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June 21, 2002

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard, Room 110  
Tallahassee, Florida 32399-0850

**VIA HAND DELIVERY**

Re: Docket No. 020233-EI

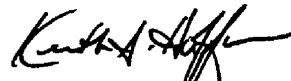
Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and seven (7) copies of the Post-Workshop Comments of Florida Power Corporation, Florida Power & Light Company and Tampa Electric Company. Also included is a high-density diskette containing the Post-Workshop Comments in MSWord format.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" or "received" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

KAH/kl

Enclosures

cc: All Parties of Record

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Review of GridFlorida Regional )  
Transmission Organization Proposal )**

**Docket No. 020233-EI**

**POST-WORKSHOP COMMENTS  
OF FLORIDA POWER CORPORATION, FLORIDA POWER & LIGHT  
COMPANY, AND TAMPA ELECTRIC COMPANY**

Florida Power Corporation ("FPC"), Florida Power & Light Company ("FPL"), and Tampa Electric Company ("Tampa Electric") (collectively, the "GridFlorida Companies") hereby file their Post-Workshop Comments ("Comments") addressing the GridFlorida Companies' proposal to establish GridFlorida, a Regional Transmission Organization ("RTO") for the Florida Reliability Coordinating Council ("FRCC") region. These Comments respond to questions raised by the Commission and the stakeholders concerning the GridFlorida Companies' March 20, 2002 compliance filing (the "Filing") as presented before, during, and after the Commission's May 29, 2002 workshop ("Workshop").

The Commission-led process, particularly the Workshop, has produced a number of suggestions to improve the GridFlorida documents, to the benefit of Florida retail customers. While the GridFlorida Companies do not agree with all of the comments made by stakeholders during this process, since the Filing they have adopted a number of constructive suggestions. Redlined documents are attached as Exhibits hereto.

For the reasons explained herein and in the Filing, the Commission should grant the relief requested by the GridFlorida Companies in the Filing without a hearing. The GridFlorida proposal included with the Filing, as amended herein, represents the best alternative for a Florida RTO at this time, is fully compliant with the Commission's Order No. PSC-01-2489-FOF-EI, issued on December 20, 2001 ("Order"), and reflects

significant stakeholder and state and federal regulatory processes. The GridFlorida Companies have gone to great lengths, including the additional steps discussed herein, to address stakeholder concerns. Further, the open architecture of GridFlorida will allow it to evolve over time, including to meet changes in the marketplace, and stakeholders will have continuing input into that evolution through the Advisory Committee and other mechanisms.

#### I. Introduction

To establish GridFlorida, there now have been two stakeholder processes, GridFlorida-specific proceedings before two regulatory agencies, and generic or region-wide proceedings before the Federal Energy Regulatory Commission ("FERC"). The journey thus far has lasted approximately three years.

Following FERC's issuance of Order No. 2000,<sup>1</sup> the GridFlorida Companies commenced a collaborative stakeholder process in Florida to develop an RTO for the FRCC region. That collaborative process involved numerous meetings among stakeholders, the distribution by the GridFlorida Companies of many drafts of all of the GridFlorida documents, close review of all stakeholder comments about those documents, and a significant number of adaptations in response to those comments. That process also resulted in three filings by the GridFlorida Companies to FERC and two orders from FERC addressing the substance of the GridFlorida proposal. See GridFlorida LLC, 94 FERC ¶ 61,020 (2001) ("GridFlorida I"); GridFlorida LLC, 94 FERC ¶ 61,363

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<sup>1</sup> Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd, Public Utility District No. 1 of Snohomish County v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

("GridFlorida II"), order on reh'g, 95 FERC ¶ 61,473 (2001). In these orders FERC approved the GridFlorida structure in large part.

A second stakeholder process followed issuance of the Order. The Commission's Order held, among other things, that: (a) the GridFlorida Companies were prudent in proactively forming GridFlorida, see Order at 4; (b) the formation of an RTO in Florida would lead to benefits to Florida customers, see id. at 9; and (c) GridFlorida initially should be structured as an independent system operator ("ISO") rather than a transmission-owning company ("Transco"), see id. at 12. The Commission also explained that it should retain jurisdiction over the transmission component of bundled retail rates. See id. at 24. Like the earlier stakeholder process, a number of stakeholder meetings were held (this time through the GridFlorida Advisory Committee), numerous drafts of documents were distributed, comments were received and thoroughly analyzed, and parties' positions debated. The resulting documents, which responded in large measure to the stakeholder input, were filed on March 20 as part of the Filing. The stakeholder process continued through the Workshop and thereafter.

Despite this lengthy and open process, some stakeholder questions remain. This partly arises because the stakeholder process involves many entities with divergent needs and interests. When a change is accepted for one stakeholder, it often raises issues for another stakeholder. This also is a reflection of the fact that the stakeholder process is not a typical negotiation. In a typical negotiation, the parties agree to a compromise position that usually is not ideal from either party's perspective, but that both parties are willing to accept to reach agreement. The parties then live under those negotiated terms. Here, on the other hand, a stakeholder is able to push for and receive a concession as part

of a "compromise" during the stakeholder process, while remaining free to argue in front of the regulator for its ideal position.

The GridFlorida Companies in these Comments explain the many amendments to the GridFlorida documents made since the Filing to address stakeholder concerns. The GridFlorida Companies also will address a number of issues raised by stakeholders as part of the Workshop and post-Workshop collaborative discussions with which the GridFlorida Companies do not agree.

## II. Governance

As filed with FERC, GridFlorida would have been a for-profit Transco. The governance structure accordingly was modeled for such an RTO. For example, the board selection process assumed that eventually there would be public shareholders of GridFlorida that could choose directors. Also, rules for board meetings and decision-making were developed to accommodate the needs of a for-profit entity while also providing for an open and advisory stakeholder process. FERC approved that GridFlorida governance structure in GridFlorida I.

The Commission in the Order required the GridFlorida Companies initially to adopt an ISO structure for GridFlorida, rather than a Transco. See Order at 13-14. In compliance with this requirement, GridFlorida was changed from a transmission-owning limited liability company to a Florida not-for-profit corporation. The new structure was reflected in the amendments included in the Filing.

A number of amendments to the GridFlorida documentation were required to reflect this change in structure. Among these were changes to the qualifications required for directors and the number of directors (from nine to seven), and changes to the Board

Selection Committee. The following table summarizes the composition of the Board of Directors, Board Selection Committee, and Advisory Committee (which was not changed) under the new GridFlorida structure.

<b>Entity</b>	<b>Responsibilities</b>	<b>No. of Members</b>	<b>Make-Up</b>
Board of Directors	Manage the business affairs of GridFlorida	7	<ul style="list-style-type: none"> <li>-Qualifications equivalent to those of directors of corporations with equivalent or larger revenues and assets than that anticipated for GridFlorida</li> <li>-The Board will to the extent possible reflect a mix of backgrounds and experience</li> </ul>
Board Selection Committee	Select and remove directors	9	<ul style="list-style-type: none"> <li>-3 representatives of IOUs</li> <li>-1 representative of non-IOUs that distribute power at retail</li> <li>-1 representative of G&amp;T coops and municipal joint action agencies that sell power at wholesale</li> <li>-1 representative of generators</li> <li>-1 representative of power marketers and brokers</li> <li>-1 representative of end-users</li> <li>-1 representative selected by the Commission (or the Advisory Committee)</li> </ul>
Advisory Committee	Advise management and the board	13	<ul style="list-style-type: none"> <li>-3 representatives of IOUs</li> <li>-2 representatives of non-IOUs that distribute power at retail</li> <li>-2 representatives of G&amp;T coops and municipal joint action agencies that sell power at wholesale</li> <li>-2 representatives of generators</li> <li>-2 representatives of power marketers and brokers</li> <li>-2 representatives of governmental or non-profit organizations that represent end-users (which includes the Commission)</li> </ul>

Parties filed comments on a number of aspects of the GridFlorida governance structure. While the GridFlorida Companies do not agree with some arguments or suggestions, others improve the GridFlorida governance or otherwise are acceptable changes. The GridFlorida Companies have amended the GridFlorida documentation to reflect the comments that fit in this latter category, as shown in Exhibits A and B hereto.

A. Selection of the Board of Directors

Under the Transco structure the Board Selection Committee would have selected the initial board of directors of GridFlorida, with subsequent directors ultimately to be elected by the corporation's shareholders. Each of the GridFlorida Companies effectively could select a representative to serve on the Board Selection Committee, which included a total of eight representatives. Notwithstanding the objections of some parties that the GridFlorida Companies were over-represented on the committee, FERC approved its composition. FERC stated that it:

disagrees with intervenors that transmission owners are likely to exercise sufficient control over the selection of the initial directors so as to threaten independence. We are satisfied that the process for determining the slate of initial Director candidates ensures a fair and non-discriminatory selection of initial Directors. The Board Selection Committee itself . . . reflects substantial diversity among stakeholder groups[.]

GridFlorida I, 94 FERC ¶ 61,020 at 61,046. This Commission did not require any change to the committee.

A not-for-profit corporation, as GridFlorida is now structured, has no shareholders, thus requiring a change to how subsequent directors are chosen. Under the new GridFlorida structure included with the Filing, the Board Selection Committee has been retained for this purpose. As described in the Filing, the Board Selection Committee preserves and expands upon the stakeholder diversity referred to by FERC. It still includes three representatives that are chosen by the GridFlorida Companies, with the balance of the representatives chosen by other stakeholder groups. However, a ninth representative to be chosen by the Advisory Committee was added as part of the Filing amendments. See Formation Plan, § 3.1.

No party raised an objection to retaining a stakeholder committee to select subsequent directors. However, in arguments that are the same as those already raised at, and rejected by, FERC, some parties object to the composition of the Board Selection Committee. See Jacksonville Electric Authority ("JEA") Comments at 2-3; Florida Municipal Group ("FMG") Comments at 13. According to the Florida Municipal Power Agency ("FMPA"), the Advisory Committee should be used for this purpose. See FMPA Comments at 6. These arguments are without merit.

1. The Composition of the Board Selection Committee is Appropriate

The parties that complain about the composition of the Board Selection Committee object to the fact that each of the GridFlorida Companies effectively is provided a representative on that committee. According to JEA, the Board Selection Committee "is not balanced among the GridFlorida stakeholders, but is weighted in favor of the Applicants." JEA Comments at 2. JEA believes the GridFlorida Companies should be limited to one representative. See id. at 3. These arguments are without merit.

The GridFlorida Companies own the significant majority of the transmission assets that will be controlled by GridFlorida, serve the vast majority of retail customers in the GridFlorida footprint, and are the only entities currently expected to appoint representatives to the Board Selection Committee that are directly regulated by the Commission. Given these facts, providing each GridFlorida Company with the ability to appoint a representative is justified. Indeed, given that the GridFlorida Companies own approximately 84 percent of the transmission assets and serve a vast majority of the customers affected by GridFlorida, one could argue that the GridFlorida Companies are under-represented.



Further, a majority vote of the Board Selection Committee is necessary to elect a director, and a two-thirds vote is required to remove a director. See Formation Plan, §§ 3.4, 3.7, 3.8. The three representatives appointed by the GridFlorida Companies, even acting together, cannot remove, elect, or block the election or removal of any director.

Finally, in response to stakeholder concerns expressed prior to the Filing, a ninth representative was added to the Board Selection Committee as part of the Filing package. This change dilutes the weight of the GridFlorida Companies' votes relative to the approach already approved by FERC. The GridFlorida Companies note in this regard that, although they originally contemplated that the new ninth representative would be appointed by the Advisory Committee, they have amended the Formation Plan to provide that such representative will be selected by the Commission. If the Commission chooses not to select that representative, it will be selected by the Advisory Committee. See Formation Plan, Exhibit B hereto, § 3.1.

Retaining three representatives on the Board Selection Committee that are chosen by the GridFlorida Companies thus is justified. The same arguments raised here by the stakeholders have been raised before--at FERC--and rejected, and this Commission did not in the Order require any change to the Board Selection Committee. The fact that the committee will have a continuing role in selecting future directors does not change the justification for the GridFlorida Companies' approach.

2. The Advisory Committee Should Not Be Used for Board Selection

A number of factors militate against FMPPA's argument that the Advisory Committee should be used to select and remove directors. First, while it is contemplated that the Advisory Committee will advise the management and board of directors of

GridFlorida on a wide range of operational issues and related matters, the Board Selection Committee has a very different and discrete purpose--electing and, if necessary, removing directors. The types of individuals whose services will be most helpful on the Advisory Committee are likely to be different from the types of individuals whose services will be most helpful on the Board Selection Committee. For example, the Advisory Committee is likely to, and should, be populated by representatives with a background in the operations or day-to-day management of transmission systems. By contrast, the Board Selection Committee is expected to, and should, be populated by individuals whom potential candidates will view as their peers, that is, by persons holding senior level management positions themselves. Populating the Board Selection Committee with a small group of senior level representatives sends potential candidates a message that the selection process will be handled in a discrete, confidential, and professional manner and underscores that the selection of the board is an important matter.

