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June 21, 2002

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee FL 32399-0850

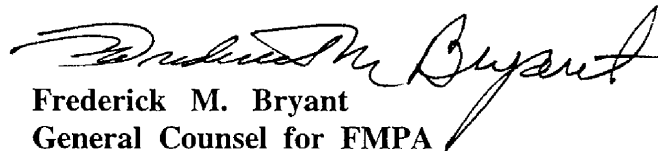
BY HAND DELIVERY

Re: 020233 - EI / Post-Workshop Comments of Florida Municipal Power Agency

Dear Ms. Bayó:

Enclosed for filing in the referenced docket are the original and fifteen copies of the Post-Workshop Comments of Florida Municipal Power Agency. Also enclosed is a diskette containing an electronic version of the filing in Word format.

Sincerely,

  
Frederick M. Bryant  
General Counsel for FMPA

FMB / eL  
encl.

cc: FLORIDA MUNICIPAL  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Review of GridFlorida Regional  
Transmission Organization (RTO) Proposal** )  
 ) **DOCKET NO. 020233-EI**  
 )

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**POST-WORKSHOP COMMENTS OF  
FLORIDA MUNICIPAL POWER AGENCY**

Pursuant to the Commission’s April 3, 2002 “Order Establishing Procedure” in the above-captioned docket,<sup>1</sup> the Florida Municipal Power Agency (“FMPA”) submits its post-workshop comments on the compliance filing submitted by the Applicants<sup>2</sup> in response to this Commission’s December 20, 2001 order regarding GridFlorida.<sup>3</sup>

These post-workshop comments follow the same organization of FMPA’s pre-workshop comments, which track the subject headings in Commission’s Staff’s April 12, 2002 memorandum:<sup>4</sup> (1) structure and governance, (2) planning and operations, (3) market design, and (4) pricing protocol and rate design. To summarize FMPA’s comments, through concessions made by Applicants during the workshop process, some headway was made to address FMPA’s concerns, as expressed in our pre-workshop comments, regarding governance and planning. However, even with those limited modifications, FMPA remains concerned that the Applicants’ revisions to the FERC-filed GridFlorida proposal (and, in some cases, their failure to revise problematic provisions) may unnecessarily impair GridFlorida’s ability to realize the benefits

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<sup>1</sup> Order No. PSC-02-0459-PCO-EI, *In Re: Review of GridFlorida Regional Transmission Organization (RTO) Proposal*, Docket No. 020233-EI (April 3, 2002).

<sup>2</sup> The GridFlorida Companies are Florida Power & Light Company (“FPL”), Florida Power Corporation (“FPC”), and Tampa Electric Company (“Tampa Electric”) (collectively, “Applicants” or “GridFlorida Companies”).

<sup>3</sup> Order No. PSC-01-2489-FOF-EI, *In re: Review of Florida Power Corp. ’s earnings, including effects of proposed acquisition of Florida Power Corp. by Carolina Power & Light*, Docket Nos. 000824-EI *et al.* (December 20, 2001) (hereafter “GridFlorida Order”).

<sup>4</sup> Memorandum from Cochran Keating, Senior Attorney, Office of General Counsel, FPSC to All Parties of Record Re: Docket No. 020233-EI--Review of GridFlorida Regional Transmission Organization (RTO) Proposal (April 12, 2002).

that the Commission expects an RTO to provide as a result of planning and operating Florida's transmission system on an integrated, transparent, statewide (or region-wide) basis, vesting those functions in an RTO that is independent of market participants, and fostering wholesale competition among existing market participants. Further, this Commission should not let Applicant's use this process as a shield against FERC review of aspects of their compliance filing that remain pending at FERC or which backtrack on proposals already approved or still pending at FERC.

## **I. STRUCTURE AND GOVERNANCE**

In its Pre-Workshop Comments, FMPA observed that Applicants' compliance filing included inappropriate procedures for selecting and removing Board members, and that it failed to ensure the Board (once seated) would be adequately informed by stakeholder views, free of *ex parte* contacts, and subject to effective public meeting requirements. At the Workshop, Applicants agreed to make certain changes (especially with regard to the public meeting requirements), and the Commission suggested additional modifications that could bolster GridFlorida's governance. FMPA appreciates these efforts and believes that, if appropriately implemented in a subsequent compliance filing, they may resolve FMPA's concerns on some issues. However, as discussed below, additional modifications will be necessary to ensure that GridFlorida's governance is independent, robust, and transparent.

### ***A. Board Member Selection and Removal***

One area where further modifications are needed involves the processes for selecting and removing GridFlorida's Board members. Previously, in the FERC-filed proposal, the Board Selection Committee was to perform the one-time task of selecting GridFlorida's initial directors. Directors would be removed (if necessary), and subsequent directors would be

selected, by GridFlorida's voting shareholders or their representatives.<sup>5</sup> While the Board Selection Committee was weighted toward the Applicants, that imbalance was justified by the claimed need for each divesting utility to have a voice in selection of the directors and was mitigated by the one-time nature of the Committee's role. Now, however, with an ISO structure, Applicants propose to maintain the Board Selection Committee with its undue weighting in perpetuity, to give it permanent responsibility for both selecting and removing GridFlorida's directors, and to have it conduct its business under a veil of confidentiality. *See* RTO Formation Plan §§ 3.3-3.4, 3.7-3.8; Articles of Incorp. VII.C, VII.E, IX; By-Laws Arts. II § 3, III § 2.

In their comments at the Workshop, Applicants attempted to portray this expansion of the Board Selection Committee's role as the only logical way for a non-profit ISO (as opposed to a Transco) to provide for ongoing selection of new directors and removal of directors when necessary. *See, e.g.*, Transcript at 15:7-17:9. In fact, it is not. FMPA has argued that such responsibility should be vested in the Advisory Committee, which has more balanced representation than the Board Selection Committee, and it has pointed out that both PJM and the Midwest ISO conduct open Board selection and removal procedures in which all members (*i.e.*, all stakeholders) vote. *See* FMPA Pre-Workshop Comments at 7-8 & nn.14-15, 17.

At the workshop, Applicants continued to resist transferring responsibility for these tasks to the Advisory Committee, but their arguments focused only on issues related to the selection of Board members, not removal. FMPA wishes to reiterate that Board selection and removal are distinct tasks that need not be vested in a single body. Indeed, there are persuasive reasons for them not to be. Thus, FMPA is willing to relent from its position that the Advisory Committee

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<sup>5</sup> Under the GridFlorida Articles of Incorporation, Article VII, voting "Class A" shareholders (which POs could not be) made all Board election decisions after the initial slate was seated, except that the remaining term of vacant

be responsible for selecting GridFlorida's Board, provided (a) that responsibility for removing GridFlorida's directors be given to the Advisory Committee, and (b) that appropriate adjustments be adopted to make the Board Selection Committee more representative and its decision-making process more transparent.

#### 1. Removal of Board Members

To begin, FMPA and the Applicants are in agreement that "the board should be responsible to somebody other than just themselves," Tr. at 16:14-15 (comments of Michael Naeve), and that a body composed of stakeholders should be responsible for removing directors when necessary and selecting subsequent directors, *see id.* at 22:1-15. The questions are: what body, and how should it be composed? But both of Applicants' arguments in favor of the Board Selection Committee (constituted as they proposed) and against the Advisory Committee are geared toward the question of who selects the Board. Neither bears on the question of removal.

First, Applicants focus on the relative sizes of the two committees. Applicants argue that "there is a competing tension here," that you want the stakeholder group to be big enough to provide diverse representation of all stakeholder groups, but that you also want it to be "a small intimate working group so that when parties come in to be interviewed for positions they aren't confronted with an army of people." Tr. at 22:8-15. Applicants also argue that a small group is necessary in order to avoid jeopardizing the confidentiality that Applicants claim interview candidates expect. *Id.* at 22:16-25. However, concerns about interview logistics and about candidates' expectations of confidentiality do not apply in the context of director removal.<sup>6</sup>

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Board seats was filled by seated directors.

<sup>6</sup> Applicants may argue that removal decisions — or at least the deliberative process behind them — should be kept confidential and that the need for such confidentiality weighs in favor of placing such responsibility in the smaller Board Selection Committee. As discussed below, FMPA disagrees with the impulse to keep such matters

Second, Applicants claim that the Board Selection Committee is better suited to perform director selection and removal because it is composed of more “senior” representatives. According to the Applicants, the consultant hired to help with the director selection process explained that “we are going to be interviewing candidates that are very senior people and that we should have them interviewed by very senior people.” Tr. at 19:12-18. In essence, Applicants explained, this is a marketing ploy to convince candidates that being on GridFlorida’s board is an important job. *Id.* at 20:6-10 (“You have to persuade [candidates] to serve on the board, too. So you want them in the interview process to perceive that this is a very important job. And that perception is driven in part by who you put up there ... to interview them.”). Such concerns clearly do not apply to the issue of director removal.<sup>7</sup>

Thus, the reasons for favoring the smaller Board Selection Committee do not apply in the context of director removal. At the same time, there are important considerations weighing affirmatively in favor of giving director removal responsibility to the Advisory Committee. First, as FMPA observed in its Pre-Workshop Comments (at 8), director removal is a very serious business, which should only be considered if there is a broad consensus that removal is justified, and the larger, more balanced Advisory Committee is the better entity to gauge that consensus and to provide director removal decisions with the legitimacy and credibility they

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confidential and believes that the governance of an entity invested with the public interest should be conducted in the sunshine. Even so, to the extent that confidentiality is appropriate, FMPA disputes the claim that a 9-member Board Selection Committee could maintain confidentiality but a 13-member Advisory Committee could not.

<sup>7</sup> On the contrary, one would expect the Advisory Committee members — who interact with the Board more regularly — to have a better feel for whether circumstances require a director’s removal. Because the question of director removal is so important, we would expect that decision to be made in coordination with the relevant stakeholder’s senior management. But, because there is no need to try to impress an interview candidate when making a removal decision, there can be no claimed problem for such views to be expressed through the Advisory Committee representatives. And vesting removal responsibility in the Advisory Committee, as opposed to the Board Selection Committee, will garner the views of a greater cross-section of stakeholders.

need.<sup>8</sup> Second, if selection of Board members is to remain with the Board Selection Committee, giving director removal responsibility to the Advisory Committee is necessary in order to create checks and balances, which will help to ensure that each Committee's choices are good ones.

In suggesting that director removal responsibility be given to the Advisory Committee, we recognize the concerns expressed by Commissioner Deason and Chairman Jaber that the Board might become beholden to the Advisory Committee, which would effectively become more than advisory. *See* Tr. at 77:8-16, 78:7-19. Applicants opportunistically suggested that they shared these concerns.<sup>9</sup> However, the fact is that the same concerns are presented whether it is the Board Selection Committee or the Advisory Committee that makes director removal decisions. The same entities, or groups of entities, are represented on both Committees — just in different proportions. Thus, Board members will understand that if they incur FPL's wrath by ignoring the positions FPL takes in the Advisory Committee, that dynamic will influence FPL's vote on the Board Selection Committee (which is proportionately greater than its vote on the Advisory Committee).<sup>10</sup> We recognize the concern that stakeholder involvement in selecting and

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<sup>8</sup> *See, e.g.*, Midwest ISO Agreement, Article Two § III.A.7.a (Original Sheet No. 26) (“The Members may remove a Director by a vote of a majority of the Members”); PJM Operating Agreement § 7.3(c) (“Removal of a Board Member shall require the approval of the Members Committee”). As noted in FMPA's Pre-Workshop Comments (at 7 nn.14-15), the Midwest ISO “Members” are all “Eligible Customers” and “Owners.” Similarly, the PJM Members Committee consists of “representatives of all the Members” (PJM Operating Agreement §§ 1.25, 8.2.1), organized into sectors (*id.* § 8.1).

<sup>9</sup> *Id.* at 204:25-205:7 (“Commissioner Deason pointed out that if we had the Advisory Committee, that is, the group that gives advice to the Board, also be responsible for picking the Board and for dislodging Board members, that that might somehow change the relationship between the Advisory Committee and the Board, and quite frankly, that is a factor we have discussed with the stakeholders. We've expressed that very same view, and it's a concern of ours as well.”).

