provider will redispatch a more expensive generator on the other side of the constraint to deliver to the intended sink. The incremental cost of this "out-of-merit" redispatch is charged to customers who have not secured transmission rights. Customers who hold transmission rights would not be charged the redispatch costs.⁴²

* * *

If a customer with transmission rights for a specific source-sink pair (from A to B) wants transmission service between a different set of source and sink points (from C to B), the customer would need to pay the cost of congestion and losses for transmission service between those new points ([from] C to B).⁴³

* * *

Once all day-ahead transactions have been scheduled, any remaining transmission capacity will be made available for real-time transactions. Transactions that were not scheduled a day ahead would flow at a charge that covers the applicable cost of losses and any congestion associated with necessary redispatch. A customer with transmission rights between a specific source and sink that did not schedule transmission service between those points a day ahead could still obtain transmission service in real time. In that case the customer would pay the real-time congestion costs and losses. The customer would also receive the congestion revenues from the day-ahead market for those points.

* * *

Transmission prices (to recover congestion and losses) developed in the transmission market must be consistent with locational energy prices developed in the energy market. A locational energy price equals the delivered cost of electricity to that point, which equals the sum of the energy price plus its congestion cost plus the value of transmission line losses from the source to the sink. The difference in energy prices between two locations should equal the

⁴² *Id.* at 9.

⁴³ *Id.* at 10.

transmission price that will be paid by customers without transmission rights to transmit power between these two points.⁴⁴

This use of LMP to calculate, then assign, congestion costs to transactions not covered by transmission rights is an interesting concept that the Commission should explore further. If incorporated into the GridFlorida model, it would seem that LMP could be used allocate transmission capacity through flowgates in excess of scheduled transmission rights without upsetting the firm physical nature of scheduled transmission rights.

Non-Flowgate Congestion - Section 12.2.5 of Attachment P proposes to socialize-by-zone redispatch costs related to non-flowgate congestion. Initial Settlement Zones are the FPL, TECO, and FPC Settlement Zones, with additional zones added as new participating owners transfer control of their facilities to the RTO, or at any other time the RTO deems appropriate.

This proposal raises several issues warranting further discussion. One of the FMG's objectives is to avoid having to absorb congestion-related costs where they have had absolutely no responsibility for the creation of such congestion. Consequently, the Commission should explore at the workshop whether there are alternatives available to directly assign non-flowgate congestion costs to responsible parties. The LMP aspect of the FERC proposal outlined above would seem to accomplish this objective. Under this approach, transmission right holders would be permitted to schedule transactions through flowgates without fear of incurring congestion costs. However, market participants scheduling transactions in excess of their transmission rights, or scheduling power through non-flowgates that become congested, would be subject to any congestion costs related to completing such transactions, including redispatch costs, with such congestions costs allocated using LMP methodology.

⁴⁴ *Id.* at 10.

Additionally, if non-flowgate congestion costs are to be socialized, the Commission should reject the by-zone approach. For one thing, redispatch within a zone does not necessarily mean that the cause of congestion exists within that same zone. For example, if congestion in one zone results in parallel flow and corresponding redispatch in a second zone, allocating all redispatch costs to customers in the second zone would seem to ignore cost causation principles. Likewise, GridFlorida does not propose to use a by-zone approach when allocating costs related to the construction of new facilities to remedy congestion problems. Under the RTO's Pricing Protocol, the cost of new facilities will be allocated on a systemwide basis. If non-flowgate congestion costs are to be socialized, the same systemwide approach should be followed.

2. Allocation of Transmission Rights

Section 3.3 of Attachment P to the proposed OATT provides for transmission rights to be allocated to existing firm users (Existing Users) of transmission facilities, with an annual reallocation to account for load growth. Specifically, Section 3.3.1.1 of Attachment P specifies that the initial allocation of transmission rights is to be based on existing uses of point-to-point and network customers. Section 3.3.1.2 specifies that each Existing User has an equal opportunity to the allocation of the transmission rights necessary to preserve existing uses, and that *pro rata* allocation will be utilized if there are insufficient rights to accommodate all such existing uses. Finally, Section 3.3.1.3 provides for the reallocation of rights following each annual planning cycle to reflect load growth.