Keeping the size of the Board Selection Committee to as manageable a number as possible--nine members meeting in a closed process, as currently proposed, versus a thirteen member Advisory Committee whose meetings are open to the public--likewise helps in achieving a discrete, confidential, and professional process. Expanding the size or opening the meetings of the Board Selection Committee would jeopardize expectations of a confidential process, and thereby create a reluctance on the part of qualified candidates to be considered.

Finally, replacing the Board Selection Committee with the Advisory Committee would establish an awkward construct that would allow the Advisory Committee, which

is charged with advising the board, to directly elect or remove from office the very individuals whom it advises. At best, such a construct would constrain the relationship between the Advisory Committee and the board.

B. Open Meetings of the Board of Directors

The GridFlorida documents have always included rights to access the board of directors and a broad information policy. However, they did not include a requirement that meetings of the board be open to the public, largely because GridFlorida was to have been a for-profit company that would frequently discuss at board meetings matters that would not be public information. This approach reflected an appropriate balance of considerations for a for-profit Transco.

Once GridFlorida was restructured as a not-for-profit ISO, and in response to stakeholder concerns in favor of greater openness, it was possible as part of the Filing to add provisions to require greater openness to the public. Regular and special meetings of GridFlorida's board therefore now will be open to the public. However, like any board, the GridFlorida board from time to time will consider matters of a confidential nature. The board thus may call, during an open meeting, an executive session that is closed to the public in order to address confidential matters. See Bylaws, Article III, § 4.

Notwithstanding these changes, some parties argue that this is not sufficient. They complain that the right to hold an executive session is too broad, that the right to take action through committees can be used to circumvent the open-meeting requirement, and that directors can confer outside of open meetings. See Seminole Electric Cooperative, Inc. ("Seminole") Comments at 20; Joint Commenters Comments at 45-46; FMPA Comments at 11-12. Most of these concerns are addressed through changes that

the GridFlorida Companies included in the Exhibits hereto. Other proposals are not warranted.

1. Changes the GridFlorida Companies Agree To Make

a. Acting by Written Consent

FMPA notes that the board of directors' ability to act by written consent contained in the GridFlorida By-Laws could be used to avoid the rules for open meetings. See FMPA Comments at 12. This was an unintended result. The GridFlorida Companies thus have amended the By-Laws to eliminate the board's ability to act by written consent. See By-Laws, Exhibit A hereto, Article III, § 6.

b. Confidential Information

The GridFlorida By-Laws define confidential information that the board is entitled to discuss in executive session by reference to a list of the types of confidential information the board is likely to consider, as well as a catch-all provision concerning matters that the chairman or a majority of the board deems confidential. See id. Article III, § 4. Joint Commenters assert that this catchall provision could be used frequently, and perhaps improperly, to avoid the open meeting requirement. See Joint Commenters Comments at 46. This was never the intent of the catchall provision; rather, it was to give the board flexibility to protect confidential information. Nevertheless, the GridFlorida Companies have amended the By-Laws to eliminate the catchall provision from the definition of confidential information. See By-Laws, Exhibit A hereto, Article III, § 6. This change also responds to Chairman Jaber's suggestion during the Workshop that the GridFlorida Companies include a list of situations when closed meetings will be held. Removing the catchall phrase leaves just such a list.

c. Actions by Committees

Because committees of the board will not generally take action on behalf of GridFlorida, the By-Laws did not subject committee meetings to the same open meeting requirements as those imposed on the board as a whole. However, in response to stakeholder comments received on this point, see FMPA Comments at 11; Joint Commenters Comments at 46, the GridFlorida Companies have amended the corporate governance documents to require that any committee meeting at which action is taken on behalf of GridFlorida must be open to the public, subject to the same notice, meeting, and confidentiality provisions applicable to the board as a whole. See By-Laws, Exhibit A hereto, Article III, § 6.

2. Arguments with Which the GridFlorida Companies Disagree

While the GridFlorida Companies are able to resolve many stakeholder concerns related to meetings of the board, others should not be incorporated into the GridFlorida structure. For example, it makes no sense to provide that directors cannot have discussions outside of public meetings, or cannot discuss matters with others, including stakeholders. See FMPA Comments at 15. The current GridFlorida documents strike an appropriate balance by requiring the board to act in the sunshine, in a public setting, but recognizing that members of the board may wish to, and should, interact with each other or with third parties outside of meetings. It is important that members of the board are permitted to develop personal relationships, and are encouraged to access as much information as possible. Prohibiting board members from interacting or imposing requirements that would make a director reluctant to glean information from others would only have a negative effect on GridFlorida. Moreover, it is in everybody's interest that

GridFlorida obtain the most competent and effective directors possible. If faced with burdensome restrictions regarding director interaction and contact outside of public meetings, otherwise willing candidates may decline to serve.

The GridFlorida Companies also do not agree with FMG's assertion that meetings via conference calls can be used to skirt the open meeting requirement. According to FMG, "Section 7 [of the By-Laws] . . . suggests that the only individuals that are entitled to participate in conference call meetings are members of the Board of Directors or any committee thereof." FMG Comments at 15. This simply is not true. Article III, Section 7, which tracks relevant state law, in fact provides:

Members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

By-Laws, Article III, Section 7. This Section in no way limits the participants on such conference calls. In fact, Article III, Section 4 of the By-Laws specifically provides:

Except as otherwise provided herein, regular and special meetings of the Board of Directors (including regular and special meetings held by means of conference telephone) shall be open to the public and notice of such meetings, together with a proposed agenda for any such meeting, shall be posted on the Corporation's website or equivalent form of electronic posting at the same time that notice is given to each director as contemplated in the immediately preceding sentence.

Id. Article III, Section 4. FMG's argument thus should be rejected.

C. Minority Opinions of the Advisory Committee

GridFlorida's corporate governance documents have always provided the Advisory Committee the right to make presentations to GridFlorida's board of directors by selecting a representative to present the Advisory Committee's view on a particular

topic at a board meeting. A provision also was added, prior to the Order, giving the Advisory Committee the right to select a second representative to present the view of the largest minority of the Advisory Committee on a particular topic. See Formation Plan, § 4.1. This approach was litigated before and approved by FERC. See GridFlorida II, 94 FERC at 62,328. An additional provision was added as part of the Filing package that provides the board of directors with discretion to invite other members of the Advisory Committee to present additional views at meetings of the board. See Formation Plan, § 4.1.

Although parties again have asserted the need to hardwire additional rights to present views to the board during board meetings, see Joint Commenters Comments at 44, the current rules strike an appropriate balance between providing access to the board and permitting the board to act in an orderly and efficient manner. To hardwire additional reports and presentations by members of the Advisory Committee into each board meeting would result in unduly burdensome, and potentially lengthy, board meetings. This could hamstring the board's ability to conduct its meetings as it sees fit and to accomplish the business at hand in an efficient manner.

Further, the Advisory Committee should not be permitted to conduct, for a second time, deliberations that have already occurred at the Advisory Committee level through a series of formal presentations to the board. Doing so would only marginalize the role of the Advisory Committee by making the committee's deliberations virtually meaningless, and reducing the impact and effectiveness of the presentations by the majority and largest minority view already contemplated by the corporate governance documents. These complaints are particularly unwarranted given the fact that stakeholders may send reports

or recommendations to members of the board at any time. See Formation Plan, § 4.1. Nothing will prevent a board member from reviewing any additional information provided to him or her when that member feels such additional review will be beneficial.

D. Corporate Filings by the Applicants

Seminole asserts that the ministerial process of filing the papers necessary to incorporate GridFlorida should be performed by an entity other than the GridFlorida Companies. See Seminole Comments at 20. This suggestion to add yet another layer to this process is unnecessary, and should be rejected.

The GridFlorida organizational documents have always been clear that once the Board Selection Committee has selected the initial slate of directors and has designated the classes in which they will serve, the names and classes of such directors are to be inserted into the Articles of Incorporation. These organizational documents also require the GridFlorida Companies to file, with Florida's Secretary of State, the Articles of Incorporation as approved by FERC, including the names and classes of directors as selected and designated by the Board Selection Committee, without alteration. See Formation Plan, § 2.2. The Applicants have no discretion as to the content of the filing with the Secretary of State. They are simply obligated to make the filing once the board has been selected and classified.

III. Planning

A number of the parties' pre-Workshop and Workshop comments regarding the planning protocol reflected a basic misunderstanding of that protocol, as well as how the planning function must be conducted under an ISO structure. To further the collaborative process and address outstanding stakeholder comments, Chairman Jaber at the Workshop



suggested an additional session among stakeholders and the GridFlorida Companies. In light of this suggestion, the GridFlorida Companies invited and received specific stakeholder comments on the ISO planning protocol included with the Filing. The parties then met via conference call on June 11, 2002. During that call, the GridFlorida Companies discussed a number of aspects of the planning protocol, agreed to address a number of suggested changes and clarifications to the protocol, and explained why other proposed changes are not reasonable. Finally, the GridFlorida Companies responded to each of the specific comments made by the stakeholders.

A number of stakeholders requested during the June 11 conference call that the GridFlorida Companies distribute, prior to June 21, 2002, an updated version of the planning protocol incorporating the changes agreed to during that call. The GridFlorida Companies expedited their efforts, and distributed an updated planning protocol to the stakeholders on June 14, 2002, a week before post-Workshop comments were due. That protocol is attached hereto, in redlined format, as Exhibit C.

The GridFlorida Companies have gone to great lengths during the entire stakeholder process to address stakeholder concerns raised about planning, including adopting many of the specific changes suggested by the stakeholders. The changes to the planning protocol, as well as certain other issues raised by stakeholders, are addressed below.

A. The ISO Planning Protocol is Fully Justified

The comments on the planning protocol fall into two general categories: (i) general objections to the use of the Midwest ISO planning protocol as a platform for the GridFlorida ISO planning protocol, which include concerns about the ISO's independence

under that approach and that the ISO planning protocol goes beyond what was required to comply with the Order; and (ii) comments on specific provisions in the protocol.

The objections that the ISO planning protocol goes beyond what is required to comply with the Order represent a narrow view of such compliance, and should be rejected. As explained more fully below, a number of factors dictate the adoption of the ISO planning protocol for the new ISO structure. Further, any concerns about the independence of GridFlorida under the ISO planning protocol are unwarranted, and reflect a basic misunderstanding of that protocol and the planning process under an ISO structure. Nonetheless, the GridFlorida Companies have made a number of additional clarifications to the protocol in an attempt to allay any such concerns.

With regard to stakeholders' specific comments, the GridFlorida Companies have been able to incorporate or otherwise address a significant number of suggestions. Others, however, are not warranted, and should not be included in the ISO planning protocol.

1. The Midwest ISO Planning Protocol is an Appropriate Platform for the GridFlorida ISO Planning Protocol

Certain parties object to the use of the Midwest ISO planning protocol as a starting point for the GridFlorida protocol. See Seminole Comments at 12; FMPA Comments at 19. According to FMPA, only "limited changes were in order to reflect the mandated shift from transco to ISO." FMPA Comments at 19.

It could appear on the surface that only limited changes would be needed to adapt the previous Transco planning protocol to the new ISO structure. However, it simply is not prudent to take such a narrow approach without analyzing whether the resulting protocol, which was designed for one structure (a Transco), will be appropriate for a

completely different structure (a non-transmission owning ISO). Transco and ISO structures have significant differences that must be considered and addressed when determining the parameters of the RTO planning function. Among the factors that must be considered are:

- Under an ISO structure, there is a greater need to assure coordination and consultation among the ISO, transmission owners, and other market participants. A Transco would have owned a substantial majority of the transmission facilities in the State, and been responsible for operating, maintaining, engineering, upgrading, and expanding those facilities. Under an ISO structure, the RTO will be responsible for operating and planning the transmission system, but will not own, engineer, maintain, upgrade, or expand transmission facilities, and therefore will need to consult and coordinate with the transmission owners about many aspects of the facilities under its control. It therefore is essential to ensure two way communication and support between transmission owners and the RTO. Greater assurance of collaboration also is necessary in light of the shift in liability that occurs in the move from a Transco to an ISO structure. A Transco was liable for the transmission facilities it owned. Thus, the decisions it made regarding its transmission facilities directly affected the RTO itself. Under an ISO structure, the owners of facilities controlled by GridFlorida will retain liability for those facilities. Moreover, a Transco had the financial wherewithal to cover liabilities arising from its actions or instructions, whereas a non-profit ISO will not have the same capability.
- It is more critical to ensure that transmission owners and other market participants are obligated to provide an ISO with the support and assistance it needs to carry out the planning function. This support and assistance includes assuring that transmission owners retain expertise necessary for planning, maintaining, engineering, upgrading, and expanding transmission facilities, and that those transmission owners provide reasonable assistance on such matters when requested by the ISO.
- It is essential to assure accountability to the Commission<sup>2</sup> for planning and reliability. By ensuring direct involvement of entities that are unquestionably subject to the Commission's jurisdiction, the Commission's continuing authority under the Grid Bill can better be assured.