<sup>10</sup> Indeed, giving both director selection and removal responsibility to a different stakeholder committee — on which Applicants have greater representation — may effectively undermine the balance provided by the Advisory Committee's composition, because GridFlorida's Board may give the Applicants' positions on the Advisory Committee more *de facto* weight than other stakeholders' positions. *See* Tr. at 208:12-17 (explaining that Applicants would rather have an extra seat on the Board Selection Committee than an extra seat on the Advisory Committee).

removing Board members raises for Board independence. The answer is to ensure that stakeholder committees are appropriately balanced and to create checks and balances that prevent any one group from acquiring too much influence. That is why director removal responsibility should be vested in the Advisory Committee — especially if selection responsibility resides in the Board Selection Committee.

## 2. Selection of Board Members

For the reasons set forth in FMPA's Pre-Workshop Comments (at 7 & nn.13-16), we continue to believe that the larger, more representative Advisory Committee is the appropriate body to select GridFlorida's directors. We doubt that the size difference between a 9-person Board Selection Committee and a 13-person Advisory Committee is enough to make a significant difference in the interview process, and we disagree that the Advisory Committee representatives — with whom the Board will have to work once seated — will be too pedestrian a group to interview potential Board members.<sup>11</sup> We submit that the PJM and Midwest ISO board selection procedures disprove the Applicants' claims.

Nonetheless, FMPA is willing to accept the use of the Board Selection Committee to select GridFlorida's directors, provided that (a) removal responsibility is given to the Advisory Committee, and (b) appropriate adjustments are made to make the Board Selection Committee more representative and to make its operations more transparent. These adjustments are necessary because the Board Selection Committee's task will no longer be a one-time proposition but an ongoing responsibility.

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<sup>11</sup> In any event, a Board Selection Committee with senior management representatives could be composed with the same stakeholder representation proportions as the Advisory Committee.



With respect to composition, Applicants started with an 8-person Board Selection Committee — 3 representatives for the Applicants, and one for each of the five other stakeholder groups — and added a 9<sup>th</sup> representative to be selected by the Advisory Committee. *See* RTO Formation Plan § 3.1; Executive Summary at 2. Applicants explained that they added the 9<sup>th</sup> representative in order to dilute the influence of investor-owned utilities on the Board Selection Committee. Tr. at 16:22-17:9, 202:20-203:1. Conversely, to the extent that the 9<sup>th</sup> representative is chosen by the Advisory Committee, it would provide the other stakeholder groups with somewhat more representation on the Board Selection Committee.<sup>12</sup> At the Workshop, Applicants initially explained that they assumed the Commission would be able, if it wished, to obtain the one seat reserved on the Board Selection Committee for governmental or non-profit entities. Tr. at 24:2-14. However, Applicants later suggested that they would be “quite amenable” to having the 9<sup>th</sup> representative be selected by this Commission instead of the Advisory Committee. *Id.* at 203:11-21.

FMPA certainly agrees that the Commission should be able, if it chooses, to have a seat on the Board Selection Committee, and FMPA understands that the Commission may wish to occupy such a seat without displacing another governmental or non-profit entity that might wish to serve. However, FMPA does not believe that the Commission’s seat should displace the additional representation that would be afforded to all stakeholder groups (including the governmental/non-profit sector) through the addition of a representative selected by the Advisory Committee. Accordingly, FMPA proposes a compromise among the various positions — an 11-person Board Selection Committee consisting of 3 representatives for investor-owned utilities, 1

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<sup>12</sup> Such stakeholder groups still would have only one seat each on the Board Selection Committee — compared to two each on the Advisory Committee — but at least they could all participate in jointly filling a ninth.

representative for each of the other sectors (a total of 5), 1 representative selected by the Commission, and 2 representatives selected by the Advisory Committee. Such a committee would still be smaller than the Advisory Committee and could consist of senior management personnel as Applicants desire, but would bring the representation proportions closer to that of the Advisory Committee.

Finally — and this is especially important if FMPA’s other proposals are not adopted — the Board Selection Committee’s procedures should be revised to provide greater transparency. If a single, small committee, with disproportionate representation for a single stakeholder group is to make board composition decisions, at the very least its activities should be transparent and open to scrutiny. As proposed by Applicants, the names of Board candidates must be kept “in strictest confidence” by the Board Selection Committee (RTO Formation Plan § 3.3), and the Committee is subject to no public meeting requirements. In order to increase transparency and provide a check on the Board Selection Committee’s decisions, that Committee should at least be required to inform the Advisory Committee of the names of candidates under consideration and seek its advice and consent in the selection process. *See* FMPA Pre-Workshop Comments at 7-8.

***B. Open Meetings and Ex Parte Contacts***

In its Pre-Workshop Comments, FMPA observed that serious loopholes appeared to undermine GridFlorida’s open meeting requirements by allowing the Board (a) take actions through committees, (b) confer outside of such meetings and take action by notational voting, (c) make too liberal use of closed, executive sessions, and (d) have unrecorded *ex parte* contacts with stakeholders. Applicants’ commitments at the Workshop represent significant strides toward fixing these problems, but important issues remain.

1. The Board's Ability to Make Decisions Outside of Public View and Take Action by Notational Voting

In its Pre-Workshop Comments (at 12), FMPA objected that Art. III § 4 of the By-Laws allowed directors to “confer and meet” outside of the open, public meetings and Art. III § 6 permitted the Board or a committee to take action without a meeting if the members consent in writing. At the Workshop, the Applicants clarified that Board members can meet outside of public meetings only if they are acting in a non-decisional mode. Tr. at 25:9-18, 27:13-28:6, 214:9-22. Applicants also realized that the provision allowing the Board to act by written consent “could have been used as a way to circumvent the Sunshine requirements for making decisions” and committed to prohibit such action by written consent. Tr. at 215:6-15. FMPA accepts this commitment, subject to review of its implementation in a compliance filing.

2. Use of Committees

FMPA's Pre-Workshop Comments (at 13) raised two issues regarding the use of committees, consisting of as few as two directors. First, FMPA noted that such committees could be delegated an extraordinary degree of authority. *See* By-Laws Art. III § 8 (authorizing committees to “exercise all the powers and authority of the Board of Directors”). Second, FMPA noted that there appeared to be no public meeting requirement for committees or any requirement to make their minutes public. At the Workshop, Applicants responded that committees would not “normally” be delegated decision-making authority, but they left open the possibility that such authority would be delegated on occasion. Tr. at 28:7-15. When such authority is delegated, however, Applicants committed to revise the GridFlorida documents to provide such authority be exercised in the sunshine. *Id.*; *see also id.* at 215:6-15.

FMPA requests that the Applicants clarify the kinds of circumstances under which they anticipate that GridFlorida's decision-making authority would be delegated to a committee. FMPA accepts the commitment that the exercise of such authority will be conducted in public meetings, subject to review of a compliance filing implementing that commitment.

### 3. Use of Closed Executive Sessions

FMPA has consistently recognized that "there will be times when it is necessary and appropriate for the Board to go into closed session to consider confidential material." FMPA Pre-Workshop Comments at 13; Tr. at 74:21-75:18. However, in order to prevent the use of closed sessions from becoming a mechanism to end run the public meeting requirements, there must be standards specifying when such sessions are appropriate and, to the extent the Board exercises discretion in making such a determination, there must be a mechanism to obtain review of that decision. At the Workshop, Applicants committed to try to come up with a "definitive list" of issues that might be considered at a closed meeting. Tr. at 216:9-17. We note that the By-Laws (Art. III § 4) already include a seemingly-definitive-list of such issues. The problem with that added to that list is a catch-all provision, allowing the Board to treat as confidential "any other matter that the Chairman, or other presiding officer, in his or her discretion, or the Board of Directors by majority vote, determines to be of a confidential nature." *Id.* FMPA notes that specific list preceding the catch-all provision appears suitably comprehensive, and FMPA believes that the catch-all could be safely eliminated.

In any event, to the extent that the Chairman, another presiding officer, or the Board exercises discretion in determining whether a matter is confidential under any of these provisions (including, but not limited to, the catch-all), there should be a mechanism to obtain review of that decision. Ideally, such a mechanism would give the public advance notice of topics to be

considered in closed session of upcoming meetings and allow parties an opportunity to challenge the designation ahead of time. Recognizing that advance resolution of such issues may be logistically difficult to accomplish, there should at least be a mechanism for determining after-the-fact whether minutes of executives sessions should be treated confidentially or made public. *See generally* FMPA Pre-Workshop Comments at 14 & nn.23-24.

#### 4. Interaction Between the Board and the Advisory Committee

FMPA's Pre-Workshop Comments also objected (at 9-10) to what appeared to us to be Applicants' unnecessarily constrained view of how the Board and the Advisory Committee would interact. We noted that the RTO Formation Plan §4.1 provided for the Advisory Committee to present only one majority opinion and one minority opinion to the Board, and to have those views funneled through a single majority and minority representative. We explained that such a vision was inconsistent with the Commission's apparent view, in which "any interaction between the board and the advisory committee should be conducted in full public view with appropriate opportunity for public input." GridFlorida Order at 19; *see also* Commission Staff's Informal Data Request to GridFlorida Companies ¶ 3 (April 22, 2002) (observing that "it appears that the only time a presentation would be made by the Advisory Committee to the Board of Directors is when the Advisory Committee is disgruntled" and asking whether the committee "would be permitted to make informative presentations or demonstrate new innovative ways to accomplish RTO tasks"). FMPA understood these comments to reflect a belief that meetings between the Board and the Advisory Committee should be open to the public and should provide for a diversity of interests to be heard about matters that the speakers (including Advisory Committee members) deemed it important to address to GridFlorida's Board.

At the Workshop, Applicants resisted changing the relevant provisions and argued that the reference to a majority and minority opinion was intended to operate only as a minimum, or a floor. *See* Tr. at 212:10-16 (“We want the Board to have some flexibility on how it decides to conduct its business, so we’ve left it that flexibility, but we provide a guaranteed right that they’re going to hear at least the primary view of the Advisory Committee and the majority minority view. And if they want to hear more, they’re certainly free to do it ....”). The problem, however, is that the minimums stated in § 4.1 are not sufficient to provide for a robust exchange of information between the Advisory Committee and the Board. If only one minority opinion is guaranteed to be conveyed, other small but significant minorities (*e.g.*, consumer representatives) may never have their voices heard. Moreover, if all majority communications are funneled through a single representative, the Board may never hear nuances in that position or receive the wisdom that other representatives could provide in a less rigidly structured atmosphere.

We recognize that the provisions in § 4.1 are intended to be minimums, which the Board may exceed, and that the Board must have flexibility to adopt reasonable, non-discriminatory time limits and rules of order to keep meetings moving. Nevertheless, the GridFlorida documents never set out an affirmative vision of the open public meetings, and the free exchange of information, that is necessary to produce well-informed decisions. We therefore submit that the GridFlorida documents should be amended to include language similar to that found in the Midwest ISO Agreement, Art. Two § VII.A (Original Sheet No. 47): “The procedures adopted by the Board for the conduct of such meetings shall allow interested members of the public, including those stakeholders represented on the Advisory Committee, to provide oral and written comments at such meetings concerning any matter that may come before the Board, Board

Committees and working groups, Advisory Committee, or Members, whichever is applicable, during the open portion of such meetings.”

#### 5. Ex Parte Contacts

The Commission’s belief that meetings between the Advisory Committee and the Board should be open to the public (GridFlorida Order at 19) has a corollary that stakeholders and Board members should not have *ex parte* contacts. To guard against such contacts, FMPA’s Pre-Workshop Comments suggested (at 15-16) that GridFlorida be required to maintain a publicly-available log of all contacts that each Board members has with stakeholders, outside of formal Board meetings, regarding matters before the Board or reasonably likely to come before the Board. FMPA noted that such a requirement would be consistent with regulations applicable to Commissioners’ *ex parte* contacts and with other RTOs’ provisions. This subject was not discussed at the Workshop, and FMPA adheres to the position articulated in its Pre-Workshop Comments.