The FMG supports this allocation methodology. Consistent with the GridFlorida approach, the FMG members strongly believe that transmission rights should be allocated to reflect historical or existing uses, with periodic reallocations to accommodate load growth up to participating owners' investment in transmission facilities. The FMG does not oppose the

allocation of transmission rights not used by existing transmission owners to new market participants, in the short-term. However, such capacity rights must be recallable by Existing Users to protect reliability. Likewise, the FMG members would not object to discussing a use-it-or-lose-it condition under which other market participants would be permitted to use unscheduled capacity covered by transmission rights.

The FMG is opposed to the allocation of basic transmission rights *via* an auction process. Put simply, the FMG members are municipal electric utilities whose overriding responsibility is to deliver electricity to their retail customers. Their use of transmission facilities is wholly intended to serve this purpose, and not to broker transmission capacity or congestion rights for profit. They have no desire to compete in an auction for capacity on facilities they have built and/or on which they rely.

Finally, as noted, Section 3.3.1.1 of Attachment P specifies that the initial allocation of transmission rights is to be based on existing uses of point-to-point and network customers. The FMG members seek to ensure that this deference to existing uses does not obviate the need to correct flaws in such uses. For example, the Commission must recognize that parallel path flow problems need to be taken into account when allocating firm transmission rights, as well as when defining the nature of such rights. Specifically, when allocating transmission rights based on existing usage, some procedure needs to be in place to ensure that an existing use is consistent with contractual rights, and that unauthorized parallel flows are neither continued under RTO operations, nor incorporated into firm transmission rights that are allocated to the offending transmission customer (*i.e.* the entity flowing power over a line in excess of the capacity purchased on the line.) Likewise, unauthorized flows should not prevent transmission customers from realizing the full value of their transmission rights. Put simply, firm

transmission rights should not cover unauthorized parallel flows and legitimate transmission rights must not be diminished by such parallel flows.

Similarly, to the extent that additional capacity is available on a facility constructed by an existing user, the existing user should periodically be allocated firm transmission rights to that capacity in response to load growth, with the RTO taking whatever steps are necessary to protect such rights against pre-existing, but unauthorized, parallel path flows. In other words, if an existing use is an unauthorized use, an exception is needed from the methodology used to allocate transmission rights to existing uses. Indeed, the transmission capacity supporting the unauthorized use should be reflected in a transmission right that is then allocated to the utility owning the line or with a superior claim to capacity on the line.

3. Overgeneration (Decremental Bid Evaluation)

New Section 8.6.5 of Attachment B to the OATT provides a mechanism for the RTO to deal with overgeneration issues. Under the mechanism, the RTO will retain the authority to accept voluntary decremental bids (*i.e.* bids to decrease generation). Section 9.2 of Attachment B provides a mechanism under which Scheduling Coordinators are to submit incremental and decremental bids, with the RTO using such submissions to develop a bid stack. If such voluntary bids are insufficient to alleviate an overgeneration issue, the RTO may order an Internal Control Area to decrease the generation in that area.

The FMG requests clarification as to exactly how decremental bids will be calculated, whether such bids and/or calculations will be subject to review, and whether the RTO will be entrusted with the authority to reject decremental bids determined to be anticompetitive. The concern is that generators may be able to exert market power by setting their decremental bids at an artificially high level if the RTO is automatically required to accept those bids. This is an issue that has recently been brought to the FERC's attention and may be reviewed in the

context of a standard market design,⁴⁵ but that should not preclude the Commission from reviewing the issue in this proceeding.