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<sup>2</sup> For sake of clarity, the GridFlorida Companies note that references to "the Commission" in this section, like the other sections of the Comments, refer to the FPSC. The term "Commission" in the planning protocol itself, however, refers to FERC.

The GridFlorida Companies used these factors to analyze the GridFlorida Transco planning protocol with minimal changes of the type suggested by FMPA, as well as numerous other ISO and RTO planning protocols (the Midwest Independent System Operator ("Midwest ISO"), the Pennsylvania-New Jersey-Maryland ISO ("PJM"), and the Electric Reliability Council of Texas (ERCOT) ISO, among others). The results of this analysis made clear that the kind of simplified approach advocated by FMPA would not result in an efficient, timely, and effective planning process for an ISO. Such an approach would not provide for the necessary consultation and coordination between the ISO, transmission owners, and other market participants, nor would it include the necessary obligations on transmission owners to provide the ISO the assistance it will need. Such an approach also would not ensure the Commission's continuing oversight over planning and reliability.

The Midwest ISO planning protocol, on the other hand, specifically was developed for an RTO that would not own transmission assets. It provides for the consultation and coordination that will be necessary under the GridFlorida ISO structure. That planning protocol, which is the most recent ISO planning protocol approved by FERC, see Midwest Indep. Trans. System Operator, Inc., 97 FERC ¶ 61,326 (2001) ("Midwest ISO"), also (i) maintains the key elements for independence that were included in the previous GridFlorida planning protocol, including ultimate ISO responsibility and authority for planning, and (ii) maintains one-stop shopping. Finally, the Midwest ISO protocol is based on principles that have been shown to work for an ISO. This planning model has been used effectively in PJM for quite some time—where the ISO planning staff works with transmission owners and other market participants, see,

e.g., Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Schedule 6, §§ 1.5.2, 1.5.5(b)—and now is being used successfully in the Midwest ISO.

In light of this analysis, the GridFlorida Companies concluded that the most prudent course of action was to utilize the Midwest ISO planning protocol as the platform for developing the new GridFlorida ISO planning protocol. No party has provided any credible argument or analysis to refute that conclusion.

In adopting the Midwest ISO planning protocol as a platform for a GridFlorida ISO planning protocol, the GridFlorida Companies recognized that the previous Transco planning protocol included a number of unique features that are not contained in the Midwest ISO model. These enhancements were added to the GridFlorida ISO planning protocol prior to the Filing. They include (i) development of planning and facilities standards, (ii) ability to request enhanced or special facilities, and to construct a delivery point or enhanced facilities on an expedited basis, (iii) specified procedural time-frames for the planning process, (iv) transition criteria for the initial GridFlorida plan, (v) procedures for establishing and modifying points of delivery, and (vi) a planning Bill of Rights.

## 2. The ISO Planning Protocol Satisfies Independence Requirements

The parties complaining about the GridFlorida ISO planning protocol have expressed general concerns that the independence of the RTO somehow is compromised under the new approach. For example, according to FMPA "the new planning protocol takes much of the responsibility and authority for transmission planning and expansion out of GridFlorida's hands and gives them back to the Participating Owners[.]" FMPA Comments at 20. Seminole expresses the belief that the GridFlorida Companies "have

undermined the balance that is found in the FERC-approved Planning Protocol. They have accomplished that result by giving to themselves power that was formerly in the RTO." Seminole Comments at 9; see also Joint Commenters Comments at 23-24 (expressing concerns about independence).

These concerns are unfounded. The planning protocol included with the Filing made it absolutely clear that GridFlorida is the ultimate decision-maker. For example, the protocol provides:

- Section I: "The Transmission Provider [GridFlorida] has the ultimate responsibility and authority for developing and approving a comprehensive GridFlorida-wide transmission plan . . . ."
- Section II: "The planning function for GridFlorida shall be the responsibility of the Transmission Provider." and "The Transmission Provider shall make the final determination in the process[.]"
- Section III: "The Transmission Provider shall be responsible for calculating [available transmission capacity] for the Transmission System."
- Section IV: "The Transmission Provider shall receive, evaluate, and respond to all requests for transmission service that involve the use of the Transmission System."

Nonetheless, to allay any lingering concerns, the GridFlorida Companies have included a number of clarifications in the planning protocol included as Exhibit C hereto to confirm the independence of GridFlorida. Most importantly, the GridFlorida Companies have clarified further the roles of the RTO, the Participating Owners ("POs"), and other market participants in the planning process. See Planning Protocol, Exhibit C hereto, § IX.

Like other places in the planning protocol, Section IX has been amended to stress that "GridFlorida shall be responsible for and have ultimate authority for performing the planning function, and developing a comprehensive and integrated GridFlorida-wide

transmission plan." Id. There thus is no question that GridFlorida is the ultimate decision-maker. In performing these functions, GridFlorida will "*reasonably* consult and coordinate with POs whose facilities are affected *and other affected market participants[.]*" Id. (emphasis added). This provision ensures that GridFlorida will not fulfill its planning duties without reasonable consultation and coordination with transmission owners and other market participants. This provision also assures, along with other parts of the protocol, that all affected market participants will have equal access to the RTO. Finally, GridFlorida will utilize Ad Hoc Working Groups for support, consultation, and coordination for the planning function and to develop the GridFlorida transmission plan. These working groups will be made up of "affected POs *and market participants*, and any other party the Transmission Provider deems appropriate." Id. (emphasis added).

Some parties argue that GridFlorida should not be required to coordinate with Participating Owners. According to Seminole, "GridFlorida should be encouraged to call upon the POs for assistance where needed, but the POs' attempt . . . to insert themselves in the process is destructive and must be disallowed." Seminole Comments at 11. Similarly, the Joint Commenters assert that the planning protocol should not provide for collaboration, but rather that "the POs should provide input as needed[.]" Joint Commenters Comments at 26.

The GridFlorida Companies disagree completely. While it is important to ensure that market participants are obligated to provide GridFlorida with the assistance it needs in the planning process—something the ISO planning protocol does—it also is important to ensure that GridFlorida will obtain the information it needs and coordinate efficiently

with transmission owners and affected market participants. As explained above, GridFlorida cannot effectively plan the system without these steps. For example, the RTO will need information from transmission owners to determine feasibility of system expansion and estimate the cost of such expansion. Likewise, a Participating Owner will need to know if the RTO is planning to use a particular facility or available space at that owner's substation, for example for the installation of a transmission capacitor bank for voltage support, because the owner may have other planned uses for such space. These issues require on-going coordination.

The GridFlorida Companies note that FERC has addressed, and rejected, arguments similar to those made here when addressing formation of the Midwest ISO. In approving the Midwest ISO planning process, FERC explained that:

[T]he Planning Framework vests primary planning responsibility on staff members of the Midwest ISO . . . . The Planning Framework also provides that the Midwest ISO planning staff will consider inputs both from [transmission owners] and from others, including the Planning Advisory Committee which represents a broad range of stakeholders.

Midwest ISO, 97 FERC at 62,520. What was important to FERC was not the obligation on the RTO to consult, but rather that all market participants have equal access to the RTO, and that the RTO has ultimate responsibility for planning. Those criteria are satisfied here.

B. Additional Clarifications to the Protocol Agreed to by the GridFlorida Companies

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The GridFlorida Companies believe that a number of clarifications and additions suggested by the stakeholders in comments and subsequent discussions are appropriate, and have amended the planning protocol accordingly. In addition to the amendments



above to clarify GridFlorida's independence, amendments in response to stakeholder comments that appear in the planning protocol included as Exhibit C hereto include:

- Requested changes regarding customers' ability to obtain facilities designed and constructed using higher standards than GridFlorida standards have been made. See Planning Protocol, Exhibit C hereto, § X; FMPA Comments at 20 and n.29.
- The provisions addressing enhanced facilities and expedited construction have been added. See Planning Protocol, Exhibit C hereto, § XI; FMPA Comments at 20 and n.30.
- Language has been added to clarify that the planning Bill of Rights have been retained. The GridFlorida Companies note in this regard that Joint Commenters complaint that the Bill of Rights had been omitted is incorrect. See Joint Commenters Comments at 24-25. The planning Bill of Rights, which originally was included in the Formation Plan, has been moved into the transmission tariff. These items were only placed in the Formation Plan initially because the Formation Plan was filed with FERC before that level of detail was included in the transmission tariff.
- The delivery point interconnection standards have been added back to the tariff, amended to reflect the ISO structure. See Terms and Conditions of Service Applicable to Points of Delivery for Network Integration Service, Exhibit D hereto (redlined against Terms and Conditions on file with FERC); FMPA Comments at 22.
- Final reports and planning studies will be posted on OASIS consistent with FERC policy. See Planning Protocol, Exhibit C hereto, § VII; FMPA Comments at 24; Joint Commenters Comments at 28.
- The reference to the Participating Owners Management Agreement ("POMA") that had been included in Section II (now Section III), has been deleted. See Joint Commenters Comments at 27.
- As requested by a number of stakeholders, old Section X of the planning protocol has been deleted. See, e.g., id. at 28.
- The Commission's ability to provide input to any party at any time, following review of the plan, has been clarified. See Planning Protocol, Exhibit C hereto, § VII; Joint Commenters Comments at 31.
- Joint Commenters state that the RFP process for construction of new facilities "should not contain unreasonable or excessively restrictive minimum criteria so as to limit the pool of bids but rather should seek to encourage broad

participation in the bidding process." Joint Commenters Comments at 31. The GridFlorida Companies agree that the bidding process for the construction of new facilities (which is discussed in greater detail below) must be a fair process. Section VIII of the Planning Protocol has been amended to clarify GridFlorida's role in that process, ensuring that GridFlorida has adequate oversight of the process, and providing for dispute resolution in the event GridFlorida and the owning entity have any dispute in that regard. See Planning Protocol, Exhibit C hereto, § VIII.

- Joint Commenters argue that "no provision is made in the Planning Protocol for inter-RTO planning." Joint Commenters Comments at 32. That statement is not true. The planning protocol included with the Filing provided that GridFlorida was to "coordinate planning with non POs and other RTOs[.]" Filing, GridFlorida Transmission Tariff, Attachment N, § XII. Nonetheless, in an attempt to address Joint Commenters' concerns, the language included in the Transco planning protocol addressing inter-RTO coordination has been inserted into the ISO planning protocol. See Planning Protocol, Exhibit C hereto, § XII.
- Reedy Creek Improvement District ("Reedy Creek") questioned why certain language regarding cost responsibility for enhanced facilities had been removed. See Reedy Creek Comments at 12. The relevant language from the Transco planning protocol has been added back to the ISO protocol. See Planning Protocol, Exhibit C hereto, § XI.
- Language has been added to clarify that Enhanced Facilities meet or exceed GridFlorida standards. See id. § 11 and n.1; see also Reedy Creek Comments at 13. Further, as requested by Reedy Creek, see Reedy Creek Comments at 13, language has been added to Section XI of the planning protocol to clarify that "Any review or inspection [of enhanced plans and facilities] 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." Planning Protocol, Exhibit C hereto, § XI.

#### C. Objections to Specific Protocol Provisions That Should be Rejected

While the GridFlorida Companies were able to incorporate a number of the stakeholders' proposed amendments, other amendments are not warranted. Those suggested amendments that warrant discussion are addressed below.

1. Line Ratings, Reliability Requirements, and Operating Guidelines

Certain parties object to the use of a transmission owner's equipment ratings until any disputes over such ratings have been resolved. See Seminole Comments at 10; FMPA Comments at 22. FMPA also objects that GridFlorida will use transmission owners' reliability requirements and operating guidelines pending resolution of any dispute regarding those requirements. See FMPA Comments at 22. See also Joint Commenters Comments at 26 (objecting to use of PO modeling information). These arguments should be rejected. The owner of facilities placed under the control of GridFlorida will retain liability for those facilities. Until any issues are resolved through dispute resolution, the line ratings, reliability requirements, and operating guidelines submitted by that owner should apply. Any other process is a recipe for potential safety and/or reliability incidents. The GridFlorida Companies also note that this issue will be mitigated as the RTO develops new standards for construction, and that FERC already has rejected similar arguments to the ones made here. See Midwest ISO, 97 FERC at 62,515-516.