#### 6. Information Policy

FMPA’s Pre-Workshop Comments observed that a strong and comprehensive information policy is critical to secure the transparency that is necessary to achieve market participants’ confidence in GridFlorida and in wholesale markets within Florida. *See* FMPA Pre-Workshop Comments at 16-18. FMPA objected to Applicants’ narrowing of the scope of “Open Public Information” under the information policy by requiring disclosure only of “significant” action taken by GridFlorida as security coordinator, without providing any standard for determining what is significant, and by providing for disclosure of “other market information” relating to congestion management and the allocation of transmission rights, without providing any indication of what “other” information might be provided. FMPA also suggested that much

of the material classified as “Available Public Information,” to be produced only on request, should be re-classified as “Open Public Information” to be posted on the internet. Finally, FMPA suggested that the default information category should be changed from non-public to public. These issues were not addressed at the Workshop, and FMPA adhered to its position on them.

## **II. PLANNING AND OPERATIONS**

### ***A. Hands-On Planning By GridFlorida***

At the Workshop, Applicants stated that “It’s certainly our intention that the RTO be in the driver’s seat on planning, and we’ll go back and look at it and see if there’s changes that might clear up that apprehension.” Tr. 222:16-19. Chairman Jaber then suggested a collaborative session with all stakeholders to examine the specific language of the Attachment N planning protocol, which Applicants promised to convene. Tr. 223:3-10. Applicants solicited written comments and convened a telephone conference call “collaborative” on June 11, where they reported on the limited changes they were willing to make. On the main disputed issue — the delineation of planning roles as among Applicants as the three largest POs, smaller POs, other stakeholders, and GridFlorida — the June 11 conference call essentially deferred discussion pending the Applicants’ provision of revised language. That language was distributed on June 14, but failed to resolve the fundamental problem with the protocol that Applicants proposed on March 19 as a substitute for the FERC-approved Planning Protocol, OATT Attachment N.

Under the substitute protocol, GridFlorida will not be “in the driver’s seat,” as it was in the FERC-filed version. It has been moved into the back seat, where it basically will review plans formulated by Applicant-dominated “Working Groups” but not take the lead as the initial



developer of GridFlorida’s plans and performer of the underlying studies. It remains there even with the modifications circulated on June 14. The difference between developer and reviewer is subtle, but crucial. Florida has long had a market-neutral, public-spirited reviewer of PO-generated plans: this Commission. Such review is valuable and should continue to be performed by this Commission. But it is no substitute for ensuring that the actual conception and development of GridFlorida’s plans will be performed by a well-staffed and well-informed GridFlorida planning department that is independent of parochial market interests and oriented to benefiting the region as a whole. To establish GridFlorida as a duplicate reviewer (alongside this Commission) of plans formulated by Applicant-dominated committees is to miss the opportunity to put the right planner’s hands on the steering wheel. The problems with this role change are compounded by the diminished transparency of the planning work performed by the market-participant “collaborators.”

For example, although at the Workshop the Applicants quoted the provision giving Grid Florida the “final determination” in the annual planning process (subject to dispute resolution and regulatory review), they omitted the fact that GridFlorida is to reach that determination by, *inter alia*, “integrating” the “plans and analyses developed by the individual POs, LSEs, and other market participants.”<sup>13</sup> Similarly, although the Applicants quoted the provision under which GridFlorida “shall receive, evaluate, and respond to all requests for service,”<sup>14</sup> they omitted the likelihood that where the request runs into a transmission constraint, a “Working Group” on which POs have an assured seat will take the lead on performing constraint-relief

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<sup>13</sup> Tr. 222:6-7, quoting Attachment N Article II. Because the June 14 version divides what had been Article I into two articles, this provision now appears in Article III.

<sup>14</sup> Tr. 222:9-10, quoting Attachment N Art. II (pre-workshop numeration).

studies, developing expansion alternatives, and developing the resulting options and costs.<sup>15</sup> GridFlorida will convey the Group’s work to the customer, but may not do much more than that. Indeed, it may not have the necessary staff: The June 14 revision deletes the provision in the pre-workshop version which had required that “The Transmission Provider shall be organized to engage in such planning activities as are necessary to fulfill its [planning] obligations.”<sup>16</sup> And although Applicants have added a “planning bill of rights” heading (dividing what had been Attachment N Article I into two Articles, now numbered I and II), most of the flaws that FMPA had identified in the language underneath that heading remain unrepaired.

As shown in our pre-workshop comments, the planning protocol that Applicants filed with FERC, and which FERC approved as Order-2000-compliant, was much clearer in providing that the hands on the planning steering wheel would be GridFlorida’s and in ensuring that passengers would have a clear view of the dashboard. Market participants were to submit information and views as interested passengers, to have opportunities to challenge GridFlorida’s decisions before neutral reviewers, and to have broad access to the information needed to support such reinforcement, but were to perform transmission planning only for local area impacts and only for a transitional period. GridFlorida therefore was positioned to bring Florida the benefits of integrated, statewide, and transparent transmission planning that were envisioned in this Commission’s GridFlorida Order.

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<sup>15</sup> The Working Group provision appears in Art. V of the pre-workshop version of Attachment N, and Art. IX of its June 14 version.

<sup>16</sup> This provision had appeared in Article II of the pre-workshop version, and is struck through in Article III of the redlined June 14 version. As written, the provision stated that GridFlorida should be organized to fulfill its planning obligations “under the PO Management Agreement and this Tariff.” FMPA agrees that the reference to the POMA was inappropriate and should be stricken, but does not support striking the requirement that GridFlorida be organized to fulfill its tariffed planning obligations.

The following table identifies numerous instances where the Attachment N provisions in the FERC-filed version<sup>17</sup> were better than the corresponding provisions in the June 14, 2002 circulated version. The second- and third-to-last rows concern language added on June 14; in each other instance, Applicants have retained without explanation language that was criticized in FMPA’s pre-workshop comments.

FERC-filed	June 14	Comment
<p>Mandates public disclosure of “<u>any</u> transmission projects proposed or endorsed; the underlying assumptions and data ...; <u>any</u> analysis relied upon by the Transmission Provider ...; and <u>all</u> documents supporting [the plan’s] ... assumptions ...” Redlined Sheet 210.</p>	<p>Weakens by removing mandate to disclose “all” or “any” decisions, assumptions, analyses, data, and supporting documents. Art. II.</p>	<p>FMPA’s Pre-Workshop comments requested that the more clearly inclusive language of the FERC-filed version be retained. Applicants have given no reason for discarding it.</p>
<p>“Any dispute between the Transmission Provider and a PO... as to the line rating of a Transmission System facility or as to ... the Transmission Provider ATC or TTC determination shall be referred to the Transmission Planning Committee and, if necessary, to dispute resolution using the procedures specified in the Transmission Provider OATT this Tariff. In the interim, the Transmission Provider’s determination shall control.” Redlined Sheet 263.</p>	<p>In calculating ATC pending dispute resolution, GridFlorida must use the equipment capability ratings provided by the POs for their respective Transmission System facilities. Art. VI.</p>	<p>FMPA’s Pre-Workshop comments requested that GridFlorida’s stronger role as to ratings be retained. Applicants have given no reason for changing this provision.</p>

<sup>17</sup> Citations in column 1 are to the redlined tariff submitted by Applicants in this proceeding on March 19, 2002, in which the FERC-filed version is shown as the pre-revision version (*i.e.*, restoring strike-through text and deleting underlined text). A clean version of that FERC-filed version is available on FERC’s website ([www.ferc.gov](http://www.ferc.gov)) as the Applicants’ May 29, 2001 compliance filing in FERC Docket No. RT01-67. All underlining of quoted matter in the table has been added. The rows are ordered by the numeration of the provisions addressed in the middle column.

FERC-filed	June 14	Comment
<p>GridFlorida “shall, with participation from and coordination with any affected PO or Non-Participating Owner, make a final determination as to the best available alternative ....” One factor for GridFlorida to consider is that “It must be feasible for the entity constructing the facilities to obtain all necessary permits for such construction.” Redlined Sheet 231-32.</p>	<p>GridFlorida “shall not require that projects be undertaken where <u>it is</u> reasonably expected that the necessary regulatory approvals for construction and cost recovery will not be obtained.” Art. VII.</p>	<p>FMPA has sought clarification that the determiner of whether regulatory approval and cost recovery may be “reasonably expected” is <u>GridFlorida</u>. Applicants have not provided it. Absent such clarification, POs asked to build facilities that they do not want may effectively oblige GridFlorida to obtain advance regulatory guarantees of cost recovery before the project begins.</p>
<p>GridFlorida “shall perform planning analysis for the specifics ... of the requested transaction ...” Redlined Sheet 210.</p>	<p>Ad Hoc Working Group that includes representatives of all affected POs (and perhaps others) may perform the studies and option development. Art. IX.</p>	<p>As discussed above, GridFlorida should be responsible for performing all studies and developing options. GridFlorida can seek and evaluate advice from an ad hoc group, but should remain the responsible active planner.</p>
<p>GridFlorida entitled “to review all aspects of a construction project undertaken by a PO pursuant to this Planning Protocol, including design standards, costs, and construction schedules.” Redlined Sheet 237.</p>	<p>“[Q]uestions [regarding] the appropriateness of a PO’s planning, design, or construction criteria, ... may be resolved through the Dispute Resolution Procedures set forth in this Tariff[,] [but,] [u]ntil any such dispute is resolved, the PO’s criteria shall govern.” Art. X.</p>	<p>GridFlorida’s planning, design, and construction standards should govern pending dispute resolution.</p>

FERC-filed	June 14	Comment
<p><u>GridFlorida</u> to review proposed Expedited Facilities for the limited purpose of determining whether they would adversely affect system reliability. Redlined Sheets 226-28.</p>	<p>Both GridFlorida and POs appear to be reliability reviewers. <i>See</i> Art. XI (“Any review or inspection by the Transmission Provider and/or the PO shall be performed on an expedited basis so as not to cause any undue delay in the adoption of plans for Enhanced or Special Facilities or the construction, interconnection or bringing into service of any Enhanced or Special Facilities.”).</p>	<p>The quoted sentence was added on June 14. The reliability review should be conducted by GridFlorida; POs should have dispute resolution rights, but should not be able to block Expedited Facilities accepted by Grid-Florida simply by claiming an unproven reliability impact.</p>
<p>If GridFlorida fails to act on Expedited Facilities within 30 days of receiving detailed plans, an Independent Engineer arbitrates. Redlined Sheets 226-28.</p>	<p>Clear timeline and arbitration by Independent Engineer replaced with requirement that PO and GridFlorida avoid “undue delay” in adopting plans. Art. XI.</p>	<p>Clear timeline for dispute resolution should be retained.</p>
<p>GridFlorida to make public Local Area Planning analyses, GIS analyses, databases used in the planning process. Redlined Sheets 222-24.</p>	<p>Provisions omitted.</p>	<p>FMPA believes that the more general disclosure requirements of Attachment N Art. II (June 14 numeration) encompass these requirements, but Applicants have declined to confirm that.</p>

Applicants have provided no basis for abandoning their well-received<sup>18</sup> FERC-filed planning regimen. It has long been contemplated that FPC would retain ownership of its

<sup>18</sup> Minor variations on the FERC-filed GridFlorida planning process received widespread support from Florida and other Southeastern stakeholders during the FERC-sponsored mediation in Docket No. RT01-100. *See Regional Transmission Organizations*, 96 F.E.R.C. ¶ 63,036 (2001). At the Workshop, Applicants professed surprise that stakeholders were now supportive of the FERC-filed planning process, claiming that stakeholders had criticized it at FERC. Tr. 220-21 (“When we filed it at FERC, a lot of people intervened and said that it was not an effective model for a variety of reasons, many of the same reasons they now don’t like the current model.”). Applicants are re-writing the record. In their February 16, 2001 Answer to Protests in FERC Docket No. RT01-67, Applicants identified only two sets of issues as to planning. At 83, they stated that “A relatively small number of parties

transmission facilities and participate as a PO.<sup>19</sup> Consequently, the FERC-filed planning regimen is already designed to work in areas where GridFlorida lacks assets and plays the role of a non-asset-owning ISO, with GridFlorida planning but not owning additions to FPC's facilities. The fact that FPL and TECo will be retaining wires ownership is no reason to import to Florida's single-state RTO a more diffuse allocation of planning roles that was developed for use in a Midwestern region spanning a score of major transmission owners and state commission jurisdictions.