4. Installed Capacity Obligations

Attachment W to the OATT specifies that GridFlorida will impose an Installed Capacity and Energy Obligation at such time that it is able to implement this requirement. The FMG is opposed to rigid installed capacity requirements. Although such requirements may produce reliability reserves, they also fall short of achieving regional efficiencies. Specifically, if each load serving entity is required to comply with uniform standards, the RTO misses the opportunity to balance one entity's excess reserves against another entity's shortage of reserves. Likewise, installed capacity markets utilized by other ISOs have not succeeded in encouraging the development of generation as originally envisioned. Instead, such markets have actually been counterproductive, creating the opportunity to earn a premium on generation resources that can only be realized when generating resources are short.⁴⁶

Rather than endorsing installed capacity and energy requirements, the Commission should evaluate whether the combination of existing planning obligations and the ability of market participants to respond to market-driven price signals is sufficient to ensure long-term generation adequacy. Specifically, long-term generation adequacy – which installed capacity requirements are designed to guarantee – refers to the forecasting load serving entities perform

⁴⁵ In December 2001, the California ISO filed an OATT amendment seeking to impose a price cap on decremental bids. It noted that, while a FERC-imposed market mitigation plan capped the incremental bids generators may submit as their price for increasing generation, a similar cap had not been imposed on decremental bids submitted by generators as their price for decreasing generation. The California ISO stated that such a cap is needed since certain decremental bids it had received exceeded the incremental bid price cap. On February 26, 2002, the FERC issued an order outlining the California ISO's amendment, and accepting and suspending it for five months subject to further review. See *California Independent System Operator*, 98 FERC ¶ 61,187, at 61,180-81, n. 3 (2002).

⁴⁶ See generally, FERC orders issued in the ISO New England proceedings at Docket No. EL00-62 regarding installed capacity requirements.

to ensure that they have access to the supplies needed to meet future changes in demand. It is essentially an element of planning that the vast majority of load serving entities generally perform today. Ensuring long-term generation adequacy may entail the execution of long-term bilateral contracts, building generation, or instituting demand response programs. As the Commission is well-aware, Florida utilities already undertake such planning, with some oversight, in order to ensure the continued reliability of their systems and ability to meet the needs of Florida retail customers. Forecasting the needs of retail customers is not something that can be easily replicated through a generic installed capacity requirement. Instead, it requires each load serving entity to evaluate and anticipate their customers needs and respond accordingly.

5. *Balanced Schedules*

A number of provisions, including Attachment P to the OATT, require load serving entities to submit balanced schedules. In its December 2001 order, this Commission specifically endorsed the use of balanced schedules, at least until a competitive market develops.⁴⁷

As the Commission is likely aware, the FERC's standard market design initiative, undertaken in Docket No. RM01-12, encompasses a review of balanced schedules and installed capacity requirements. Specifically, in the Discussion Paper issued on March 15, 2002, the FERC suggested that its proposed rules, due out this summer, will likely not include a balanced schedule requirement.⁴⁸ Additionally, in an Options Paper issued on April 10, 2002,

⁴⁷ See Order No. PSC-01-2489-FOF-EI at p. 20.

⁴⁸ See FERC Discussion Paper, *infra* note 39 at p. 14.

the FERC outlined a variety of options, primarily operating reserve requirements, that could be employed in place of balanced schedules to ensure short-term/real-time reliability.⁴⁹

The FMG supports GridFlorida's use of a balanced schedule requirement in light of peninsular Florida's relative isolation from the rest of the grid and limited import capability. In Comments to the FERC's Discussion Paper, however, the FMG noted that it is not fundamentally opposed to the FERC's belief that balanced schedules should not be required, and that permitting unbalanced schedules may increase the supply and diversity of generation available in the market. At the same time, however, the FMG cautioned the FERC against considering balanced schedule requirements on a stand-alone basis. A balanced schedule requirement is but one type of tool available to a system operator; if it is removed from the operator's toolbox, the FERC must ensure that other mechanisms are available to balance the system and protect reliability. The FMG also counseled that the FERC should be deferential to RTOs requesting deviations from a standard market design in order to impose a balanced schedule requirement, particularly when an RTO oversees an underdeveloped balancing market or faces other operational challenges.