2. Construction of Facilities

a. Competitive Bidding Process

Under the planning protocol, the construction of any major new transmission facility, as determined by GridFlorida, must be competitively bid by the entity responsible for owning such facility. See Planning Protocol, Exhibit C hereto, § VIII. Seminole objects to allowing the owner to construct the facility by matching the lowest bid for construction. See Seminole Comments at 10-11. Seminole argues that this right of first refusal "unduly favors the PO" and "undermine[s] the bidding process[.]" Id. at

11. Seminole, however, provides absolutely no support for this assertion. Rights of first refusal are common provisions in a wide array of contractual arrangements in various industries. The GridFlorida Companies do not believe that the bidding process will be undermined in any respect, and that it is reasonable to permit the entity that will own a facility to construct that facility so long as it matches the lowest bid submitted through an RFP process. Nevertheless, to allay Seminole's concerns, the GridFlorida Companies have clarified the RTO's role in the bidding process to ensure adequate oversight and review during that process.

b. Cost Recovery and Regulatory Approvals

FMPA objects to the provision in the planning protocol that GridFlorida "shall not require that projects be undertaken where it is reasonably expected that the necessary regulatory approvals for construction and cost recovery will not be obtained." Planning Protocol, Exhibit C hereto, § VIII. FMPA argues that the provision "might be acceptable, as long as it is clarified that GridFlorida is the entity that determines whether regulatory approval and cost recovery may be 'reasonably expected.'" FMPA Comments at 23. This clarification is not necessary. Like any other matter under the planning protocol, if there is a dispute it will be resolved through the tariff's dispute resolution procedures. Until the dispute is resolved construction should not commence, as it could result in unnecessary expenditures that harm retail customers.

c. Design and Construction Standards

FMPA also expresses a concern that under the ISO planning protocol GridFlorida maintains less control over the design and construction of projects. See id. at 23-24. However, nothing has changed in this regard. Under both the Transco planning protocol

and the ISO planning protocol GridFlorida has a right to review design and construction of new transmission facilities. See, e.g., Planning Protocol, Exhibit C hereto, § IX. If there is a disagreement between GridFlorida and the entity that will own those facilities, it will be resolved through dispute resolution.

d. Generation Alternatives

Joint Commenters assert that the planning protocol should be amended to require GridFlorida to make a determination "as to whether the construction of transmission or generation is the least cost alternative." Joint Commenters Comments at 30. Joint Commenters provide no specific language in this regard, and the exact nature of their concern is unclear. However, the GridFlorida Companies do not believe that any changes to the planning protocol are necessary.

The planning protocol specifies throughout that GridFlorida must consider generation alternatives as part of the planning process. For example, Section II (Bill of Rights) provides that "The GridFlorida planning process shall . . . identify and facilitate, in a timely manner, the adoption and implementation of transmission projects *and/or potential generation alternatives* that can effectively relieve congestion[.]" Planning Protocol, Exhibit C hereto, § II (emphasis added). Section VII similarly provides that "[t]he GridFlorida Plan will give full consideration to the transmission needs of all market participants, and identify expansions needed to support competition in bulk power markets and in maintaining reliability *taking into consideration demand side options and generation alternatives to transmission expansion.*" Id. § VII (emphasis added). Exhibit N.1 to the protocol provides that "[t]he Transmission Provider shall determine the need

for incremental transmission facilities (*including potential alternatives - e.g., generation additions*)[.]” Id., Exhibit N.1, § 4 (emphasis added).

Generation projects therefore will be fully integrated into the planning process. When a generator proposes a project that can alleviate the need for a transmission project, the transmission expansion plan will be adjusted to reflect that proposal.

To the extent Joint Commenters are arguing that GridFlorida itself should enter into arrangements for generation alternatives to transmission construction, that position should be rejected. If a generation alternative is warranted, the market will send appropriate price signals and the generator will be constructed. For example, a generator that constructs a generating facility that relieves congestion will receive the transmission rights associated with that increase in available transmission capacity. Further, a generation alternative to resolve congestion only will be effective if the generating facility is producing power. The RTO should not be entering into, for example, long-term power purchase agreements to resolve congestion. Doing so would significantly and adversely affect GridFlorida's independence; GridFlorida as a power purchaser would be a market participant. Even were independence not a concern, GridFlorida is a not-for-profit company and cannot accept the market risks associated with such an approach.

### 3. Use of Participating Owner Ten-Year Plans

Joint Commenters assert that the Participating Owners' ten-year plans should not be adopted by the RTO, rather “[t]he RTO should have the flexibility to evaluate projects outside the 4-10 year lead time.” Joint Commenters Comments at 28. This complaint is

a curious one, since Attachment N.2 to the planning protocol specifically gives the RTO the flexibility that has been requested:

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 PO and which is superior to that ten year plan, the Transmission Provider shall consult with the PO to attempt to reach agreement on the cancellation or delay. If the Transmission Provider cannot reach agreement with the PO, the PO may request dispute resolution.

Planning Protocol, Exhibit C hereto, Attachment N.2, § 2.

#### IV. Rates and Cost Recovery

The GridFlorida transmission tariff addressed by the Commission in the Order included a comprehensive pricing structure that previously had been approved by FERC. See GridFlorida II, 94 FERC at 62,346-352. That pricing structure included a number of important mitigation measures to protect retail customers against cost-shifts associated with the move to an RTO. These mitigation measures included a phase-in to system-wide rates from zonal rates, a phase-out of revenue recovery from existing agreements, and a phase-in of credits for transmission dependent utility ("TDU") facilities.

The Commission in the Order made no specific findings with regard to the GridFlorida pricing structure, but expressed concern that it should continue to set the revenue requirements needed to support retail transmission service. See Order at 14. To address the Commission's jurisdictional concern, the GridFlorida Companies amended the GridFlorida pricing structure so that during a five-year transition period the GridFlorida Companies will exempt their bundled retail load from zonal charges under the tariff. Consistent with the Commission's stated desire in the Order, this approach

will maintain the status quo with regard to jurisdiction over the GridFlorida Companies' existing transmission facilities during the transition period.<sup>3</sup>

In making this change, the GridFlorida Companies felt it was essential to retain the many important protections for retail customers, which the Commission did not require to be changed and which FERC already approved. While the changed treatment for bundled retail load required a number of conforming changes throughout the GridFlorida tariff, which the GridFlorida Companies explained in the Filing, the basic pricing structure and cost responsibilities were retained.

Parties for the most part did not raise issues about pricing that warrant any Commission response. Some parties are addressing aspects of the structure, such as TDU credits, at FERC, but do not believe this Commission needs to address those matters. See FMPA Comments at 42 n.57; Seminole Comments at 17-18. Others raise issues that relate to part of the basic pricing structure that has not been changed. See, e.g., FMG Comments at 38-42 (addressing how non-jurisdictional revenue requirements are established, charges for transmission owners that do not participate in an RTO, and pricing for imports and exports). Indeed, only two substantive matters warrant discussion in this regard: (i) the need for a recovery clause mechanism; and (ii) changes to dates related to existing facilities and existing contracts. In addition, the GridFlorida Companies will address requests from some parties for clarifications or corrections to the GridFlorida tariff.

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<sup>3</sup> Oddly, Seminole characterizes this amendment to comply with the Commission's directive as the GridFlorida Companies "reneg[ing] on their commitment in the GridFlorida filing at the FERC" to include all bundled load under the GridFlorida tariff. Seminole Comments at 17. The GridFlorida Companies do not agree that



A. Recovery Clause Mechanism

While bundled retail load can be exempted from zonal charges under the GridFlorida transmission tariff, it cannot be exempted from certain other RTO costs. See Midwest Indep. Trans. System Operator, Inc., 98 FERC ¶ 61,141 at 61,412-13 (2002). Specifically, bundled retail load cannot be exempted from costs associated with grid management, new facilities, or credits for existing TDU facilities. These costs, which are within FERC's exclusive jurisdiction, must be charged based on all load, including bundled retail load. The GridFlorida Companies thus will be subject to GridFlorida charges for these costs for their bundled retail customers as well as their wholesale loads.

These charges are expected to result in new, significant costs to the GridFlorida Companies, which are not included in current retail rates. Recovery by the GridFlorida Companies of these charges therefore is an integral part of the GridFlorida pricing structure. The GridFlorida Companies in the Filing asked the Commission expressly to authorize the recovery of these new charges from retail customers.

For a number of reasons, the mechanism for this purpose should be a cost recovery clause. First, such a clause will allow for timely recovery of these costs, without the expense of continually resetting base rates. The exact RTO costs are not known at this time, and will not be known until RTO bills are received, so it is not possible to seek recovery of the exact costs at issue until after-the-fact. Also, these costs will be significant, and likely will grow over time as new transmission facilities are constructed and if, as expected, the costs of TDU facilities are phased-in to RTO rates over time. Timely cost recovery therefore is a significant issue. Second, the costs are out of the

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complying with this Commission's directives amounts to renegeing on prior

GridFlorida Companies' control, and thus cannot be minimized by the GridFlorida Companies, making clause recovery particularly appropriate. The GridFlorida Companies note in this regard that the recovery clause mechanism will not be used to seek any increase in charges associated with increased costs for existing facilities. Third, a cost recovery mechanism will avoid over- and under-recovery of costs, and facilitate review of the level and basis for transmission costs in the future. As noted, the need to continually re-file rates is avoided. Fourth, a recovery clause mechanism is easily implemented, as the costs at issue are distinct and easily measurable.

The Florida Industrial Power Users Group ("FIPUG") argues that any cost recovery mechanism the Commission considers should "take into account each utility's net operating income from its entire operations, not just the additional costs attributable to the RTO." FIPUG Comments at 5. FIPUG argues that otherwise such a clause will ignore the effects of sales growth and rate base amortization. See id. This argument should be rejected. Base rates are calculated based on a test year that reflects just and reasonable costs for that period. None of the retail rates for the GridFlorida Companies include the additional costs at issue here. As explained, an RTO cost recovery clause is an appropriate mechanism to assure timely recovery of those costs. That mechanism should not effectively be turned into a formula rate where each rate component is examined to determine various offsets, particularly given that the off-sets FIPUG points to are questionable at best.

FIPUG's suggestion that clause recovery should be tied to an overall review of net operating income also is inconsistent with the treatment of other clause recoverable

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commitments.

items. For example, for each of the GridFlorida Companies the costs of purchased power capacity payments that are not included in base rates are recoverable through a capacity clause. Clause recovery of these purchased power costs does not require an overall review of net operating income. See Order No. PSC-92-1334-FOF-EI, issued on November 18, 1992.

B. Dates for Existing Facilities and Existing Contracts

In addition to permitting an exemption for bundled retail load from zonal charges, the GridFlorida Companies amended the GridFlorida pricing structure in two substantive ways. First, the definition of Existing Facilities, the costs of which are included in zonal charges, was amended. Rather than facilities placed into service prior to January 1, 2001, Existing Facilities now are defined as facilities placed into service prior to January 1 of the year GridFlorida begins commercial operations. See GridFlorida Transmission Tariff, § 1.11A (redlined version). Second, the date that determines whether existing contracts automatically are converted to service under the GridFlorida tariff (and thus not subject to phase-out of pancaked rates) was amended. Rather than contracts entered into after December 15, 2000, contracts entered into after January 1 of the year GridFlorida begins commercial operations automatically will convert to GridFlorida service. See id., Attachment T, § 8.1 (redlined version).

These key dates are interrelated, and were clustered as part of the GridFlorida Companies' plan for transition from individual utility service to RTO service within the time frame originally required by FERC's Order No. 2000. This tight pattern of dates supported the GridFlorida Companies' objective of minimizing cost shifts among RTO customers, as the limited time frame would preclude an accumulation of pre-

implementation new transmission investment to be rolled into the system-wide rates upon RTO implementation. Events during the past year that were completely beyond the GridFlorida Companies' control have resulted in deferral of the RTO implementation date to the indefinite future and thereby destroyed the synchronism, or reasonable contemporaneity, of transition dates that is essential to an effective scheme for mitigating cost shifts among RTO customers. The only way to restore such synchronism was to reestablish the temporal link between the RTO implementation date, the cut-off date defining Existing Facilities, and the cut-off date beyond which existing contracts would automatically be converted to service under the GridFlorida tariff.

The fact that the unraveling of the RTO transition dates and the consequences of such unraveling were not explicitly anticipated does not make those consequences any less significant, and should not preclude the GridFlorida Companies from rationally adapting their proposal to changed circumstances. In this instance, adaptation is necessary to preserve the coherence and effectiveness of the RTO transition mechanisms designed to minimize cost shifts. If the threshold date for including new transmission facilities in the system-wide RTO rate is not moved up, there will be more pre-implementation facilities whose costs would be included in the system-wide RTO rate, thereby exacerbating cost shifts among RTO customers. Moreover, if the threshold date for automatic conversion of existing contracts to service under the GridFlorida tariff is not moved up in tandem, there may be new contracts that produce significant costs borne by zonal customers. Neither result would be in the best interest of Florida customers.

Seminole and Joint Commenters suggest that this re-establishment of a synchronous approach to RTO transition and resulting change in the conversion date for

existing agreements allows the GridFlorida Companies to engage in the type of "gaming" that the establishment of the original date was intended to preclude. See Seminole Comments at 21-25; Joint Commenters Comments at 38-39. However, as noted above, the dates changed solely as a consequence of the delay in GridFlorida start-up, and there will not be any undue enrichment of the GridFlorida Companies as a result of this consequential change in dates. The parochial business interests of one party should not be permitted to undermine the reasonable, well-balanced, and previously approved mechanisms for mitigating cost shifts associated with the transition to an RTO.