During the June 11 conference call, Applicants suggested that giving themselves a greater planning role would make planning more accountable to this Commission. That argument forgets that under the GridFlorida Order, GridFlorida will also be a Florida public utility, and thus be directly subject to this Commission's jurisdiction. In the Midwest, participating owners' planning role provides an indirect form of accountability to state commissions, for a regional entity that is not organized to be subject to the jurisdiction of every state commission in its broad footprint. In Florida, GridFlorida's status as a utility directly subject to this Commission's jurisdiction will make that indirect form of accountability unnecessary, and counterproductive. Increasing Applicants' role and switching to planning by committee will diminish accountability. So will diminished transparency.

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provided comments on and requested changes to the Generator Interconnection Service ('GIS') provisions of the GridFlorida OATT ('Interconnection Procedures' or 'Procedures'), and for the most part the commenters supported the Procedures." At 88-89, they responded to a Seminole contention regarding the transition period for Local Area Planning. According to what Applicants said at the time, there were no issues as to GridFlorida's annual post-transition planning process, and no issues as to GridFlorida's process for studying transmission delivery service requests. FMPA raised at FERC concerns about GridFlorida's ability to condemn land and to develop facilities at its northern border, but did not present the kind of criticisms depicted by Applicants.

<sup>19</sup> Moreover, even when FPL and TECO contemplated divesting ownership of their wires, they planned to retain ownership of their transmission-right-of-way land and land rights. Thus, their relationship with GridFlorida would have resembled that of FPC in significant respects.

Since the FERC-filed version was completed in May 2001, FPL and TECO have come to see themselves as future POs rather than future GridFlorida customers. But that is no reason to support moving the hands-on planning from GridFlorida to its POs. If that misdirected objective is abandoned, only limited changes to the FERC-filed planning protocol are needed to make it work in the new context, where GridFlorida's non-ownership management role extends to all rather than many facilities. Exhibit A is a markup showing those limited changes.<sup>20</sup> Not surprisingly, most of the changes involve the obligation to construct, to account for the fact that GridFlorida will not itself be constructing and owning transmission facilities.

We do not ask the Commission to rule on the specifics of the changes we have identified. Attachment N is a FERC-filed tariff attachment, and FERC should determine what it will say. Whatever plans emerge from the tariff-defined planning process will be subject to this Commission's review. At this organizational stage, we do ask that this Commission explicitly refrain from blessing Applicants' more radical Attachment N changes. To the extent it addresses the specifics of Attachment N, the Commission should find that the Applicants' proposed reconstruction goes far beyond what was necessary to effectuate compliance with the change to an ISO, and makes it less likely that GridFlorida will achieve the benefits of market-independent regional planning contemplated by this Commission's orders. Alternatively, the Commission should make clear that it is not evaluating whether the Applicants' proposed Attachment N changes were necessary or appropriate.

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<sup>20</sup> FMPA circulated the mark-up in advance of the June 11 conference call, but Applicants treated it as a non-starter.

***B. Eminent Domain***

FMPA has significant concerns regarding condemnation of land for GridFlorida-planned transmission facilities, such as new transmission right of way. Applicants have proposed that POs be required to condemn such land on GridFlorida's behalf, on the theory that GridFlorida will lack condemnation power in its own right. See Attachment N Art. VIII (June 14 numeration). FMPA fears that this approach addresses a non-issue while failing to address real condemnation-related problems, and thereby fails to assure a clearly valid legal route to successful condemnation of needed land. Moreover, even if the proposed approach is legally valid, it would make GridFlorida dependent on POs' use of eminent domain in support of projects that POs may not wish to build.

The Commission has found that GridFlorida will be a Florida public utility. Its purpose will be to operate the state's transmission grid. Consequently, there should be little doubt that it will have eminent domain power in its own right as an entity "organized for the purpose of constructing, maintaining or operating public works." FLA. STAT. ANN. § 361.01 (2001) (emphasis added). Thus, it is not clear why the Applicants' proposal to obligate POs to condemn land on behalf of GridFlorida's plan is necessary. What is clear is that that proposal raises thorny legal issues that have not yet been satisfactorily resolved. Under Florida case law, a public utility on which the state has conferred the eminent domain power may not be able to delegate the discretion as to which land will be condemned. *Chalmers v. Florida Power & Light Co.*, 245 So. 2d 285, 287-88 (Fla. Dist. Ct. App. 1971), held that the decision as to precisely which land would be taken for FPL's public utility use had to be made by FPL's board of directors, not by FPL's attorney acting as FPL's delegate. Thus, there is substantial doubt as to whether a PO may bind itself to condemn land for a project sited by another entity.



FMPA believes that the delegation problem can be solved by having GridFlorida condemn land as a Florida public utility acting on its own behalf, and then transfer the title to a successor owner (either an existing PO or an entity that would become a new PO). That way, the entity exercising eminent domain would be the entity responsible for determining the site to be acquired. Because GridFlorida-planned transmission projects clearly serve a public purpose, GridFlorida should be able to acquire land for the purpose of siting public works and then transfer title to another entity, particularly where the ultimate owner is itself a public body or public utility.

The foregoing is a general concept for an approach that enables GridFlorida to assemble land for its transmission system, without requiring it to maintain long-term ownership of right-of-way and without giving POs a legally unsustainable or practically problematic role. However, it is not a fully developed regimen, and legislation might be required to make it work. FMPA suggests that rather than attempt to resolve this issue now, the Commission should direct stakeholders to continue collaboration on it. The Commission should, however, clarify now that GridFlorida's status as a non-asset-owning ISO is not intended to bar it from acquiring land through condemnation, for GridFlorida to operate and temporarily own pending transfer to an existing or new PO.

### **III. MARKET DESIGN AND MARKET POWER**

#### ***A. The Commission Should Not Be Prescriptive On Market Design, But Should Advocate Strong Market Power Protections***

At the workshop, the marketers/independent generators' presentation was an interesting educational opportunity regarding the different rate designs and their claimed benefits and detriments. As the Commission can tell, market design is a very complex, "cutting edge,"

subject on which there are significant differences of opinion. We continue to urge this Commission not to issue rulings regarding the details of a GridFlorida-specific market design for wholesale power markets, but rather to participate in the FERC's standard market design ("SMD") rulemaking, Docket No. RM01-12. If GridFlorida is to remain a Florida-only RTO, its market design must be consistent with the rest of the country. Thus, the Commission should participate at FERC to ensure that standard market design that is adopted for nation-wide application is one that benefits Florida, *e.g.*, by providing strong market power protections.

For example, at the workshop, the marketers/generators stressed the importance of auctioning all Transmission Rights from the outset (whether it be a physical or financial rights model). However, we strongly agree with Applicants (and with Seminole and its members, see Tr. 48:13-49:9, 67:23-69:7) that an allocation of rights to reflect existing contract rights and historical firm usage of the transmission system is necessary to ensure that whatever congestion management scheme is adopted does not create "surprises" for LSEs that have long supported the grid and rely on it to supply their loads with reliable service at reasonable cost.

Implementing a mandatory auction mechanism for initial Transmission Rights unnecessarily increases the uncertainty, risk, and transaction costs to those who must depend upon the grid to serve load. If the auction method proves effective, a *voluntary* auction will be able to realize the potential benefits of mandatory auction, while avoiding the pitfalls. The marketers and generators identify no efficiency benefits from a mandatory auction proposal that cannot be realized with an active secondary market for trading Transmission Rights. Imperfect information and lack of experience with Transmission Rights (whether they be physical or financial) virtually ensure that a mandatory auction approach will *not* produce an efficient result

with respect to the initial Transmission Rights. It is far from clear that auction revenues (even if assigned based on existing contract rights and historical use) will cover congestion costs, or even the expected value of congestion costs.

A mandatory auction would also unnecessarily increase transaction costs. Under the marketers/generators' mandatory auction concept (as we understand it), auction revenues may be allocated so that the historical user of a transmission path receives the auction revenues associated with rights on that path. According to the FERC's April 10 Options Paper,<sup>21</sup> the historical user will always be able to outbid other market participants in the auction because "[w]hatever price the user pays in the auction for the rights would be fully offset by its allocation of auction revenues." While such an allocation of auction revenues is the only equitable way to implement an auction for initial Transmission Rights, it is not at all clear how a mandatory auction would be structured to produce this outcome.<sup>22</sup>

Given current market uncertainties, if existing customers can maintain their Transmission Rights by bidding high in the auction, most will do so. The resulting prices revealed by the auction will be highly unreliable; and since the post-auction allocation of Transmission Rights will only minimally differ from the initial allocation, the auction itself will be nothing more than a symbolic, but potentially very expensive, nod to market theory. In addition to the significant "cash flow issues" acknowledged by the FERC Options Paper (at 13, n.12), there will be

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<sup>21</sup> Options for Resolving Rate and Transition Issues in Standardized Transmission Service and Wholesale Electric Market Design, at 13 n.12, *Electricity Market Design and Structure*, issued in Docket No. RM01-12 (Apr. 10, 2002) (available at [http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion\\_paper.htm#option](http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion_paper.htm#option)). We refer to this paper as the "FERC Options Paper."

<sup>22</sup> In principle, it should be possible to structure an auction so that the historical user is kept whole; but many ways of allocating auction revenues would result in substantial monetary losses for such users. Further, use of an auction process to secure Transmission Rights equivalent to the rights embodied in network integration service, under the FERC open access tariff, to integrate dispersed resources to serve dispersed loads seems particularly challenging.

considerable transaction costs associated with designing, running, and participating in the auction.

As the FERC Options Paper highlights, the Transmission Rights allocation vs. auction issue is neither easy nor straightforward and, like many market design issues, requires resolution of many competing, legitimate arguments that are based on economic theory, practical implementation concerns, and questions of equity. It may well be worthwhile for this Commission to hold educational workshops on this subject, so it can better provide input into the FERC SMD rulemaking process. However, the Commission should resist the temptation to lock into a market design for wholesale power markets, the issue before FERC in its SMD rulemaking. Especially if GridFlorida is to operate a Florida-only RTO, it is essential that its market design be consistent with our neighbors. Otherwise the market power problems that plague Florida (*see* FMPA Pre-Workshop Comments at 32-34) will be exacerbated. Thus, as urged in our pre-workshop comments and at the workshop, the Commission should advocate at FERC for a standard market design and market power mitigation plan that protects Florida ratepayers from exercises of market power

***B. The Commission Should Retain Authority Over Establishing and Enforcing Capacity Reserves***

In its pre-workshop comments and at the workshop, FMPA urged the Commission to retain its jurisdiction and process for establishing and enforcing reserve requirements, rather than ceding jurisdiction to GridFlorida and FERC by endorsing inclusion of the Installed Capacity and Energy (“ICE”) “principles” in a FERC-filed GridFlorida tariff. At the workshop, Applicants, through FPL, urged the Commission to look askance at our suggestion (and that of others, *see, e.g.,* Seminole at Tr. 90:13-91:7) by noting that those urging the FPSC to retain

capacity jurisdiction were not subject to that jurisdiction. Tr. 219:18-220:18. To the contrary, while we are not subject to this Commission's rate jurisdiction, we are subject to its Grid Bill jurisdiction and its 10-year site plan review process. While Applicants currently have a higher minimum capacity requirement than others, that results from Applicants' stipulation. See FMPA Pre-Workshop Comments at 36.

As illustrated by the FERC Options Paper at 13,<sup>23</sup> FERC is struggling to figure out who should be responsible for maintaining reserve adequacy and how. Rather than unnecessarily ceding jurisdiction to FERC by endorsing Applicants' inclusion of ICE in the GridFlorida tariff, this Commission should reassert its Grid Bill jurisdiction to establish reserve standards and enforce adequacy. It should take this opportunity to step forward as a success story and an example of how active state role in reserve adequacy obviates the need for FERC involvement, or for reserves to be addressed through an enforcement mechanism established under a FERC-filed tariff. This Commission's tried-and-true reserves enforcement looks better and better as recent disclosures continue to reveal the potential for gaming, manipulation, and harming consumers by abusing capacity reserves auction mechanisms like that contemplated for ICE.<sup>24</sup> See GridFlorida Tariff, Attachment W, § ILC (identifying "deficiency auction" as a possible enforcement mechanism).