In comments to the FERC's Option Paper, the FMG opposed the use of rigid operating reserve requirements as a means to ensure that load-serving entities possess access to the resources necessary to meet the day-to-day demands of their customers, to account for real-time swings in demand, and to respond to contingencies, such as the loss of a generating unit. For this real-time function, the FMG members asserted that flexibility is key. Rather than mandating a single approach, the FMG urged the FERC to afford load serving entities a variety

⁴⁹ See *Options for Resolving Rate and Transition Issues in Standardized Transmission Service and Wholesale Electric Market Design*, slip op. at pp. 13-17, Unreported Options Paper issued in Docket No. RM01-12, available at <<http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/RM01-12-04-10-02.pdf>> (April 10, 2002) ("FERC Options Paper").

of options to meet real-time demand fluctuations. Such options may include self-providing operating reserves, participation in reserve sharing groups (such as the one operated by the FRCC utilities), purchasing reserves from generators in real-time markets, procuring call options on generators, or utilizing ancillary services provided in RTO administered markets.

Against this backdrop, the FMG believes that this Commission should continue to support the use of balanced schedules and encourage the FERC to permit GridFlorida to adopt such a requirement. At the same time, however, the Commission should recognize the value of flexibility when determining how a load serving entity secures the generation resources necessary to balance load. This multi-faceted approach would ensure the reliability of the Florida grid while promoting the maximum and efficient utilization of generating resources.

E. Pricing Protocol and Rate Design

Pricing is clearly an important issue for the Commission and FMG members, particularly since RTO charges will be assessed to all of the participating owners and, ultimately, passed through to retail customers. In light of FERC initiatives, the GridFlorida pricing proposal is rapidly becoming outdated in several key respects. Specifically, as noted above, the FERC is poised to propose a new "Network Access Service" to replace existing network and firm/non-firm point-to-point services. Thus, GridFlorida's proposal is likely to undergo a significant overhaul in the future. Nonetheless, the following issues should be reviewed in this proceeding and discussed at the workshop.

1. Five-Year Exclusion of Retail Load

Under GridFlorida's proposal, a participating owner would retain the option to exempt its bundled retail load from zonal transmission charges over a five-year transition period. For any GridFlorida Company "opting out" during this period, the Commission would continue to set its revenue requirement for existing transmission facilities used for bundled retail transmission

service. The Grid Management Charge (“GMC”) and new facilities charge will be imposed on all participating owners on a systemwide basis.

The conversion of bundled retail load to the new Network Access Service is one of the issues on the FERC’s RTO agenda. Specifically, in its Options Paper, the FERC discussed three conversion options, two of which would require bundled retail load to be converted to Network Access Service upon implementation of a standard market design. The third would be to permit regional variations.⁵⁰

In general, the FMG does not believe that conversion is a regional issue for which each RTO should be permitted to chart its own course. Beyond this issue, however, the broader considerations have to do with the timing and terms of conversion. Until precise cost information is available, it is premature to make a specific recommendation. As a broad principle, this Commission should advocate a conversion methodology that preserves the historical uses of transmission facilities and the historical costs to retail customers. To the extent that cost shifting is expected, the Commission should stress that such costs should be mitigated to the extent possible, and that cost shifts are phased-in, rather than imposed immediately upon initiation of RTO operations.

2. Establishing the Revenue Requirements for Nonjurisdictional Utilities

Under the GridFlorida proposal, a public utility would submit its revenue requirements to the FERC for review and ultimate inclusion in RTO rates. (The Commission would continue to set retail rates for those utilities that select the five-year transition option). Utilities that are not subject to the FERC’s jurisdiction would submit their revenue requirements to GridFlorida, which would then file those revenue requirements with the FERC for inclusion in RTO rates.

⁵⁰ See *id.* at pp. 9-11.

GridFlorida would be under no obligation to defend nonjurisdictional utilities' revenue requirements in a FERC filing. Instead, GridFlorida will simply abide by any FERC ruling.⁵¹

The FERC's jurisdiction over a nonjurisdictional utility's revenue requirement is largely an unsettled matter. In Order No. 2000-A, the Commission clarified that it did not intend, in that order, to explicitly extend its jurisdiction to nonjurisdictional utilities' revenue requirements.⁵² In other contexts, the FERC has determined that it has the jurisdiction to review the revenue requirements of nonjurisdictional utilities that voluntarily submit their revenue requirements as part of an overall RTO rate.⁵³

The FMG participants are not subject to FERC's jurisdiction under the Federal Power Act. They recognize the possibility that the FERC could disallow their revenue requirements as an unjust or unreasonable component of GridFlorida's FERC jurisdictional transmission rates. This proceeding is not the proper forum to debate the legality of such an exertion of jurisdiction. At the same time, however, the FMG members want to preserve all of their options should the FERC disallow their revenue requirements.