Finally, FMG expresses a concern that a Participating Owner may delay the construction of facilities so that such facilities can be included in the system-wide charge rather than the zonal charge. See FMG Comments at 42-43. While a theoretical possibility, the GridFlorida Companies believe that any such action that might occur should be addressed at the time a Participating Owner seeks to recover those new facilities costs, rather than attempting to amend the GridFlorida tariff to address a relatively remote possibility.

### C. Clarifications and Corrections

Stakeholders requested certain clarifications and corrections regarding pricing with which the GridFlorida Companies agree. Those clarifications and corrections are:

- Seminole requests clarification that the exemption for bundled retail load discussed above relates only to the obligation to pay zonal rates for the transition period. See Seminole Comments at 17. The GridFlorida Companies clarify that this is the case. No amendment to the GridFlorida tariff is necessary.
- FMPA correctly states that POMA Sections 1.1.2 and 8.1 should be clarified to reflect the exemption of bundled retail load from the zonal charge under the GridFlorida tariff. See FMPA Comments at 40 n.51. A redlined POMA, which includes the suggested changes, is included as Exhibit E hereto.

- Joint Commenters argue that the exhibit to the POMA addressing revenue distribution "ensures the POs earn more than just 'a reasonable rate of return' and recover more than 'the capital cost invested' in their Controlled Facilities[.]" Joint Commenters Comments at 42. Joint Commenters, however, have provided no basis for this conclusion. Similarly, Seminole asserts that under this exhibit, "the Applicants will receive payments for the entire revenue requirements but only be required to pay the RTO for wholesale transactions." Seminole Comments at 28. After analyzing that exhibit again, the GridFlorida Companies have clarified the definition of NZREF in Section 1 to specifically reference Section 34.1(g) of the GridFlorida transmission tariff. Section 34.1(g) is the specific reference to the network customer payments for zonal charges, which are to be paid to the applicable Participating Owner after TDUs are paid their revenue requirements. No other changes or clarifications are necessary or helpful in response to the concerns raised by Joint Commenters or Seminole. The exhibit does not require payment for the "entire revenue requirements" for existing facilities, as Seminole asserts, but rather only for revenues received for zonal charges. These changes are included in Exhibit E hereto.

#### V. Third Party Agreements

Provisions throughout the POMA were amended as part of the Filing to address Third Party Agreements, which generally were defined as contractual agreements between Participating Owners and third parties that relate to facilities under the control of GridFlorida. See POMA § 2.3.1. A number of parties raised objections to these changes. See Joint Commenters Comments at 40-41; FMPA Comments at 25-29; Seminole Comments at 27-28. These objections generally are characterized by FMPA's argument that these new provisions are problematic because "the definition of 'Third Party Agreement' is extremely broad[.]" FMPA Comments at 27.

After reviewing these comments, the GridFlorida Companies have amended the POMA to remove the new language regarding Third Party Agreements, and generally to restore the language that was included in the POMA as approved by FERC. See POMA, Exhibit E hereto, § 6.16. The GridFlorida Companies, however, have clarified that:

"Except to the extent necessary to fulfill its role as security coordinator, GridFlorida shall

not take any action, and a mediator or arbitrator shall not issue any decision, that would interfere with a PO's ability to fulfill its obligations under such a third party agreement."

Id. This language, which closely tracks language including in the Filing, provides important protection for Participating Owners. Also, no party identified any problems with that specific language included in the Filing. These amendments are included in Exhibit E hereto.

#### VI. Market Monitoring

Under the GridFlorida market monitoring structure, a separate market monitoring company, with a separate board of directors, will be established. The Commission in the Order did not require any change to that structure, which has been approved by FERC. See GridFlorida II, 94 FERC at 62,362-365. The GridFlorida Companies therefore did not in the Filing propose any substantive changes in this regard. Only limited changes were required to reflect the new corporate structure for GridFlorida.

Nonetheless, FMG questions whether, instead of a separate market monitoring company, the Commission should perform the market monitoring function. See FMG Comments at 16. The GridFlorida Companies do not believe such a change is warranted. The GridFlorida market monitoring structure is a well-defined proposal that is well accepted by parties and already has received federal approval. It will provide for efficient, independent, and expert review of the relevant markets, with appropriate regulatory oversight by the Commission and FERC.

Rather than adopting the FMG proposal, the GridFlorida Companies have amended the Market Monitor Tariff to provide that the market monitor will notify the Commission (and FERC) immediately whenever the market monitor determines that a

market problem may require further investigation, a change in the GridFlorida tariff or market rules, or actions by the Commission or FERC. This change will ensure that both the Commission and FERC are fully informed on a timely basis of the market monitor's findings and conclusions, allowing both agencies to take timely appropriate actions. The GridFlorida Companies also note that this a change is consistent with, and goes beyond, similar changes recently required by FERC to ISO market monitoring functions. FERC recently has required ISOs to amend their market monitoring functions to provide for similar notice, though only to FERC. See Midwest Indep. Transmission Sys. Operator, Inc., 99 FERC ¶ 61,237 (2002); The New Power Co. v. PJM Interconnection, Inc., 98 FERC ¶ 61,208 (2002).

The GridFlorida Companies accordingly have amended Section 3.2.3 of the Market Monitor Tariff. A redlined version of that tariff is included as Exhibit F hereto.

VII. Conclusion


WHEREFORE, the GridFlorida Companies request the Commission to grant the relief requested by the GridFlorida Companies in the Filing without a hearing.



DATED this 21st day of June, 2002.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 020233-EI**

**I, THE UNDERSIGNED COUNSEL, HEREBY CERTIFY** that a true and correct copy of the foregoing has been served via first class U.S. mail (\* hand delivery) to the following parties listed below this 21<sup>st</sup> day of June, 2002:

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Tallahassee, FL 32301

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City of Gainesville  
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Lakeland Electric  
Paul Elwing  
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C/o Florida Industrial Power Users Group  
Joseph McGlothlin/Vicki Kaufman  
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The Perkins House  
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Office of Public Counsel  
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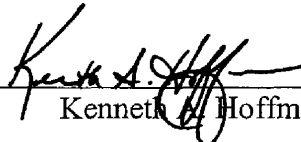
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Kenneth A. Hoffman

**EXHIBIT A**  
**AMENDED BY-LAWS**

BY-LAWS  
OF  
GRIDFLORIDA, INC.

(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of [To Come], County of [To Come], State of Florida.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Florida as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF BOARD SELECTION COMMITTEE

Section 1. Place of Meetings. Meetings of the Board Selection Committee (as defined in the articles of incorporation of the Corporation, as amended or restated from time to time (the "Articles of Incorporation")) for the election of directors or for any other purpose authorized by the Articles of Incorporation shall be held at such time and place, either within or without the State

of Florida as shall be designated from time to time by the Board Selection Committee.

Section 2. Quorum. Unless otherwise required by law or the Articles of Incorporation, a majority of the members of the Board Selection Committee, present in person or represented by proxy, shall constitute a quorum at all meetings of the Board Selection Committee for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 3. Voting. Unless otherwise required by law, the Articles of Incorporation or these By-Laws, any question brought before any meeting of the Board Selection Committee, other than the election of directors, removal or replacement of directors and filling of vacancies by the Board Selection Committee, shall be decided by the vote of a majority of the members of the Board Selection Committee present at a meeting at which a quorum is present, and the election of directors, removal or replacement of directors and filling of vacancies by the Board Selection Committee shall be decided by a vote of the majority of the entire Board Selection Committee.

### ARTICLE III

#### DIRECTORS

Section 1. Number, Election and Qualifications of Directors. The Board of Directors shall consist of seven members. The Board of Directors shall be



and is divided into three classes of directors of as nearly equal numbers as is possible, designated Class I, Class II and Class III, respectively, serving staggered three-year terms, with the term of a class expiring at each Annual Meeting of the Board Selection Committee (as defined in the Articles of Incorporation). At each Annual Meeting of the Board Selection Committee, a number of directors equal to the number of directors of the class whose term expires at such Annual Meeting of the Board Selection Committee (or the number of directors properly nominated and qualified for election) shall be elected to hold office for a term expiring at the third succeeding Annual Meeting of the Board Selection Committee after their election or their earlier resignation, retirement, death, disability, removal from office or replacement by action of the Board Selection Committee as provided by the Articles of Incorporation. In all cases, each director shall serve until a successor has been elected and qualified or until such director's earlier resignation, retirement, death, disability, removal from office or replacement by action of the Board Selection Committee. Directors shall be elected by a majority of the entire Board Selection Committee at an Annual Meeting of the Board Selection Committee or at such other meeting of the Board Selection Committee specifically called for such purpose in accordance with the Articles of Incorporation. Any director may resign at any time upon written notice to the Corporation. Directors must satisfy the qualifications for Director Independence set forth in Section 11 hereof. The Board of Directors shall

set, by resolution, the maximum age limitation to be imposed in connection with the election of directors; until the Board of Directors adopts any such resolution, no person shall be entitled to be elected a director after such person reaches the age of 72.

Section 2. Vacancies; Removal. Unless otherwise required by law or the Articles of Incorporation, vacancies resulting from the resignation, retirement, death, disability, removal from office or otherwise, may be filled only by a majority of the entire Board Selection Committee for the full term of the class of directors in which the vacancy occurs; provided, however, that if, and to the extent that, Section 617.0809 of the Florida Not For Profit Corporation Act is deemed to confer on the remaining directors the ability to fill any such vacancy, the term of office of any director appointed by such remaining directors to fill any such vacancy shall expire as soon as the Board Selection Committee acts to replace such director with another director selected by a majority of the entire Board Selection Committee to serve for the full term of the class of directors in which such vacancy originally occurred, which action of the Board Selection Committee is hereby expressly authorized. Any or all of the directors of the Corporation may be removed from office at any time but only by the affirmative vote of two-thirds of the entire Board Selection Committee at a meeting specifically called for such purpose. While it is not the intention of the Corporation to have members for any purpose whatsoever, under the Florida Not For

Profit Corporation Act or otherwise, if, and to the extent that, Section 617.0808 of the Florida Not For Profit Corporation Act is deemed to be mandatory, and the directors purport to exercise the rights of members contemplated thereby pursuant to Section 617.0721(5) of the Florida Not For Profit Corporation Act, the exercise of such rights by the directors shall be subject to the prior approval of the Board Selection Committee, which approval right in favor of the Board Selection Committee is hereby expressly authorized, and the term of office of any director appointed by the directors to fill any vacancy created by the exercise of such rights shall expire as soon as the Board Selection Committee acts to replace such director with another director selected by a majority of the entire Board Selection Committee to serve for the full term of the class of directors in which such vacancy originally occurred, which action of the Board Selection Committee is hereby expressly authorized. All references in this Section 2 to particular sections of the Florida Not For Profit Corporation Act refer to those sections as in effect on January 1, 2002, and all references to action or approval by the Board Selection Committee refer to approval or action, in the case of the election of directors or the filling of vacancies, by at least a majority of the entire Board Selection Committee and, in the case of removal of directors, by at least two-thirds of the entire Board Selection Committee, at a meeting specifically called for such purpose or at an Annual Meeting of the Board Selection Committee.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are permitted by statute, the Articles of Incorporation and these By-Laws.

Section 4. Meetings. All actions of the Board of Directors shall be taken at a regular or special meeting of the Board of Directors. The Board of Directors shall hold both regular meetings and special meetings within the State of Florida; provided, however, that this requirement shall in no way limit the Board of Directors' ability to hold regular and special meetings by means of conference telephone, pursuant to Section 7 of this Article III, which meetings shall be deemed to be held within the State of Florida.

Regular meetings of the Board of Directors may be held at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman or by a majority of the Board of Directors. Notice of meetings of the Board of Directors, together with a proposed agenda for any such meeting, stating the place, date and hour of the meeting, shall be given to each director not less than five (5) days before the date of a regular meeting and not less than forty-eight (48) hours before the date

of a special meeting, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Except as otherwise provided herein, regular and special meetings of the Board of Directors (including regular and special meetings held by means of conference telephone) shall be open to the public and notice of such meetings, together with a proposed agenda for any such meeting, shall be posted on the Corporation's website or equivalent form of electronic posting at the same time that notice is given to each director as contemplated in the immediately preceding sentence. To the extent practicable, the Corporation shall also post on the Corporation's website or equivalent form of electronic posting any materials prepared for the Board of Directors for use during a regular or special meeting that do not contain or constitute "Confidential Information" (as defined below). For the avoidance of doubt, directors are free to confer and meet outside of regular and special meetings without being subject to the public meeting, notice and related requirements imposed hereunder in respect of regular and special meetings of the Board of Directors.