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<sup>23</sup> See also Commission Staff's September 26, 2001 Capacity Reserves Discussion Paper (available at [http://www.ferc.gov/calendar/commissionmeetings/discussion\\_papers.htm](http://www.ferc.gov/calendar/commissionmeetings/discussion_papers.htm)), and FERC Staff's discussion paper, "Ensuring Adequate Capacity Reserves," prepared for the joint NARUC-FERC conference held February 11, 2002 (available at <http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/naruc-02-11-02.pdf>).

<sup>24</sup> Earlier this week, the Pennsylvania PUC found that Pennsylvania Power & Light had economically withheld installed capacity to game the PJM "ICAP" market, thereby damaging wholesale and retail markets and participants. It referred the matter and the underlying record to the Attorney General of Pennsylvania, the United States Department of Justice, and the Federal Energy Regulatory Commission. See Statement of Chairman Glen R. Thomas, *Investigation Upon the Commission's Own Motion With Regard to PJM Installed Capacity Credit Markets*, Pa. PUC Docket No. I-00010090 (June 13, 2002) (available at

#### IV. RATE-RELATED ISSUES

Three rate-related issues received prominent discussion at the workshop and will be discussed below: The TDU adder, owner-initiated opt-out for a limited number of high-voltage distribution facilities, and new facilities. All three issues concern whether and when all 69 kV facilities placed under GridFlorida's control and used by GridFlorida to provide transmission service will be recognized in GridFlorida's rates for its wholesale-level services. FMPA submits that all transmission owners who contribute their facilities to GridFlorida should have their full revenue requirements covered, but that the timing of the cost recognition in FERC-jurisdictional rates is for FERC to determine.

##### *A. TDU Adder*

FMPA agrees with Applicants (Tr. 228:16-19) that it is highly desirable to maintain a voltage-based "clear demarcation as opposed to having to look at every single facility and make a case for whether that particular facility is transmission or is not transmission." It is regrettable that the pricing protocol for which rehearing is pending at FERC does require TDUs, though not Applicants, to make such a facility-by-facility demonstration of transmission functionality as a condition to full cost coverage. See OATT Attachment H.

But whether that treatment of TDUs is an appropriate component of GridFlorida's wholesale-level rate structure is an issue for FERC to determine. As FMPA and Applicants agreed at the Workshop, Tr. 121-22, the issue before this Commission is whether to establish a cost recovery clause in the Applicants' retail rates as a channel through which the Applicants' retail customers will share in the Applicants' costs of procuring services from GridFlorida. The

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[http://puc.paonline.com/press\\_releases/Press\\_Releases.asp?UtilityCode=EL&UtilityName=Electric&PR\\_ID=841&View=PressRelease](http://puc.paonline.com/press_releases/Press_Releases.asp?UtilityCode=EL&UtilityName=Electric&PR_ID=841&View=PressRelease) (last visited June 19, 2002)).

share per year of GridFlorida's overall costs that will be allocated to Applicants, and thus the amount that will flow into that channel, is a wholesale-level rate issue for FERC to determine. In particular, FERC's purview includes the timetable by which the costs of facilities that TDUs contribute to the GridFlorida-controlled grid will be recognized through GridFlorida's OATT Attachment H and thereby become inputs to the TDU adder. This Commission has jurisdiction, which it is exercising now, to determine whether to establish the cost recovery clause and whether it is prudent for the Applicants to enter into the GridFlorida arrangements. It will have ongoing prudence-based jurisdiction to determine whether all of the FERC-determined amounts that flow into the cost recovery clause should flow through that channel to Applicants' retail customers. *See Nantahala Power and Light Co. v. Thornberg*, 476 U.S. 953, 963 (1986); *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 911 F.2d 993, 1002 (5<sup>th</sup> Cir. 1990); *Pike County Light & Power Co. v. Pennsylvania Pub. Util. Comm'n*, 465 A.2d 735 (Pa. Commn. Ct. 1983). In short, FERC will determine the inputs to the cost recovery clause by determining how much GridFlorida will allocate to the Applicants under its OATT for providing them with grid management and expanded-grid services; this Commission is regulating the establishment of the clause and will have ongoing prudence authority to affect its outputs.

As explained at the workshop and in our pre-workshop comments, we support the Applicants' proposal to establish the recovery clause mechanism. It preserves FPSC jurisdiction over the costs of the Applicants' existing transmission facilities used to provide transmission in support of bundled retail load, while providing a mechanism through which that load will share in the other costs that will enable GridFlorida to provide its region-wide service: grid

management, new transmission facilities, and transmission facilities contributed to the GridFlorida-controlled grid by TDUs.

***B. Voluntary Owner-Initiated Opt-Out for Limited High-Voltage Distribution Facilities***

For facilities rated 69 kV or higher, full cost coverage through GridFlorida's rates and submission of those facilities to GridFlorida's control should go hand in hand. FMPA and its All-Requirements members anticipate turning over to GridFlorida control all of their transmission facilities rated 69 kV and above, provided fair terms can be arranged for cost coverage and other issues. However, FMPA is aware that certain other municipal transmission owners have continued to seek the right to demonstrate that some of their facilities rated at transmission voltage function as distribution, and therefore should be kept out of GridFlorida's control. Tr. 106. The flip side of such treatment, which those municipals have stated is integral to their proposal, is that the costs of the withheld "high-voltage distribution" facilities will be borne solely by that owner's distribution load. *Id.* If control transfer remains a precondition for cost coverage of 69 kV facilities through GridFlorida's transmission rates, continues to be universal for all 69 kV facilities owned by Applicants,<sup>25</sup> and applies presumptively to all 69 kV facilities subject to a demonstration by the owner that particular facilities should be treated otherwise, then FMPA anticipates this opt-out provision would affect only a small number of facilities. If those limitations apply, FMPA does not object to it.

***C. New Facilities and Grandfathered Contracts***

At Tr. 30-31, Applicants explained the significance of the demarcation dates for defining new facilities grandfathered contracts, but proceeded to misstate the basis for changing them.



The second change we made is that we revised the dates for defining what are new facilities and grandfathered contracts. New facilities, the cost of new facilities are not included in zonal rates, they are instead included in region-wide rates. And grandfathered contracts are locked in through the phase-out period. They are kind of phased out in years five through ten. So the question is what is the new facility? What is the date for deciding what is a new facility, and what is the date for deciding what is an old grandfathered contract as opposed to a new contract. We previously had set these dates to coincide with the start-up date, the anticipated start-up date for GridFlorida, which was initially December 15<sup>th</sup>, 2000. That was the day specified in Order 2000 by which we had to be up and running. So we used those as the dates for those two definitions. It now is clear that we are not going to meet that date, so we have revised these deadlines to comply with the future start-up date, and we are going to use December 31st, which is a convenient time for accounting periods and it will be the year of commercial operations for GridFlorida.

This description is not accurate. The demarcation date (more precisely, the two slightly different demarcation dates) were deliberately set to be fixed and retrospective, with full knowledge that they would predate GridFlorida operations.

As the redlined tariff filed herein shows, the demarcation date for new transmission facilities was January 1, 2001.<sup>26</sup> That date was filed in FERC Docket No. RT01-67 on December 15, 2000, as part of a filing in which the Applicants stated that “it will not be possible to complete the process of selecting an independent board and employees until the third quarter of 2001,” and that they sought to enable GridFlorida “to assume its functions by December 15,

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<sup>25</sup> GridFlorida must control all 69 kV assets of the state’s three largest transmission owners, with no opt-out, to ensure that it can maintain its formation momentum without having to justify its scope line-by-line.

<sup>26</sup> The struck-through definition of “New Transmission Investment” in § 1.26A of the redlined OATT filed in this docket is “The revenue requirement associated with transmission facilities placed into service on or after January 1, 2001 (emphasis added). *See also* OATT Attachment I-1, Section B.1.a (“New Transmission Plant” was defined as the “Simple average of beginning-of-year and end-of-year amounts in Accounts 350-359 placed into service after January 1, 2001” (emphasis added)).

2001.”<sup>27</sup> It was reiterated in the Applicants’ May 29, 2001 FERC filing.<sup>28</sup> Thus, until the Applicants made their March 19, 2002 filing in this proceeding, the new facilities demarcation date had always significantly preceded the anticipated GridFlorida operational date. That was and remains appropriate, because facilities are now being planned and completed with the expectation that GridFlorida will use them for its statewide service, and because a retrospective date prevents gaming harmful to Florida rate-payers and potentially harmful to reliability, in which needed upgrades are deferred so that their costs will be spread throughout GridFlorida.

Nor was the demarcation date for Existing Transmission Agreements — *i.e.*, the date after which all subsequent contracts will automatically convert to GridFlorida service when GridFlorida begins operations — ever tied to the anticipated GridFlorida operational date. The Applicants’ filing in FERC Docket No. RT01-67 made on December 15, 2000 deliberately established that date as the ETA demarcation date “to prevent gaming prior to the date GridFlorida commences operations, *i.e.*, to prevent entities from entering into ETAs prior to GridFlorida operations for the sole purposes of obtaining ETA status.” Supplemental Compliance Filing at 47 (Dec. 15, 2000). Applicants explained that

If, after December 15, 2000 [*i.e.*, today], a Participating Owner or Divesting Owner enters into a new ETA, or agrees to purchase or provide long-term transmission service (*i.e.*, service for a term that is greater than one year) under an ETA executed prior to that date, the new service provided under such ETA will be converted to GridFlorida service upon the commencement of GridFlorida operations. Also, if a Participating Owner or Divesting Owner agrees to provide, or to purchase, short-term firm or non-firm service that has a term that extends beyond the date of GridFlorida operations, that service will convert to GridFlorida service upon

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<sup>27</sup> Supplemental Compliance Filing of FPL, FPC, and TECo, at 9, *GridFlorida*, FERC Docket No. RT01-67 (Dec. 15, 2000).

<sup>28</sup> See the OATT included in that filing, in the same locations cited in note 26 above.

the commencement of GridFlorida operations. All parties will be placed on notice as of December 15 that this will be the treatment for new transmission service.

*Id.* Thus, until the Applicants made their March 19, 2002 filing in this proceeding, the ETA demarcation date had always significantly preceded the anticipated GridFlorida operational date. That was and remains appropriate, in part for the notice reasons that Applicants gave, and the reliance reasons that are their obverse.

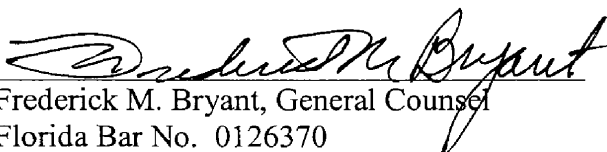
FMPA asks that the FPSC leave these FERC-jurisdictional matters to FERC. It would be clearly inappropriate for one governmental agency to intrude on proceedings pending before another agency based on an erroneous description of the proceedings before that other agency. Thus, the Commission should make clear that it is not approving Applicants' proposed shift of the demarcation dates.

## V. CONCLUSION

If GridFlorida is to achieve the benefits the Commission expects, as described in the December 20 Order, GridFlorida needs to move forward in an environment of harmony between this Commission and FERC. We therefore urge the Commission to require the modifications urged above and in our Pre-Workshop Comments, consistent with its jurisdiction, and then accept Applicants' compliance filing as consistent with the December 20 Order, but with the express recognition that Applicants made changes far beyond what was required for such compliance (*e.g.*, with regard to the Planning Protocol). Further, the Commission should limit its acceptance of the filing in a way that does not complicate or otherwise shield Applicants' revised proposal from full FERC review. Finally, the Commission should participate actively in SMD rulemaking at FERC, and retain its process for ensuring adequate capacity reserves without ceding authority or jurisdiction to FERC and GridFlorida.