In this respect, GridFlorida should be required to expressly permit a FERC nonjurisdictional participating owner to withdraw from the RTO if the FERC disallows a portion of the participating owners' claimed revenue requirement. The FMG recommends that Section 9 of the POMA, which governs the withdrawal of facilities, be revised accordingly. That section generally requires a 12-month advance warning before withdrawal of facilities, unless (i) the participating owner permits GridFlorida to retain operational control of facilities, or (ii) a favorable ruling regarding an owner's tax exempt status is reversed. A third exception to the

⁵¹ See Section 8.2 of the POMA.

⁵² See *Order No. 2000-A*, FERC Stats & Regs. at 31,371-72.

⁵³ See *City of Vernon*, 93 FERC ¶ 61,103 at 61,285 (2000).

12-month notice provision should be carved out for FERC disallowance of a nonjurisdictional participating owner's revenue requirements.

3. PANCAKED RATES FOR NON-PARTICIPATING OWNERS

In Section 5 of Schedule 7 of the OATT, GridFlorida has proposed to charge pancaked rates to non-participating FRCC transmission owners. This would be accomplished by requiring shippers having a source in one GridFlorida zone and a sink in another to pay both zonal rates, as well as the System-Wide Access Charges and GMC. On energy exported from the RTO in a non-participating owner transaction, the zone charge for the source would be added to the through-and-out rate. (This pancaking would not apply to FRCC transmission owners that participate in another RTO, or who provide point-to-point and network service on their own facilities at non-pancaked rates.⁵⁴)

Although these types of charges appear to be designed to encourage RTO participation, they essentially function as penalties and should be eliminated, or at least severely limited, so as to accommodate the legitimate reasons a utility may have for electing not to join an RTO. For example, if RTO participation would somehow cause a municipal electric utility to lose its tax-exempt status, surely the utility should not be penalized for non-participation.

More broadly, however, this Commission should consider seriously whether it is appropriate to penalize utilities within the state if, in fulfilling their duty to provide the most reliable service to their customers at the lowest rate, they elect not to join the RTO. In general, FMG member-systems are each localized in nature and are not critical from a commercial standpoint, except for their own retail purposes, to the Florida high-voltage grid. Certain

⁵⁴ This latter option appears to contemplate that the non-participating transmission owner would provide service over its facilities free-of-cost. While the FMG members are more than willing to negotiate coordination and/or seams agreements (as well as Agency Agreements, as discussed above), they are strongly opposed to providing the RTO with unlimited access to their facilities without receiving compensation.

elements of the GridFlorida concept – such as the forced transfer of all 69 kV facilities – may make joining the RTO operationally unreasonable. Likewise, in light of their historic success with cost containment, participation in the GridFlorida RTO could have profound retail rate impacts for some FMG members, depending on the nature of the final pricing structure.

In short, there are a variety of legitimate reasons a Florida utility may decide not to join the RTO, at least initially, and the utility should not be penalized for making this decision, particularly since neither the legislature nor this Commission has mandated participation in RTOs. To remedy the problem, the Commission should instruct GridFlorida to eliminate the pancaked rate and assess non-participating owners the same rates as would be charged if they joined the RTO. Conversely, the RTO should have the full authority to negotiate with non-participating transmission owners for service on their facilities. This solution would accomplish the central RTO objective of integrating the transmission grid, while at the same time enabling Florida utilities to analyze the value of joining GridFlorida without threat of being penalized.

4. Import / Export Pricing (Seams Issues)

The Commission must address seams issues in this proceeding. Specifically, it must ensure that the Florida utilities that are located on peninsular Florida's borders, with facilities interconnected to both FRCC and SERC facilities, are not forced to pay two RTO rates depending on whether they flow power to or from the north or south.