During any regular or special meeting of the Board of Directors, the Chairman, or other presiding officer, may declare an executive session, which shall be closed to the public, as necessary to safeguard the confidentiality of "Confidential Information" which shall include: personnel related information, information subject

to the attorney-client privilege or to confidential treatment under the attorney-work product doctrine or concerning pending or threatened litigation, information relating to strategy and negotiation sessions in connection with any material agreement or arrangement, discussions of emergency or security procedures, information regarding trade secrets, proprietary information, specifications for competitive bidding, or information regarding a specific proposal if open discussion would jeopardize the cost or siting thereof or give an unfair competitive bargaining advantage to any person, ~~or information or discussions relating to 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.~~

The minutes of regular and special meetings of the Board of Directors shall be posted on the Corporation's website or equivalent form of electronic posting, provided, however, that any Confidential Information, as contemplated by the immediately preceding sentence, may be redacted from such posted minutes. In addition, notwithstanding any provision of these By-Laws to the contrary, a copy of any formal recommendations made by any consulting firm that is retained by the Corporation to assist the Board of Directors in developing a compensation plan for the directors and management of the Corporation shall be provided to the Advisory Committee.

Section 5. Quorum. Except as otherwise required by law or the Articles of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors then in office shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 6. ~~Actions by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. Reserved.~~

Section 7. Meetings by Means of Conference Telephone. Members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a

meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

Section 8. Committees. The Board of Directors may designate one or more committees, each committee to consist of two or more of the directors of the Corporation. The Board of Directors shall establish an Audit Committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that to the extent any committee of the Board of Directors is authorized to take any action on behalf of the Corporation, any such action shall be taken only at a meeting of such committee that is open to the



public and subject to the provisions of Section 4 of this Article III relating to public meetings, including notice and posting requirements, executive sessions and Confidential Information, that are otherwise applicable to a regular or special meeting of the Board of Directors. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 9. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 10. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because the director or officer's vote is counted for such purpose if (i) the material

facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors or a committee thereof. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 11. Director Independence. In addition to, and consistent with, the provisions regarding directors in the Articles of Incorporation of the Corporation, no person shall be nominated or elected a director of the Corporation, nor may any person serve or continue to serve as a director of the Corporation, unless and until such person and all members of his or her Immediate Family (as defined in these By-Laws) has no financial interest in, including the ownership of securities of, any Market Participant (as defined in these By-Laws), except that such a person and any member of his or her Immediate Family will be permitted to own securities of a Market Participant through diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segments thereof). Notwithstanding the foregoing, any such person

and any member of his or her Immediate Family who holds a financial interest in a Market Participant may (i) hold such a financial interest for a period not to exceed six months following such person's initial election to the Board of Directors and (ii) petition (or the Corporation, on behalf of any such person and any member of his Immediate Family, may petition) the Federal Energy Regulatory Commission (the "FERC") for (x) an exception to the foregoing prohibition on holding any such financial interest or (y) an extension of time to dispose of any such financial interest (with respect, however, in either case to only those financial interests held by such person and any member of his Immediate Family at the time of such person's initial election to the Board of Directors), which exception or extension the FERC may grant if the FERC determines that the required disposition of such financial interest will result in economic hardship to such person or any member of his or her Immediate Family due to tax effects or legal restraints on the transfer of such financial interest and that granting such exception or extension will be consistent with the public interest. For purposes of these By-Laws, "Market Participant" shall have the meaning ascribed to such term in Order No. 2000 and all supplements and amendments thereto issued by the FERC and the "Immediate Family" of a person shall mean such person's spouse and dependent children.

No person shall be in violation of the foregoing provisions if he or she or any member of his or her Immediate Family continues his or her pre-existing

participation in a qualified defined benefits pension plan and/or health benefits plan of a Market Participant for purposes of receiving pension benefits and post-employment health benefits or remaining eligible to receive such benefits at a future time so long as the benefits to such person under any such pension plan do not vary with the economic performance of such Market Participant or the value of any of such Market Participant's securities held by such plan; provided, however, that if any such person is able to transfer his or her pension account to another unrelated firm without suffering adverse financial consequences in the opinion of the Board of Directors, such person shall be required to effect such transfer.

In addition to the foregoing provisions, no director nor any member of his or her Immediate Family shall be an employee, director or officer of any Market Participant. The Board of Directors shall develop and implement policies, designed to ensure independence, regarding the ownership of securities of suppliers of the Corporation by directors and members of their Immediate Family.

In connection with the foregoing, the Corporation shall retain an independent compliance auditor (which shall not be its independent public accountant) and cause such independent compliance auditor to obtain all information necessary to determine whether each director of the Corporation is in compliance with the provisions of this Section 11. Each director shall file an annual compliance affidavit with such independent compliance auditor. Such independent compliance

auditor shall report to the Audit Committee of the Board of Directors any facts and circumstances which lead it to believe that any director of the Corporation is not in compliance with the provisions of this Section 11 and shall be authorized to report any findings and recommendations to the FERC without the prior approval of the Audit Committee or the Board of Directors, provided, however, that the independent compliance auditor shall request confidential treatment of any such reports or recommendations to the extent they are based on confidential corporate or personal information or data. With the exception of any such report to the Audit Committee, and any action taken by the Audit Committee as a consequence thereof, and any report to the FERC in compliance with the immediately preceding sentence, all information obtained and compiled by such independent compliance auditor shall be held in strict confidence by the same.

#### ARTICLE IV

##### OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a Chairman, a President, a Secretary and a Treasurer. The Chairman shall be a director of the Corporation. The Board of Directors, in its discretion, also may choose one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law or the Articles of

Incorporation. Except in the case of the Chairman, the officers of the Corporation need not be directors of the Corporation.

Section 2. Election. The Board of Directors, at its first meeting held after each Annual Meeting of the Board Selection Committee, shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors, provided, however, that prior to the election of any person as an officer of the Corporation (other than the Chairman and the President) the President shall recommend to the Board of Directors persons to be selected for each such office. All officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries and other compensation of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the

name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman. The Chairman shall preside at all meetings of the Board of Directors. During the absence or disability of the President, the Chairman shall exercise all the powers and discharge all the duties of the President. The Chairman shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 5. President. The President shall, subject to the control of the Board of Directors and the Chairman, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall be the Chief Executive Officer of the Corporation and shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the

other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman, the President shall preside at all meetings of the Board of Directors. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 6. Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act, the Chairman, or at the Chairman's request or in the Chairman's absence or inability or refusal to act, the Vice President, or the Vice Presidents if there is more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. In the Chairman's absence or inability or refusal to act and if there be no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.



Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts

and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 9. Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's disability or refusal to act, shall perform the duties of the Secretary, and

when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 10. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restoration to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 11. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors

may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

Section 12. Officer Independence. No person shall serve or continue to serve as an officer of the Corporation, unless and until such person and all members of his or her Immediate Family has no financial interest in, including the ownership of securities of, any Market Participant, except that such person and any member of his or her Immediate Family will be permitted to own securities of a Market Participant through diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segments thereof). Notwithstanding the foregoing, any such person and any member of his or her Immediate Family who holds a financial interest in a Market Participant may (i) hold such a financial interest for a period not to exceed six months following such person's initial service as an officer and (ii) petition (or the Corporation, on behalf of any such person and any member of his Immediate Family, may petition) the FERC for (x) an exception to the foregoing prohibition on holding any such financial interest or (y) an extension of time to dispose of any such financial interest (with respect, however, in either case to only those financial interests held by such person and any member of his Immediate Family at the time of such person's initial service as an officer, which exception or extension the FERC may grant if the FERC determines that the required disposition of such financial

interest will result in economic hardship to such person or any member of his or her Immediate Family due to tax effects or legal restraints on the transfer of such financial interest and that granting such exception or extension will be consistent with the public interest.

No person shall be in violation of the foregoing provisions if he or she or any member of his or her Immediate Family continues his or her pre-existing participation in a qualified defined benefits pension plan and/or health benefits plan of a Market Participant for purposes of receiving pension benefits and post-employment health benefits or remaining eligible to receive such benefits at a future time so long as the benefits to such person under any such pension plan do not vary with the economic performance of such Market Participant or the value of any of such Market Participant's securities held by such plan; provided, however, that if any such person is able to transfer his or her pension account to another unrelated firm without suffering adverse financial consequences in the opinion of the Board of Directors, such person shall be required to effect such transfer.

In addition to the foregoing provisions, no officer nor any member of his or her Immediate Family shall be an employee, director or officer of any Market Participant.

The Board of Directors shall develop and implement policies, designed to ensure independence, regarding the ownership of securities of suppliers of the Corporation by officers and members of their Immediate Family.

In connection with the foregoing, the Corporation shall retain an independent compliance auditor (which shall not be its independent public accountant) and cause such independent compliance auditor to obtain all information necessary to determine whether each officer of the Corporation is in compliance with the provisions of this Section 12. Each officer shall file an annual compliance affidavit with such independent compliance auditor. Such independent compliance auditor shall report to the Audit Committee of the Board of Directors any facts and circumstances which lead it to believe that any officer of the Corporation is not in compliance with the provisions of this Section 12. With the exception of any such report to the Audit Committee and any action taken by the Audit Committee as a consequence thereof, all information obtained and compiled by such independent compliance auditor shall be held in strict confidence by the same.

## ARTICLE V

### STOCK

Section 1. Non-Stock. The Corporation is organized on a non-stock basis.

## ARTICLE VI

### NOTICES

Section 1. Notices. Except as otherwise provided in the Articles of Incorporation, whenever written notice is required by law, the Articles of Incorporation or these By-Laws to be given to any director or member of a committee, such notice may be given by mail, addressed to such director or member of a committee, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given five days after the same shall be deposited in the United States mail; written notice may also be given personally or by telegram, telex or cable. In addition, whenever notice is required by these By-Laws to be given to any stakeholder representative to the Advisory Committee for the Corporation, as approved by the FERC from time to time, such notice may be given by mail, addressed to such stakeholder representative at such stakeholder representative's address as it appears on the records of said Advisory Committee, with postage thereon prepaid; written notice to stakeholder representatives may also be given personally or by telegram, telex or cable, or by electronic mail or transmission.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Articles of Incorporation or these By-Laws to be given to any director or member of a committee, a waiver thereof in writing, signed by the person or persons

entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 3. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporation Not For Profit Seal, Florida." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.



## ARTICLE VIII

### INDEMNIFICATION

#### Section 1. Power to Indemnify in Actions, Suits or Proceedings

Other Than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Corporation), by reason of the fact that he or she is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party to any proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Article VIII in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 3. Authorization of Indemnification.

(a) Any indemnification under Section 1 and Section 2 of Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made: (i) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding; (ii) if such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the board of directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding; or (iii) by independent legal counsel (1) selected by the board of directors prescribed in (i) or the committee prescribed in (ii) or (2) if a quorum of the directors cannot be obtained for (i) and the committee cannot be designated under (ii), selected by majority vote of the full board of directors (in which directors who are parties may participate). Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by (iii) shall evaluate the reasonableness of expenses and may authorize indemnification.

(b) To the extent that a director, officer, employee, or agent of the Corporation has been successful on the merits or otherwise in defense of any proceeding referred to in Section 1 or Section 2 of this Article VIII or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 4 shall mean any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the

Corporation as a director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding the failure of the Corporation to provide indemnification, and despite any contrary determination of the board in the specific case, a director, officer, employee, or agent of the Corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that: (i) the director, officer, employee, or agent is entitled to mandatory indemnification under Section 3(b) of this Article VIII in which case the court shall also order the Corporation to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses; (ii) the director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Corporation of its power pursuant to Section 7; or (iii) the director, officer, employee, or agent is fairly and reasonably

entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in Section 1, Section 2 or Section 7 of this Article VIII.

Section 6. Expenses Payable in Advance. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the Corporation pursuant to this Article VIII. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors deems appropriate.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided pursuant to this Article VIII are not exclusive, and the Corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or

omissions to act, were material to the cause of action so adjudicated and constitute:

(i) a violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful; (ii) a transaction from which the director, officer, employee, or agent derived an improper personal benefit; (iii) in the case of a director, a circumstance under which the liability provisions of §617.0834 of the Florida Not For Profit Corporation Act are applicable; or (iv) willful misconduct or a conscious disregard for the best interests of the Corporation in a proceeding by or in the right of the Corporation to procure a judgment in its favor.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to the "Corporation" include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a

consolidation or merger, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, limited liability company, partnership, joint venture, trust, or other enterprise, is in the same position under this Article VIII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "other enterprises" include employee benefit plans. References to "expenses" include counsel fees, including those for appeal. References to "liability" include obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding. The term "proceeding" includes any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. The term "agent" includes a volunteer. The term "serving at the request of the Corporation" includes any service as a director, officer, employee, or agent of the Corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries. The term "not opposed to the best interests of the Corporation" describes the actions of a person who acts in



good faith and in a manner he or she reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses as provided in this Article VIII shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

Section 11. Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VIII), the Corporation shall not be obligated to indemnify any director, officer, employee, or agent in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

## ARTICLE IX

### CODE OF CONDUCT

Section 1. Compliance. The Board of Directors shall adopt a code of conduct that complies with the rules and regulations of the FERC and its orders applicable to the Corporation (the "Code of Conduct"). All directors, officers and

employees of the Corporation shall at all times comply strictly with the Code of Conduct then in effect, which Code of Conduct shall at all times include provisions, similar to those set forth in Article III, Section 11 and Article IV, Section 12 hereof, to ensure that such directors, officers and employees are independent from Market Participants.