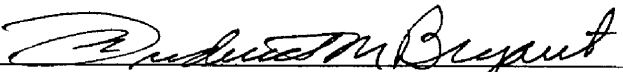
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**CERTIFICATE OF SERVICE**

I CERTIFY that copies of the foregoing **POST-WORKSHOP COMMENTS OF FLORIDA MUNICIPAL POWER AGENCY**, including **ATTACHMENT N** and **EXHIBIT N.1**, were furnished to all parties in accordance with the attached 3-page service matrix, by United States Mail, on this **21st** day of June, 2002.

  
\_\_\_\_\_  
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Service Matrix for FPSC  
Docket No. 020233-EU  
Review of GridFlorida  
Regional Transmission  
Organization Proposal  
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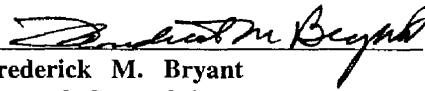
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Review of GridFlorida Regional )  
Transmission Organization (RTO) Proposal )  
\_\_\_\_\_ )

**DOCKET NO. 020233-EI**

**ATTACHMENT N**

**and**

**EXHIBIT N.1**

**to**

**POST - WORKSHOP COMMENTS**

**OF**

**FLORIDA MUNICIPAL POWER AGENCY**

**filed June 21, 2002**

## ATTACHMENT N

### Planning Protocol

#### I. Transmission Planning by the Transmission Provider

##### A. The GridFlorida Planning Process:

1. The Transmission Provider is responsible for performing the planning function for the Transmission System. The GridFlorida Planning Process is an open and participatory planning process that effectuates the reliable and efficient planning of the Transmission System so as to meet the needs of all users of the Transmission System in a non-discriminatory manner. The Transmission Provider will adopt NERC and FRCC planning standards, and Nuclear Regulatory Commission (“NRC”) requirements relating to nuclear plants, in performing its planning function. The Transmission Provider also will coordinate all planning with non-Participating Owners.
2. The GridFlorida Planning Process involves the planning necessary for the Transmission Provider to meet the needs of all users of the Transmission System (utility generation, network generation, merchant plants, IPPs, LSEs, etc.) seeking long-term Network Transmission Service, Point-to-Point Transmission Service or Generation Interconnection Service under the Tariff, including planning for new interties with non-Participating Owners and control areas located outside of the FRCC. Except as provided in Section I.A.8, this includes the obligation to plan to meet all requested service involving Flowgates.
3. Pursuant to Sections I.A, I.B and II, the GridFlorida Planning Process shall also:
  - Identify and facilitate, in a timely manner, the adoption and implementation of transmission projects and/or potential generation alternatives that can effectively relieve congestion;
  - Identify and evaluate longer range needs and facilitate transmission projects to expand competitive markets, including increased intertie capacity at the interfaces;
  - Maintain and enhance the efficiency and reliability of the Transmission System;
  - Consider whether expansion plans required to provide requested transmission service can be combined into a more efficient expansion plan; and
  - Assess whether expansion can efficiently reduce overall Transmission System losses.

This process shall encourage and provide opportunities for meaningful, indepth participation by all users of the Transmission System, Participating Owners, the FPSC, and other interested parties. In order that proposed generation and transmission projects are effectively coordinated so as to ensure reliability and efficient congestion management, for each planning period, the GridFlorida Planning Process shall include, at a minimum, timely, regular and complete public disclosure, consistent with confidentiality requirements and information disclosure policies, pursuant to Sections I.A.9-10 and I.B.h, of:

- a. any transmission projects proposed or endorsed;
  - b. the underlying assumptions and data on which the proposal is based;
  - c. any analysis relied upon by the Transmission Provider concerning its proposed transmission plan or proposed generation alternatives offered by users of the Transmission System; and all documents supporting assumptions underlying the proposed transmission expansion plan that are challenged by users of the Transmission System in the GridFlorida Planning Process.
4. All requests for transmission service under the Tariff (i.e., requests involving Network Transmission Service, Point-to-Point Transmission Service, or Generation Interconnection Service) or requests for connection of new tie lines will be made to the Transmission Provider and posted on the OASIS in accordance with FERC policy regarding requests for transmission service.
  5. The Transmission Provider shall have the ultimate responsibility for analyzing and responding to each transmission request. The Transmission Provider shall perform planning analysis for the specifics (e.g., type of long-term firm transmission service, term, reserved capacity, etc.) of the requested transaction using as input all confirmed existing long-term firm transmission obligations, the Local Area Planning Process discussed in Section I.B, the Generation Interconnection Planning Process discussed in Section I.C and the data bases discussed in Section I.D to determine the impact of the requested services on the transmission system. The results shall be documented and presented by the Transmission Provider to the transmission service requestor(s).
  6. The Transmission Provider shall also continually reassess, consistent with Section I.E.c. of the Operating Protocol, the ability of the transmission system to reliably serve on-going long-term firm transmission service obligations (e.g., integration of Network Resources with existing Network Loads and projected load growth of such Network Loads, etc.) using the data bases discussed in Section I.D.

7. The Transmission Provider will coordinate all transmission system planning with the planning of Non-Participating Owners.
8. The Transmission Provider is not obligated to plan the transmission system for non-firm or short-term firm transmission service(i.e. transmission service with a duration of less than one year). Nor is the Transmission Provider obligated to plan the transmission system for Long-Term Firm Point-to-Point and Network Service over Flowgates [Note: subject to Standard Market Design rulemaking or other non-flowgate methodology] when the Transmission Customer declines to pursue a System Impact Study or a Facilities Study pursuant to the provisions of the Tariff. The Transmission Provider will process requests for such service in accordance with the Tariff.
9. The analysis performed pursuant to the GridFlorida Planning process (including potential solutions) will be provided to the transmission service requestor. Once the study is completed, the availability of that study will be posted on the OASIS. Such studies will be available (except for data designated as confidential pursuant to Section I.D hereof) upon request, subject to the payment of a nominal processing fee.
10. The Transmission Provider, in coordination with the users of the Transmission System, has established procedural milestones associated with the transmission expansion plan. Such procedural milestones have been established to facilitate, in an orderly and efficient manner, an opportunity for the users of the Transmission System to participate and review the transmission expansion plan. Exhibit N.1 to this Planning Protocol sets out such procedural milestones so as to establish an “Annual Regional Transmission Planning Process”.
11. As a transition mechanism, at the commencement of operation of the Transmission Provider, the Transmission Provider shall adopt and incorporate into its transmission expansion plan the most recent ten (10) year plan of all POs and ~~Divesting Owners~~ associated with facilities that are considered part of the Transmission System, including facilities that are planned to serve Network Customers or to satisfy outstanding Long-Term Firm Point-to-Point transmission service requests of the POs and ~~Divesting Owners~~.
  - (a) Such ten (10) year plan shall include:
    - (i) Any new generation that is identified within the planning horizon in the most recent Ten Year Site Plans of the POs and ~~Divesting Owners~~ as filed with the FPSC prior to the commencement of the

first GridFlorida Annual Regional Planning Process;

- (ii) Any new or modified facility that is within the planning horizon, that is considered part of the Transmission System and / or related to a Point of Delivery associated with Network Load, and that is identified in the most recent FERC Forms No. 715 of the POs and ~~Divesting Owners~~ as filed with the FERC prior to the commencement of the first GridFlorida Annual Regional Planning Process; and
- (iii) any facility improvement necessary to meet the reliability targets established pursuant to Section I.F.3 of the Transmission Provider Operating Protocol planned by a PO or a ~~Divesting Owner~~ prior to the commencement of the Transmission Provider's operations.

- (b) The ten year plans adopted by the Transmission Provider shall be included in the Transmission Provider's initial expansion plan. To the extent that the Transmission Provider subsequently determines an alternative plan exists that requires the cancellation of or delay to a transmission project included in the ten year plan of a ~~divesting owner or PO~~ and which is superior to that ten year plan, the Transmission Provider shall consult with the ~~divesting owner or PO~~ to attempt to reach agreement on the cancellation or delay. If the Transmission Provider cannot reach agreement with the ~~divesting owner or PO~~, the ~~divesting owner or PO~~ may request dispute resolution.
- (c) A PO shall be entitled to recover in its revenue requirement the costs incurred with respect to any project that is cancelled pursuant to paragraph (b) above.

B. Local Area Planning Process Associated With Network Load and Existing and Confirmed Firm Point-to-Point Transmission Service:

1. The Local Area Planning Process involves an assessment and subsequent development of expansion plans associated with the Transmission System where Network Load is served and existing and confirmed Firm Point-to-Point transmission service is provided. The Local Area Planning Process shall be conducted in accordance with NERC and FRCC planning criteria, and NRC requirements relating to nuclear plants.
2. The Local Area Planning Process is performed by the Transmission Provider with participation and coordination from each LSE receiving Network Transmission Service, and confirmed

and existing Point-to-Point Transmission Service reservations served by the Transmission Provider and any PO whose facilities serve the LSE in order to handle requests for new Point(s) of Delivery and to determine potential reliability problems with local area transmission systems. The Local Area Planning Process will determine alternative solutions to serve new Point(s) of Delivery and to address reliability problems found, and document results in a study report which will be presented by the Transmission Provider to the LSE(s) and to the PO(s) whose facilities serve the LSE(s). In conducting the Local Area Planning Process, the Transmission Provider, with input from the LSE and the PO, must consider the following:

- a. The need for expansion of existing facilities shall be determined by testing the ability of the existing and planned system to meet FRCC, FPSC, NERC, and NRC criteria, as applicable, as well as the GridFlorida Planning Standards then in effect.
- b. Alternative solutions to the criteria violations associated with local area reliability problems shall be developed and evaluated considering economics, lifetime, feasibility, and other specifics associated with the request. As part of a request for a new Point of Delivery by an LSE, such request shall include a justification for the proposed new Point of Delivery, including an analysis of viable distribution alternatives. The Transmission Provider shall incorporate the LSE's justification into an overall evaluation of alternatives to the proposed new Point of Delivery.
- c. Requests for new Points of Delivery shall be evaluated taking into consideration distribution alternatives as applicable, location of existing delivery points, transmission feasibility, economics, and other specifics associated with the request, on a comparable basis for all LSEs' existing Points of Delivery, taking into account any specific reliability needs of the LSE customer(s) served from such Point of Delivery. The Transmission Provider will make a reasonable effort to accommodate the LSE's requested alternative, based on the above criteria. Except as otherwise provided for in Section I.E below and notwithstanding any other provision of this Tariff to the contrary, upon the request of any Transmission Customer, the Transmission Provider ~~and or, where applicable a PO(s)~~, shall be obligated to permit the construction of any facilities required to establish a new Point of Delivery regardless of any distribution alternative(s) to such

construction that may exist, provided that the new Point of Delivery does not adversely affect system reliability; and provided further that the requesting Transmission Customer agrees to pay Transmission Provider or the PO for the difference in costs incurred by or on behalf of the Transmission Provider or the PO in constructing the requested Point of Delivery and the alternative the Transmission Provider otherwise would have selected.

- d. Subject to Section I.E of this document, the Transmission Provider, in consultation with ~~or~~ the PO, as applicable, consistent with the PO Agreement, shall, consistent with the GridFlorida Planning Standards, be responsible for ~~the designing, causing the~~ construction of, and operating ~~on~~ of all facilities considered part of the Transmission System. The LSE shall be responsible for the design, construction and operation of all facilities that are part of the LSE's system. With respect to circumstances where a new Point of Delivery involves the establishment of a transmission to distribution substation or a metering point, the Transmission Provider, in consultation with the ~~or the~~ PO, as ~~applicable~~ shall be responsible for ~~the designing, causing the~~ construction of, and operating ~~on~~ of all transmission voltage level equipment in accordance with the guidelines contained in Attachment Q – Section 1 of the Tariff. The LSE(s) shall be responsible for the design, construction and operation, in accordance with the guidelines contained in Attachment Q – Section 1 of the Tariff, and in accordance with Attachment 1 to the transmission service Operating Agreement (i.e., Terms and Conditions of Service Applicable to Points of Delivery) of all of the facilities on the LSE's side of the Point of Delivery. Space shall be provided at the control house and the common ground location associated with the Point(s) of Delivery for the installation of equipment owned by either the ~~Transmission Provider,~~ LSE or PO whose facilities serve such LSE.
- e. The Transmission Provider, the LSE(s) and the PO whose facilities serve such LSE(s) shall collaborate on the design and construction of the Point(s) of Delivery facilities to seek an efficient construction means, including selecting a single contractor if feasible.
- f. The Transmission Provider shall, if applicable, develop procedures for the design and operation of a Point of Delivery that serves as a Point of Delivery for two or more LSEs.