This is one of Tallahassee's principle RTO concerns. As the Commission is aware, Tallahassee's system is located on what is currently the border of GridFlorida and SeTrans. Its facilities operate as a bridge between peninsular Florida to the south and the southeastern grid to the north, and it utilizes flow in both directions. As such, depending on which RTO Tallahassee joins, if any, it could find itself routinely having to pay both SeTrans and GridFlorida rates, depending on which direction power is flowed, even though such transactions will utilize

few, if any, of either of the RTO's facilities. In such cases, rates must be designed so as to ensure that Tallahassee pays for only the facilities it actually uses. Thus far, GridFlorida has shown virtually no interest in resolving these concerns.

Several solutions are available. For example, the FERC has highlighted this issue with regard to its proposed Network Access Service. Under the service, customers would pay an "Access Charge" to secure access to RTO facilities. In its April 10, 2002, Options Paper, the Commission requested comments on whether and/or how such charges should be imposed on exports and wheel throughs.⁵⁵ In comments on the paper, the FMG is urging the FERC to adopt exemptions or accommodations that explicitly recognize that transmission owners located on RTO borders are not forced to pay the rates of multiple RTOs when, in the continuation of their historical transmission services, they flow power from and to both RTOs. This Commission should advocate the same position.

Likewise, the Commission should impose a requirement that GridFlorida negotiate a seams agreement with SeTrans, or whatever other RTO may ultimately share GridFlorida's northern border. Not only is such an agreement critical to Tallahassee, it is vital to ensuring that peninsular Florida does not become further isolated from the SERC grid.

5. NEW TRANSMISSION INVESTMENTS

As the FMG understands the GridFlorida proposal, the costs associated with new facilities – *i.e.* "New Transmission Investments," defined as the revenue requirement associated with facilities placed into service after January 1st of the year the RTO goes into operation⁵⁶ – will be recovered *via* a systemwide charge.⁵⁷ The FMG generally supports this proposal as a

⁵⁵ See FERC Options Paper, *infra* note 49 at pp. 6-7.

⁵⁶ See Section 1.26A of the proposed GridFlorida OATT.

⁵⁷ See Attachment I to the proposed GridFlorida OATT (providing for the inclusion
(continued...))

needed transition to postage stamp rates. It is concerned, however, that the definition of new facilities could result in a type of subsidization whereby a participating owner's delay in constructing needed facilities may result in the inappropriate allocation of costs to RTO-wide rates when such rates should be included in the participating owner's zonal rate.

For example, long-standing inadequacies in the transmission grid may have produced persistent unauthorized parallel path flows. If these inadequacies had been addressed on a timely basis, the facilities needed to correct the unauthorized flow would have already been built prior to January 1st of the year the RTO goes into operation. Consequently, the costs would have been allocated to a participating owner's zonal rate. By delaying construction until after January 1st of the year the RTO goes into operation, however, the participating owner effectively shifts the costs from its own zonal rates to systemwide rates, thereby avoiding any direct responsibility for the parallel flow problem and requiring all market participants to share in remedial costs.

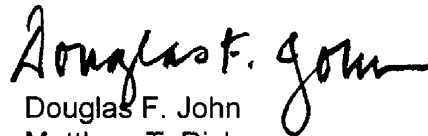
At this time, the FMG does not propose an alternative to address this issue. Instead, it requests that the Commission discuss the issue at the workshop, recognize that the costs associated with correcting long-term facility inadequacies should be allocated to the zonal rates of the responsible participating owner, and direct the GridFlorida companies to propose an appropriate solution.

⁵⁷(...continued)
of New Transmission Investments in the calculation of "Annual System Transmission Costs); Section 1.43A of the proposed GridFlorida OATT (defining the "System-Wide Rate" to include Annual System Transmission Costs).

CONCLUSION

WHEREFORE, the FMG requests that the concerns and recommendations set forth above be considered by the Commission when identifying discussion items for the May 29, 2002 workshop, and when reviewing the GridFlorida RTO proposal.

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I **HEREBY CERTIFY** that a copy of the foregoing Comments of Lakeland Electric, Kissimmee Utility Authority, Gainesville Regional Utilities, and the City of Tallahassee, Florida, has been furnished by U.S. Mail to the following this 8th day of May, 2002.

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