## ARTICLE X

### AMENDMENTS

Section 1. Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the Board of Directors, provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of the Board of Directors. All such amendments must be approved by a majority of the entire Board of Directors then in office. Notwithstanding anything contained herein to the contrary, the Board of Directors may not amend these By-Laws in any manner that is inconsistent with Order No. 2000 and all supplements and amendments thereto issued by the FERC or any other applicable requirements of such other rules and orders as the FERC may now or hereafter issue regarding RTOs. A public informational copy of each amendment to these By-Laws shall be filed with the FERC on or before sixty (60) days prior to the effectiveness of such amendment, together with a certificate duly executed on behalf of the Corporation certifying that

such amendment is in compliance with Order No. 2000 and all supplements and amendments thereto issued by the FERC and all other applicable requirements of such other rules and orders as the FERC may now or hereafter issue regarding RTOs.

\* \* \*

Adopted as of: \_\_\_\_\_

Last Amended as of: \_\_\_\_\_

(353003)

**EXHIBIT B**

**AMENDED FORMATION PLAN**

## **RTO FORMATION PLAN**

Florida Power & Light Company ("FPL"), Florida Power Corporation ("FPC"), and Tampa Electric Company ("TEC", and collectively with FPL and FPC, the "Applicants") desire to form an RTO in the State of Florida. This RTO Formation Plan (the "Plan") is attached to the Applicants' Order No. 2000 Compliance Filing (the "Filing") filed with the Federal Energy Regulatory Commission (the "FERC"). This Plan describes the Applicants' plans to form the RTO.

### **ARTICLE I** **Definitions**

The following capitalized terms used in this Plan shall have the meanings set forth below:

"Advisory Committee" has the meaning set forth in Section 4.1 hereof.

"Affiliate" means an affiliate, as defined by the FERC in Order No. 2000.

"Agency Agreement" means an Agency Agreement in the form attached hereto as Exhibit D.

"Articles of Incorporation" means the Articles of Incorporation of GridFlorida, Inc., attached hereto as Exhibit A.

"Board Selection Committee" has the meaning set forth in Section 3.1 hereof.

"Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of Florida).

"By-Laws" means the By-Laws of GridFlorida, Inc., attached hereto as Exhibit B.

"Chairman" has the meaning set forth in Section 3.4 hereof.

"Code of Conduct" means the Code of Conduct as applicable to GridFlorida, Inc., as approved by the FERC and in effect from time to time.

"Compliance Auditor" has the meaning set forth in Section 5.1 hereof.

"Confidentiality Policy" has the meaning set forth in Section 3.3 hereof.

"FERC" means the Federal Energy Regulatory Commission, or any successor entity thereto.

"GridFlorida, Inc." means that certain Florida not for profit corporation to be formed by the Applicants as contemplated herein, which entity shall serve as the RTO contemplated to be formed hereby.

"GridFlorida LLC" means that certain Florida limited liability company initially formed by the Applicants in connection with the Applicant's original Filing, which entity was organized to undertake certain start-up activities, and incur related costs and expenses, in connection with developing the RTO contemplated to be formed hereby.

"Immediate Family" means, with respect to a person, such person's spouse and dependent children.

"Initial Designation" has the meaning set forth in Section 4.3 hereof.

"Market Monitor" has the meaning set forth in Section 6.6 hereof.

"Market Monitoring Corporation" has the meaning set forth in Section 6.2 hereof.

"Market Participant" has the meaning ascribed to such term in Order No. 2000.

"Monitor Search Firm" has the meaning set forth in Section 6.3 hereof.

"Order No. 2000" means Order No. 2000 issued by the FERC and all supplements and amendments thereto.

"Participating Owner" means an owner of transmission facilities within the geographic region in which GridFlorida, Inc. provides transmission service that has provided GridFlorida, Inc. with notice that it intends to execute and deliver to GridFlorida, Inc. a POMA and an Agency Agreement in the forms attached hereto as Exhibit C and D, respectively.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, governmental entity or any department or agency thereof.

"Plan" means this RTO Formation Plan together with all of the Exhibits attached hereto.

"POMA" means a Participating Owners Management Agreement in the form attached hereto as Exhibit C.

"Pooled Stakeholder" has the meaning set forth in Section 4.3 hereof.

"RTO" means an RTO as defined by Order No. 2000, or any subsequent order or rulemaking issued or made by the FERC relating to the same.

"Search Firm" has the meaning set forth in Section 3.3 hereof.

## **ARTICLE II**

### **Formation of GridFlorida Inc. and Dissolution of GridFlorida LLC**

2.1. RTO. The Applicants intend to form an RTO in the State of Florida by effecting the formation of GridFlorida, Inc., a Florida not for profit corporation which shall serve as such RTO, as contemplated by this Plan.

2.2. GridFlorida, Inc.. The Applicants shall cause, as soon as practicable following the selection of the initial board of GridFlorida, Inc., as contemplated by Article III hereof, the formation of GridFlorida, Inc. as a Florida not for profit corporation, including, without limitation, filing, or causing to be filed, the Articles of Incorporation, in the form attached hereto as Exhibit A, with the Secretary of State of the State of Florida and taking, or causing to be taken, any and all such further actions as shall be necessary to effect the formation of GridFlorida, Inc. as contemplated hereby and in the Articles of Incorporation and the By-Laws.

2.3. GridFlorida LLC. As soon as practicable following the formation of GridFlorida, Inc., (i) GridFlorida LLC shall transfer and assign all of its assets and liabilities to GridFlorida, Inc., (ii) GridFlorida, Inc. shall accept and assume all of the assets and liabilities of GridFlorida LLC, (iii) following the foregoing transfer, assignment, acceptance and assumption, the Applicants shall cause GridFlorida LLC to be dissolved in accordance with Florida law, and (iv) GridFlorida LLC, GridFlorida, Inc. and the Applicants shall take, or cause to be taken, any and all such further actions as shall be necessary to effect the foregoing.

2.4 POMA and Agency Agreement. As soon as practicable following the formation of GridFlorida, Inc., GridFlorida, Inc. shall execute and deliver to each of FPL, FPC, TEC and each Participating Owner (and each of FPL, FPC, TEC and each Participating Owner shall execute and deliver to GridFlorida, Inc.) the POMA and an Agency Agreement in the forms attached hereto as Exhibit C and D, respectively.

### **ARTICLE III** **Board Selection**

3.1. Board Selection Committee. A board selection committee (the "Board Selection Committee") shall be established which shall be charged with the responsibility of selecting the initial slate of directors for GridFlorida, Inc. and electing subsequent directors for GridFlorida, Inc., as contemplated hereby. The Board Selection Committee shall consist of up to nine representatives (or less if each seat on the Board Selection Committee is not filled), with each of the following stakeholder groups being entitled to appoint up to that number of representatives that follows: (i) three representatives of investor owned utilities that are owners of transmission facilities within the geographic region in which GridFlorida, Inc. provides transmission service; (ii) one representative of non-investor owned electric utilities that distribute electricity at retail within the geographic region in which GridFlorida, Inc. provides transmission service; (iii) one representative of generation and transmission cooperatives and municipal joint action agencies that sell electricity at wholesale within the geographic region in which GridFlorida, Inc. provides transmission service; (iv) one representative of entities that own or are developing generation facilities whose output will be delivered over facilities controlled by GridFlorida, Inc.; (v) one representative of power marketers and brokers; (vi) one representative of governmental or non-profit organizations that are not utilities, represent end-use consumers' economic or environmental interests and are located within the geographic region in which GridFlorida, Inc. provides transmission



services; and (vii) one representative that is selected by the Florida Public Service Commission, provided, however, that if the Florida Public Service Commission declines to select such representative, such representative shall be appointed by the Advisory Committee (as defined in Section 4.1 of this Plan). Each stakeholder group identified in clauses (i) through (vi) of the immediately preceding sentence and the Advisory Committee, as applicable, shall determine the method for selecting, replacing and determining the term of service of its representative(s) on the Board Selection Committee. No single entity (including affiliates and other entities with which there is a pending merger) shall participate in more than one stakeholder group or have more than one representative on the Board Selection Committee. In order to become a member of one of the foregoing stakeholder groups for purposes of participating in the selection of its representative(s) to the Board Selection Committee, an entity must become and remain a member of the correlative stakeholder group identified in Section 4.2 of this Plan, in compliance with all of the requirements associated therewith set forth in Article IV of this Plan. Under no circumstance shall an individual be selected or permitted to serve as a representative to the Board Selection Committee if such individual is then serving as a representative to the Advisory Committee. Each stakeholder group and the Advisory Committee, as applicable, shall endeavor to select as its representative to the Board Selection Committee an individual who has senior-level management experience. As soon as practicable following the formation of the Board Selection Committee, the Board Selection Committee shall meet to elect a chairman and a vice-chairman and to determine all procedures that are necessary or advisable for the Board Selection Committee to take action and conduct its affairs in accordance with the terms of this Plan, including procedures for electing subsequent chairmen and vice-chairmen.

3.2. Director Qualifications. In addition to the qualifications for directors of GridFlorida, Inc. contained in the Articles of Incorporation and the By-Laws, those persons chosen to serve as directors of GridFlorida, Inc. shall also have qualifications equivalent to those of directors of corporations with equivalent or larger revenues and assets than that anticipated for GridFlorida, Inc. and shall reflect, as much as is practicable, a mix of backgrounds and experience (including, as appropriate, experience in areas such as finance, accounting, engineering, utility regulation, system planning or operations, utilizing transmission services, and/or commercial market trading or risk management); provided, however, that experience in the electric industry is not a prerequisite to serving as a director of GridFlorida, Inc. In addition, those persons selected as directors of GridFlorida, Inc. shall be of a caliber that will engender credibility in the marketplace and provide GridFlorida, Inc. with quality and experienced leadership.

3.3. Search Firm. The Board Selection Committee shall retain a nationally recognized search firm (such firm retained, the "Search Firm") to propose to the Board Selection Committee a pool of between twelve (12) and fifteen (15) candidates to be considered for election as initial directors of GridFlorida, Inc., which candidates must (i) satisfy all of the qualifications described in Section 3.2 hereof, the Articles of Incorporation and the By-Laws and (ii) agree, if elected, to serve as directors of GridFlorida, Inc. and take all such other actions required to be taken by the directors of GridFlorida, Inc. as contemplated under this Plan. In submitting its pool of proposed candidates to the Board Selection Committee, the Search Firm shall identify which candidates, from among those proposed, are its preferred candidates for election as initial directors and the reasons therefor. The Board Selection Committee shall require the Search Firm to propose an initial pool of candidates to the Board Selection Committee as soon as practicable following its retention of the Search Firm, with the goal of submitting such initial pool to the Board Selection Committee within sixty (60) days of such retention. Except for such disclosure as may be necessary for customary reference checks and for advising individuals proposed by the Search Firm of the names of other individuals so proposed, the identities of those individuals proposed by the Search Firm to the Board Selection Committee shall be kept in the strictest confidence by both the Search Firm and the Board Selection Committee; provided, however, that the Board Selection Committee shall publicly declare its slate of candidates for election as initial directors of GridFlorida, Inc. pursuant to Section 3.4 hereof. The Board Selection Committee, in consultation with the Search Firm, shall develop such policies and procedures as it deems necessary or advisable to safeguard the confidentiality of its deliberations, the identity of individuals proposed by the Search Firm, or any subsequent search firm, and such other confidential information that may be provided to or developed by the Board Selection Committee (such policies and procedures, as amended or revised from time to time, collectively the "Confidentiality Policy"). The Search Firm, any subsequent search firm, and all representatives to the Board Selection Committee, including subsequent representatives to the Board Selection Committee, shall be, and shall agree to be, bound by such Confidentiality Policy. In addition, the current version of the Confidentiality Policy shall be posted on GridFlorida, Inc.'s website or equivalent form of electronic posting.

3.4. Selection Process. Following receipt from the Search Firm of its proposed pool of candidates for election as initial directors of GridFlorida, Inc., the Board Selection Committee shall meet, as necessary, to select seven individuals from the pool of candidates proposed by the Search Firm to serve as initial directors of GridFlorida, Inc.; provided, however, that the affirmative vote of a majority of the

entire Board Selection Committee shall be required to select any such proposed candidate as an initial director of GridFlorida, Inc. Following its selection of seven proposed candidates as initial directors of GridFlorida, Inc., the Board Selection Committee shall declare such group of seven candidates as its slate of candidates for election as initial directors of GridFlorida, Inc., shall select one of such seven candidates to serve as the initial chairman of GridFlorida, Inc. (the "Chairman") and shall determine the class of directors in which each such candidate shall serve in accordance with the Articles of Incorporation, provided, however, that the Chairman shall serve in the class of directors having the term with the latest expiration date.