- g. New Point(s) of Delivery shall be designed on a basis that provides for comparable reliability to the existing Point(s) of Delivery, taking into consideration distribution alternatives as applicable, location of existing delivery points, transmission feasibility, and economics, on a comparable basis for all LSEs' existing Points of Delivery, taking into account any specific reliability needs of the LSE customer(s) (e.g. airports, hospitals, etc.) served from such Point of Delivery.
          - h. Specifics regarding the construction and other Point of Delivery matters relating to such new Point of Delivery facilities shall be addressed on a case-by-case basis pursuant to the contractual arrangements among the respective LSE, and the Transmission Provider, ~~and the respective PO if the transmission facilities that must be expanded are owned by a PO~~, and Attachment 1 to the Operating Agreement, which contains the Terms and Conditions of Service Applicable to Points of Delivery.
  3. The analysis performed pursuant to the Local Area Planning Process (including potential solutions) will be provided to the LSE. Once the study is completed, the availability of that study will be posted on the OASIS. Such studies will be available (except for data designated as confidential pursuant to Section I.D hereof) upon request, subject to the payment of a nominal processing fee.
  4. The Transmission Provider, with the mutual agreement of a PO ~~and/or a Divesting Owner~~, shall have the option of assigning the performance of the Local Area Planning function discussed in this Section I.B for the LSE(s) served by a respective PO's ~~or Divesting Owner's~~ transmission facilities to such PO ~~or Divesting Owner~~ for up to three years following the commencement of the Transmission Provider operations (the "transition period"). The results and recommendations of such Local Area Planning performed by the PO(s) ~~or Divesting Owner(s)~~ during the transition period will be subject to review and approval, or modification, by the Transmission Provider. The Transmission Provider shall assume the Local Area Planning Function for itself as soon as it is capable of performing the function.
- C. Generation Interconnection Planning: [NOTE: SUBJECT TO ONGOING FERC RULEMAKING]
1. All requests for Generation Interconnection Service ("GIS") shall be submitted to the Transmission Provider for processing pursuant to Part IV of the Tariff.
  2. The analysis performed pursuant to the GIS planning process (including potential solutions) will be provided to the requestor.



Once the study is completed, the availability of that study will be posted on the OASIS. Such studies will be available (except for data designated as confidential pursuant to Section I.D hereof) upon request, subject to the payment of a nominal processing fee.

3. The Transmission Provider shall be authorized to act as the agent for all POs to negotiate and execute Generation Interconnection Agreements in coordination with and on behalf of the POs whose facilities are subject to a GIS request. Such POs shall have the opportunity to also execute on their own behalf such Interconnection Agreements negotiated and executed by the Transmission Provider; provided that, once the PO is provided with the opportunity to execute the agreement, failure of the PO to execute the agreement shall not impede or delay the implementation of the interconnection.

D. Creation and Maintenance of Data Bases:

1. The Transmission Provider shall develop databases (e.g. load flow, dynamic and short circuit) using information from Parts I.A, B and C as well as information from Non-Participating Owners.
2. Databases for use in the planning process delineated in this document will be developed by the Transmission Provider with data input (e.g., 10- year load growth and firm planning obligations) and coordination from the affected LSEs, POs and Non-Participating Owners. Databases are approved by the Transmission Provider, affected LSEs, POs, and Non-Participating Owners and provided to LSEs, POs and Non-Participating Owners for their participation in the planning process.
3. The Transmission Provider shall file at the FERC and make available to each PO, non-Participating Owner, LSE and transmission service requestor(s) databases as are required by FERC (e.g. Form 715).
4. Entities providing information to the Transmission Provider as part of the planning process may designate such data as being confidential commercial information, consistent with FERC policy regarding the confidentiality of commercial information. The Transmission Provider shall not make such data available to third parties without the agreement of the providing entity unless required to do so by a court or regulatory agency with jurisdiction over the Transmission Provider.
5. LSE(s), transmission service requestor(s), generation interconnection requesters and POs have an obligation to provide the requisite information to the Transmission Provider to ensure reliability and coordinated expansion plans.

E. Enhanced or Special Facilities Alternative

1. A Transmission Customer may request and the Transmission Provider shall be obligated to provide and, where applicable, to interconnect enhanced or special facilities, regardless of whether such facilities have been identified as necessary by the Transmission Provider as part of the planning process. If the conditions of Section I.E.2 are satisfied, the Transmission Provider shall be obligated to cause the provision of and, where applicable, the interconnection of such facilities, and POs shall be obligated to interconnect or permit the interconnection of such facilities. Enhanced or special facilities ("Enhanced Facilities") shall include, but not be limited to (1) facilities requested for meeting retail customer needs; (2) facilities, including substations, switching stations, line segments, towers, poles and other facilities which the Transmission Customer determines are necessary or appropriate to support its provision of distribution services; (3) facilities to be constructed pursuant to governmental orders, (4) facilities which, although identified as necessary by Transmission Provider, are not scheduled to be in-service at the time requested by the Transmission Customer, and (5) an alternative Point of Delivery on the Transmission System. A request for Enhanced Facilities may be made at any time and for any reason, including but not limited to, enhanced reliability, environmental, aesthetic and other land-use planning reasons.
  2. The Transmission Provider will grant the request for Enhanced Facilities, provided that each of the following conditions is met:
    - a. The requested Enhanced Facilities do not adversely affect system reliability; and
    - b. The requesting party agrees to reimburse the Transmission Provider or the applicable PO for any costs incurred by Transmission Provider and/or the PO in connection with the Enhanced Facilities, including any costs associated with placing facilities in-service prior to the time scheduled by the Transmission Provider, provided that such costs would not otherwise have been incurred by Transmission Provider and/or the PO but for the request to construct the Enhanced Facilities or to place them in service earlier than planned.
- F. Expedited Construction by Transmission Customer
1. A Transmission Customer may construct a Delivery Point or Enhanced Facilities ("Expedited Facilities") itself, provided that the conditions of Section I.E.2 are satisfied, and provided that, in addition, the following conditions are met:
    - a. As soon as reasonably practicable after the Transmission Customer determines that it will construct Expedited Facilities itself pursuant to this Section I.F, the

Transmission Customer will so inform the Transmission Provider and PO and will provide ~~them~~ it with conceptual plans of the facilities to be constructed.

- b. At least 90 days prior to commencing construction of any Expedited Facility, the Transmission Customer shall submit its request in writing to the Transmission Provider specifying the Enhanced Facilities, along with detailed plans for such facilities consistent with Transmission Provider Design Standards, and shall provide copies to the PO;
- c. The Transmission Provider in consultation with the PO will review the detailed plans for the limited purpose of determining whether the Expedited Facilities will adversely affect system reliability. This review is not a substitute for the planning process associated with a request for service or a request to amend existing service in accordance with Parts II or III of the Tariff. The procedures applicable to requests for service under Parts II and III also must be followed to the extent placing the Expedited Facilities into service is associated with new or revised transmission service.
- d. If the Transmission Provider does not conclude within thirty (30) days following the submission of the detailed plans that the Expedited Facilities will not adversely affect system reliability, the matter may be submitted to an Independent Engineer for determination. The Independent Engineer shall be an engineering firm experienced in transmission operations as mutually agreed by the Transmission Provider, ~~and the Participant,~~ and PO. The Independent Engineer shall make its determination within sixty (60) days following its receipt of the initial submission.
- e. If the Independent Engineer determines that the proposed facilities will not adversely impact system reliability the Transmission Provider will, after the time that decision becomes effective, facilitate the construction and, where applicable, the interconnection of such facilities on an expedited basis consistent with Good Utility Practice. In addition, the Transmission Provider will make any necessary filings with the Commission within 30 days of the date the Independent Engineer's determination becomes effective pursuant to Section I.F.1.g
- f. If the Independent Engineer determines that the proposed facilities will adversely affect system reliability, the

Transmission Provider will not allow the Transmission Customer facilities to be interconnected with the Transmission System until the Transmission Provider is able to complete a Facilities Study and has otherwise processed the request and has determined its own plan to serve the Transmission Customer's needs, and any necessary modifications have been made to the facilities constructed at the direction of ~~by~~ the Transmission Provider.

- g. Determinations by the Independent Engineer shall become effective twenty days after issuance, unless FERC is requested to review the determination within such period. Determinations by the Independent Engineer for which FERC review has been requested shall become effective 30 days following the initial request for review unless the Commission determines that a determination should not become effective.
  - h. Prior to interconnecting any Expedited Facilities constructed by a Transmission Customer to the Transmission System, the Transmission Provider shall have the right to inspect such facilities to ensure that, as constructed, they will not adversely affect the reliability of the Transmission System. Both the PO and the Transmission Customer shall have the right to accompany the Transmission Provider as the Transmission Provider conducts its inspection and to provide comments for the Transmission Provider's evaluation. ~~and~~ The Transmission Provider may refuse to permit the interconnection until the Transmission Provider is satisfied that there will be no adverse impacts on the reliability of the Transmission System.
2. If any portion of the Expedited Facilities constructed by the Transmission Customer are of a type that would be considered part of the Transmission System based on the Line of Demarcation established in Attachment Q of the Tariff, the Transmission Customer shall enter into the Participating Owners Management Agreement with respect to such facilities, unless Grid Florida and the Transmission Customer otherwise agree upon the terms and conditions for the transfer of title to such facilities to the PO. ~~Transmission Provider.~~
3. The Transmission Provider shall determine whether all or a portion of any Expedited Facilities that are included in the Transmission System should be treated as New Transmission Investment or whether all or a portion should be treated as Enhanced Facilities,

the cost of which must be borne by the Transmission Customer pursuant to Section I.E.2.b.

4. All Expedited Facilities constructed by the Transmission Customer that are not made part of the Transmission System shall be operated by the Transmission Customer at its sole expense.

G. Planning, Design, and Construction Standards

1. The Transmission Provider shall develop standards for the planning ("the GridFlorida Planning Standards"), design ("the GridFlorida Design Standards") and construction ("the GridFlorida Construction Standards") of transmission facilities that will become part of the Transmission System planned, designed and constructed by the Transmission Provider and, where applicable, the POs. These standards shall apply on a comparable basis to all the facilities included in the Transmission System.
2. The Transmission Provider shall phase in the GridFlorida Planning Standards, the GridFlorida Design Standards and the GridFlorida Construction Standards over a period of time not to exceed five years from the commencement of the Transmission Provider operations.
3. A Transmission Customer may request application of design and construction standards higher than those established by the Transmission Provider. Such a request may be made for any reason, including but not limited to, enhanced reliability, environmental, aesthetic and other land-use planning reasons. Such request shall be granted, provided that each of the following conditions is met.
  - a. The Transmission Customer must submit a detailed written request to the Transmission Provider detailing the proposed enhanced design and construction standards.
  - b. The design and construction standards must not impair the reliability of the Transmission System when compared to the GridFlorida design and construction standards.
  - c. The Transmission Customer must agree to reimburse the Transmission Provider for all costs incurred by or on behalf of the Transmission Provider, and to reimburse the PO for all costs incurred by or on behalf of the PO, as a result of applying the higher design and construction standards to the subject transmission facilities.

II. Transmission Expansion

- A. If, as a result of the GridFlorida Planning Process performed pursuant to Section I, it is determined that transmission facilities must be constructed, the Transmission Provider shall, with participation from and coordination

with any affected PO or Non-Participating Owner, make a final determination as to the best available alternative, consistent with the then applicable the GridFlorida Planning Standards and the GridFlorida Design Standards, determined in accordance with the following factors:

1. The Transmission Provider shall take into account the estimated costs of proposed alternatives, as well as impacts on reliability, impacts on existing firm service, and consistency with the long-term planning for the region. In order to continually provide better cost estimates, the Transmission Provider shall take into consideration the accuracy of previous cost estimates versus the actual cost of such installed transmission facilities in developing future cost estimates. Additionally, the Transmission Provider shall avoid, whenever possible, the imposition of unreasonable costs
2. The Transmission Provider shall provide oversight of the on-going costs during the engineering and planning stages as well as during the construction of facilities deemed part of the Transmission System. If as part of such oversight responsibility the Transmission Provider determines that the possibility exists that the cost of facilities planned to be constructed may exceed the estimated cost of such facilities by greater than twenty (20) percent, the Transmission Provider shall reevaluate available alternatives and advise the Transmission Planning Committee regarding any recommended variance from the initial plan.
3. If the best available alternative requires the construction of facilities by a Non-Participating Owner, the Transmission Provider shall enter into good faith negotiations to reach agreement with the Non-Participating Owner to construct the required transmission facilities or to allow the Transmission Provider to construct such facilities. If the Non-Participating Owner does not agree to such construction, the Transmission Provider shall select the next best available alternative, determined in accordance with Section II.A.
4. It must be feasible for the entity constructing the facilities to obtain all necessary permits for such construction. The cost of obtaining and complying with such permits shall be included in the cost of the facilities in determining the best available alternative. If it is not feasible to obtain the necessary permits for the best available alternative, the next best available alternative shall be selected.
5. In considering whether an alternative is the best available alternative, the Transmission Provider shall consider whether the alternative addresses congestion and whether the alternative would decrease or increase congestion.
6. The entity (i.e., ~~the Transmission Provider or the PO~~) constructing the facilities must be able to have the opportunity to fully recover the reasonable cost of the facilities in rates or through other

charges approved by the appropriate regulatory authority. This condition may be waived by the entity constructing the facilities.

7. The costs to be incurred by the prospective owner of the incremental facilities, the identity of which shall be determined pursuant to Section II.B., shall be taken into consideration in determining the best available alternative.
8. The Transmission Provider also shall consider market solutions, including solutions that do not require the construction of new facilities. The Transmission Provider shall take into account such market solutions in determining the best available alternative.
9. The Transmission Provider shall accommodate a Transmission Customer request to implement higher design and construction standards than those set by the Transmission Provider so long as the Transmission Customer has complied with the requirements in Section I relating to higher design and construction standards requests.

B. The entity that constructs and owns new transmission facilities, pursuant to the discussion in Section II.A above, shall be determined as follows.

1. If the facilities are to be added to the existing facilities of a PO, then that PO shall have the option, subject to Section II.B.3, of constructing and owning that portion of the new facilities that is to be located in its service area. If the facilities are to be added to the existing facilities of more than one PO, then each PO shall have the option, subject to Section II.B.3, of constructing and owning the facilities to be added to its existing facilities that are to be located in its service area.
- ~~2. If facilities are to be added to both the existing facilities of a PO and the Transmission Provider, the PO shall have the option of constructing and owning the facilities to be added to its existing facilities that are to be located in its service area, and the Transmission Provider shall construct and own the remaining facilities.~~
- ~~3. If the facilities are to be added to the existing facilities of the Transmission Provider, but do not require facilities to be added by a PO, or if an PO declines the option of constructing and owning new facilities, then the facilities will be constructed and owned by the Transmission Provider.~~
2. If a PO is designated selected to construct and own transmission facilities and that PO fails to obtain necessary permits or financing or fails to commence construction within a reasonable period of time, or if the designated PO notifies the Transmission Provider that it does not wish to own and construct such facilities, then the Transmission Provider shall construct and own the facilities itself.

alternate arrangements designed to yield such facilities shall be identified by the Transmission Provider. Depending on the specific circumstances, such alternate arrangements shall include solicitation of other POs or others to take on financial and/or construction responsibilities. Notwithstanding the above, the Transmission Provider may require a PO, to the extent necessary, to apply for all necessary certificates of public convenience and necessity and permits for the construction of transmission facilities that will become part of the Transmission System, and to use its power of eminent domain, including rights of way, for the construction of such transmission facilities.<sup>1</sup>

3. If the Transmission Provider is unable to enter into alternate arrangements under commercially reasonable terms, it shall notify the originally designated PO. In such instances, the originally designated PO shall be responsible to own and construct such facilities, provided, however, that such PO may contest its obligation to own and construct such facilities by providing the Transmission Provider notice that such PO would face undue financial burden in carrying out its construction responsibilities. Upon receiving such notice, the Transmission Provider may seek an order from the FPSC or the Commission requiring such designated PO to own and construct such facilities. The construction of any new transmission facilities **with an original cost exceeding \$50,000** shall be competitively bid. The PO shall have the right to construct the required facilities by matching the lowest bid for construction of the required facilities.
4. The Transmission Provider shall assist the affected PO(s) or other relevant entities in justifying the need for, and obtaining certification of, any facilities required by the approved GridFlorida Plan by preparing and presenting testimony in any proceedings before state or federal courts, regulatory authorities, or other agencies as may be required.
- 4.5. Regardless of the entity selected, the new facilities shall be designed in accordance with the then applicable GridFlorida Design Standards and constructed in accordance with the then applicable GridFlorida Construction Standards, unless higher design and construction standards have been proposed and agreed to by the Transmission Provider in accordance with the higher design and construction standards request requirements in Section I, in which case the higher standards would apply. If a PO fails to comply with the then applicable Design or Construction Standards, then the Transmission Provider shall make any necessary changes,

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<sup>1</sup> [Note The legal issues associated with delegation of eminent domain power have not yet been resolved]



and the costs of such changes shall be recovered from the PO (which may not be collected in that PO's revenue requirement).

- C. The FPSC has the right to review the studies (and supporting data) and to provide input to the Transmission Provider during the decision making process as to the need for new transmission facilities. To the extent that proposed incremental facilities selected by the Transmission Provider include facilities that are subject to the FPSC's siting jurisdiction, the proposed expansion shall be submitted to the FPSC for its review and approval in accordance with the relevant statutory standards.
- D. To the extent the FPSC (or any regulatory body) lawfully orders an LSE or PO under its jurisdiction to construct facilities that are considered part of the Transmission System, then the Transmission Provider accepts the responsibility to cause build such facilities to be built if the LSE or the PO either (a) cannot do so, or (b) does not desire to do so and is not obligated to do so pursuant to Section II.B.
- E. The recovery of costs of transmission facilities constructed pursuant to this Attachment N by the Transmission Provider or PO(s) will be in accordance with the Tariff and FERC policies. The Transmission Provider shall have the right to review all aspects of a construction project undertaken by a PO pursuant to this Planning Protocol, including design standards, costs, and construction schedules.
- F. The Transmission Provider may require a PO or Divesting Owner, to the extent necessary, to apply for all necessary certificates of public convenience and necessity and permits for the construction of transmission facilities that will become part of the Transmission System, and to use their power of eminent domain to assist the Transmission Provider in the acquisition of any necessary property rights, including rights of way, for the construction of such transmission facilities.

### III. Transmission Planning Committee

1. No later than the date this Tariff becomes effective, The Advisory Committee shall create a Transmission Planning Committee as a subcommittee of the Advisory Committee. The Transmission Planning Committee shall be composed of one member from each stakeholder group represented on the Advisory Committee.
2. The Transmission Planning Committee shall provide advice and input regarding the planning process to the Transmission Provider. Further, to the extent requested by the parties involved, the Transmission Planning Committee shall provide advice and possible alternatives as to unresolved planning and expansion matters. In the event that such matters referred to the Transmission Planning Committee cannot be resolved, the matters will be resolved in accordance with the Dispute Resolution Procedures set forth in the Tariff.

IV. FRCC's and FPSC's Role In Reliability and Planning Process

- A. The FRCC's role in the reliability and planning process shall be as follows:
  - 1. The FRCC shall review and assess the plans and reliability assessment of the Transmission Provider (including POs as necessary).
  - 2. The FRCC, in coordination with NERC, shall develop reliability standards, and monitor and ensure compliance with such standards.
- B. The FPSC's role in the planning process shall be as follows:
  - 1. The FPSC shall have the same right to participate in the planning process described in Sections I and II as any other entity, to the extent that it so chooses.
  - 2. The creation and operation of the Transmission Provider will not affect the FPSC's ability to participate in the FRCC's review of the plans and reliability assessment of the Transmission Provider provided for in Section IV.A.1 above.
  - 3. All proposed construction of transmission facilities subject to the FPSC's siting jurisdiction shall be submitted to the FPSC for its review and approval.

V. Coordination of the Transmission Provider with other RTOs

- 1. The Transmission Provider will coordinate all inter-regional planning (e.g., with a SERC RTO).
- 2. The Transmission Provider will develop practices to ensure the coordination of reliability and market interface practices among regions. The Transmission Provider will either develop these practices itself or in coordination with an independent entity that covers several regions or an entire interconnection. The Transmission Provider will submit a report to FERC on its progress in the development of coordination standards within one year of its commencement of operations.

**Exhibit N.1**  
**To The**  
**Planning Protocol**  
**Annual Regional Transmission Planning Process**

~~In order to~~ To implement the transmission expansion plan, procedural milestones are a timeline is established as set forth below in order to effectuate an “Annual **Regional Transmission Planning Process**”: **Each year, the Transmission Provider will establish the date the procedures below will commence. The first such date will be no later than one year after the effective date of this Tariff.**

1. ~~At the time determined by the Transmission Provider, in September of each year,~~ the Transmission Provider will notify and post on the OASIS a request for data from Network Customers concerning expected usage of the Transmission System for the next 10 years (*e.g.*, demand/load forecasts incorporating in such forecast the current year’s winter and summer peak data, supply forecasts for the 10 year period (i.e., Network Resource(s)); proposals for new interconnections, Points of Delivery, proposals for transmission system upgrades, etc.). The Transmission Provider shall obtain similar information from Non-Participating Owners located in the FRCC in its capacity as security coordinator of the FRCC.
2. ~~In sixty days, By November 1 of each year,~~ Network Customers of the Transmission Provider shall submit the data requested in paragraph 1.
3. A transmission customer may make a request for long-term firm transmission service (i.e., Long-Term Firm Point-to-Point, Network Service) and/or Generation Interconnection Service and have such request processed in accordance with the provisions contained in the ~~Tariff~~ OATT, at any time during the year. Such request for service will be processed based on:
  - (i) the existing Transmission System;
  - (ii) the FTEP;
  - (iii) all valid requests for long-term firm transmission service and GIS that are submitted prior to such request and which impact the processing of such request.

In addition, for each annual **regional** plan subsequent to the initial planning cycle, a confirmed request for long-term firm transmission service or GIS submitted prior to ~~November 1~~ the annual data submittal date of the

Transmission Provider's network customers will be included in the base assumptions for that year's Annual Regional Transmission Planning Process.

4. The Transmission Provider shall **conduct studies regarding** the need for incremental transmission facilities (including potential alternatives - e.g., generation additions) taking into consideration all existing and reserved long-term firm transmission service, and post the availability of such studies on the OASIS.
5. Seven months from the date of data submittal, By June 1 of each year, the Transmission Provider shall post on its OASIS an **Initial Transmission Expansion Plan ("ITEP")** that provides for the transmission needs of the users. The posting shall invite comments on the ITEP by interested parties, including Non Participating Owners. Such comments shall be submitted to the Transmission Provider in 30 days by July 1.
6. Two weeks after the receipt of comments, By July 15 of each year, the Transmission Provider shall conduct a Regional Planning Conference at which all users of the Transmission System, FPSC and interested parties may participate in a detailed review and present their comments regarding the ITEP. In developing the **Final Transmission Expansion Plan ("FTEP")**, the Transmission Provider shall take into consideration such comments relating to the ITEP.
7. Ten weeks after the planning conference, By October 1 of each year, the Transmission Provider shall finalize the FTEP and post it on the OASIS. The entire process will take eleven months from the data submittal date.

To the extent that a user of the Transmission System or the FPSC does not agree with the FTEP, such user or the FPSC shall first raise this matter with the Transmission Planning Committee. Subsequently, in the event that such matter cannot be resolved by the Transmission Planning Committee, the matter will be resolved in accordance with the Dispute Resolution Procedures set fourth in ~~the OATT~~ this Tariff.