3.5. Election of Directors and Initial Meeting. As soon as practicable following the Board Selection Committee's declaration of its slate of candidates for election as the initial directors of GridFlorida, Inc., the Applicants shall cause the Board Selection Committee's slate of candidates to be elected or named as initial directors of GridFlorida, Inc., in such classes as are determined under Section 3.4 hereof, and such directors shall hold their initial meeting, taking all actions contemplated by this Plan to be taken at such meeting, in the following manner: (i) the names of such Persons shall be listed as the initial directors of GridFlorida, Inc., designated in such classes as are determined under Section 3.4 hereof, in the Articles of Incorporation, which Articles of Incorporation shall be filed with the Secretary of State of the State of Florida, as contemplated by Section 2.2 hereof; (ii) as soon as practicable thereafter, the directors of GridFlorida, Inc. shall hold their initial meeting of the board of directors of GridFlorida, Inc., at which meeting such directors shall (a) approve the By-Laws in the form attached hereto as Exhibit B as the By-Laws for GridFlorida, Inc., (b) elect the Chairman as chairman of GridFlorida, Inc.; (c) appoint the Compliance Auditor (as contemplated by Section 5.1 hereof) as the independent compliance auditor of GridFlorida, Inc. (but not the independent public accountant for GridFlorida, Inc.) and require the Compliance Auditor to perform those duties described in Section 5.2 hereof; (d) cause GridFlorida, Inc. to accept and assume all of the assets and liabilities of GridFlorida LLC, as contemplated by Section 2.3 hereof; (e) cause GridFlorida, Inc. to execute and deliver to each of FPL, FPC, TEC and each Participating Owner the POMA and an Agency Agreement in the forms attached hereto as Exhibits C and D, respectively; and, (f) take such other action as such directors deem necessary in order to consummate the transactions contemplated hereby.

3.6. Compensation. The directors of GridFlorida, Inc. shall be compensated, in accordance with the Articles of Incorporation and the By-Laws, commensurate with the compensation of directors of companies of comparable size and business activity, recognizing, however, that initially, GridFlorida, Inc. will be a

start-up company. As soon as practicable following their election as initial directors of the GridFlorida, Inc., such initial directors shall cause GridFlorida, Inc. to retain a nationally recognized consulting firm to assist GridFlorida, Inc. in developing an appropriate compensation plan for the directors and the management of GridFlorida, Inc., which consulting firm shall, to the extent practicable, attempt to include in any such plan an appropriate incentive compensation package for management that would reward superior performance and cost control as well as such other factors as the board of directors may deem appropriate. The board of directors shall provide the Advisory Committee with (i) a copy of the formal recommendations of the consulting firm retained for the purposes described in this Section 3.6, and (ii) on an annual basis, a report setting forth the compensation paid by GridFlorida, Inc. to each director and the five most highly compensated officers of GridFlorida, Inc.

3.7. Election of Subsequent Directors. Subsequent directors of GridFlorida, Inc. shall be elected by the Board Selection Committee in the manner provided in the Articles of Incorporation. Prior to each Annual Meeting of the Board Selection Committee (as provided in the Articles of Incorporation), the Board Selection Committee shall meet to determine whether it intends to retain any or all of the incumbent directors whose terms expire at such Annual Meeting of the Board Selection Committee. If the Board Selection Committee determines that it is likely that it will not reelect one or more of such incumbent directors at such Annual Meeting of the Board Selection Committee, the Board Selection Committee shall retain a nationally recognized search firm to propose to the Board Selection Committee a proposed pool of candidates for election as a director of GridFlorida, Inc. to replace any incumbent director that the Board Selection Committee may choose not to reelect at such Annual Meeting of the Board Selection Committee, which proposed candidates must satisfy all of the qualifications described in Section 3.2 hereof, the Articles of Incorporation and the By-Laws. At any such Annual Meeting of the Board Selection Committee, the Board Selection Committee shall, in respect of each director whose term is expiring at such Annual Meeting of the Board Selection Committee either (i) reelect such director, or (ii) replace such director with one of the candidates proposed by the search firm retained by the Board Selection Committee prior to such Annual Meeting of the Board Selection Committee. With respect to any candidates proposed by a search firm pursuant to this Section 3.7, except for such disclosure as may be necessary for customary reference checks, the identities of those individuals proposed by the search firm to the Board Selection Committee shall be kept in the strictest confidence by both the search firm and the Board Selection Committee, in such manner as may be required under the Confidentiality Policy.

3.8. Removal of Directors and Filling Vacancies. Directors of GridFlorida, Inc. may be removed from office only by two-thirds of the entire Board Selection Committee, and vacancies on the Board of Directors shall be filled only by a majority of the entire Board Selection Committee, in each case in the manner provided in the Articles of Incorporation; provided, however, that prior to calling a meeting to fill a vacancy on the Board of Directors of GridFlorida, Inc., the Board Selection Committee shall retain a nationally recognized search firm to propose to the Board Selection Committee a proposed pool of candidates for election as a director of GridFlorida, Inc. to fill such vacancy, which proposed candidates must satisfy all of the qualifications described in Section 3.2 hereof, the Articles of Incorporation and the By-Laws. With respect to any candidates proposed by a search firm pursuant to this Section 3.8, except for such disclosure as may be necessary for customary reference checks, the identities of those individuals proposed by the search firm to the Board Selection Committee shall be kept in the strictest confidence by both the search firm and the Board Selection Committee, in such manner as may be required under the Confidentiality Policy.

3.9. Expenses of Board Selection Committee. Prior to the formation of GridFlorida, Inc., expenses of the Board Selection Committee, including costs, fees and expenses associated with meetings of the Board Selection Committee, retention of the Search Firm, and such other activities as are necessary to perform the function of the Board Selection Committee prior to the formation of GridFlorida, Inc. as contemplated by this Plan, shall be paid by GridFlorida, LLC with any resultant assets and liabilities to be transferred and assigned to, and accepted and assumed by, GridFlorida, Inc. as contemplated by Section 2.3 hereof. On and following the formation of GridFlorida, Inc., expenses of the Board Selection Committee, including costs, fees and expenses associated with meetings of the Board Selection Committee, retention of any search firm, and such other activities as are necessary to perform the function of the Board Selection Committee on and following the formation of GridFlorida, Inc. as contemplated by this Plan, the Articles of Incorporation and the By-Laws, shall be paid by GridFlorida, Inc. Under no circumstance shall the representatives to the Board Selection Committee be compensated for their service on the Board Selection Committee nor shall such representatives receive reimbursement for travel, lodging, meals or other incidental or personal expenses incurred in attending and participating in meetings of the Board Selection Committee.

**ARTICLE IV**  
**Advisory Committee**

4.1. Advisory Committee. An advisory committee (the "Advisory Committee") shall be established which shall be charged with advising the management and board of directors of GridFlorida, Inc. on matters of concern to the Advisory Committee. A designated representative of the Advisory Committee shall be entitled to: (i) prepare and submit written recommendations and reports, at any time, to the board of directors and senior management of GridFlorida, Inc.; (ii) meet and confer with senior management of GridFlorida, Inc., at least once during each calendar quarter, on matters of concern or interest to the Advisory Committee; and (iii) make presentations to the board of directors of GridFlorida, Inc. at regularly scheduled board meetings on matters that a majority of the members of the Advisory Committee agree are of sufficient importance that they merit board attention (provided, however, that this right shall be exercised by the Advisory Committee with discretion and is reserved primarily for instances when efforts to address concerns through GridFlorida, Inc.'s management prove unsatisfactory). In addition, the Advisory Committee may review and comment on (but will not have a right to approve) GridFlorida, Inc.'s annual operating budget. The representatives of the Advisory Committee that share the minority view with the greatest support related to a matter to be presented to the board of directors of GridFlorida, Inc. may select a representative to present to such board such minority view, and such board, in its discretion, may invite other representatives of the Advisory Committee to present to such board additional minority views that may exist on such matter. Members of the Advisory Committee shall have reasonable and timely access to information concerning GridFlorida, Inc.'s operation of its assets and the transmission system under its control, in a manner consistent with GridFlorida, Inc.'s information policy. GridFlorida, Inc. shall not have the right to abridge the entitlements set forth in this Section 4.1 without the prior written consent of the FERC. In addition to the foregoing, the Advisory Committee shall perform such other functions as may be provided herein or as may be assigned to the Advisory Committee from time to time.

4.2. Representatives. The Advisory Committee shall consist of up to thirteen representatives (or less if each seat on the Advisory Committee is not filled), with each of the following stakeholder groups being entitled to appoint up to that number of representatives that follows: (i) three representatives of investor owned utilities that are owners of transmission facilities within the geographic region in which GridFlorida, Inc. provides transmission service; (ii) two representatives of non-investor owned electric utilities that distribute electricity at retail within the geographic region in which GridFlorida, Inc. provides transmission service; (iii) two

representatives of generation and transmission cooperatives and municipal joint action agencies that sell electricity at wholesale within the geographic region in which GridFlorida, Inc. provides transmission service; (iv) two representatives of entities that own or are developing generation facilities whose output will be delivered over facilities controlled by GridFlorida, Inc.; (v) two representatives of power marketers and brokers; and (vi) two representatives of governmental or non-profit organizations that are not utilities, represent end-use consumers' economic or environmental interests and are located within the geographic region in which GridFlorida, Inc. provides transmission service, provided, however, that one representative from this stakeholder group shall be from the Florida Office of Public Counsel, unless the Florida Office of Public Counsel declines to serve on the Advisory Committee. Notwithstanding any other provision hereof to the contrary, no single Market Participant, including its Affiliates and entities with which a merger is pending, shall participate in more than one stakeholder group or have more than one representative to the Advisory Committee. Each stakeholder group shall establish a procedure for rotating its representatives to the Advisory Committee so as to provide each member of a stakeholder group with a reasonable opportunity to serve as one of such stakeholder group's representatives to the Advisory Committee.

4.3. Participation of Market Participants. No Market Participant may join as a member of any of the stakeholder groups identified in Section 4.2 hereof, unless such Market Participant first (i) submits an application indicating its primary activity or activities in the markets served by GridFlorida, Inc. qualifying it to be a member of the stakeholder group identified in its Initial Designation (as defined below), together with a membership fee in the amount of \$10,000 payable to the Advisory Committee, and (ii) agrees to pay to the Advisory Committee an annual fee in the amount of \$5,000, which fees shall be used to pay for the formation and operating expenses of the Advisory Committee and its subcommittees. The level and disposition of membership fees and annual fees may be reviewed and amended from time to time by a majority vote of the Advisory Committee. In connection with making an application described above, each Market Participant shall notify the chairman of the Advisory Committee of the stakeholder group in which it intends to participate (a Market Participant's "Initial Designation"). Each year thereafter, a Market Participant may make a written request to the chairman of the Advisory Committee to redesignate its Initial Designation to permit it to participate in a different stakeholder group. The chairman of the Advisory Committee shall notify the members of the Advisory Committee of any Market Participant's Initial Designation and/or request for redesignation. Members of the Advisory Committee shall have fifteen days following any such notification within which to file with the chairman of the Advisory Committee a written protest of any such Initial Designation

or request for redesignation. In the event of any such protest, the Advisory Committee shall vote to approve or disapprove of the Initial Designation or request for redesignation at issue, based upon the Advisory Committee's assessment of whether the Market Participant making such Initial Designation or request for redesignation meets the qualifications of the stakeholder group that it has designated. If no such protest is received within the aforementioned fifteen day period, the Initial Designation or request for redesignation, as the case may be, shall be deemed to be administratively approved. In connection with the foregoing, (i) any two or more Market Participants may join together to form a single applicant (such Market Participants together, a "Pooled Stakeholder") for purposes of joining a stakeholder group, provided however, that no Market Participant may participate in more than one Pooled Stakeholder and a Pooled Stakeholder shall be entitled to only one vote in any meeting of the stakeholder group that it is permitted to join, and (ii) in no event shall any Market Participant (or Pooled Stakeholder), including its Affiliates and entities with which a merger is pending, be permitted to join as a member of more than one such stakeholder group or be represented by more than one representative to the Advisory Committee.

4.4. Meetings of the Advisory Committee. As soon as practicable following the formation of the Advisory Committee, the Advisory Committee shall meet to adopt By-Laws for the Advisory Committee and to elect from among the representatives to the Advisory Committee a chairman, a vice-chairman and a secretary, in accordance with the terms of such By-Laws. Thereafter, the Advisory Committee shall meet at the call of the chairman of the Advisory Committee and as otherwise prescribed by the By-Laws, but in no event less frequently than semi-annually. Notice of Advisory Committee meetings shall be given to all stakeholders who are current in the payment of their annual fees. The Advisory Committee shall invite to attend its meetings representatives of the Florida Public Service Commission as well as members of the staff of the FERC, any of whom may participate fully in Advisory Committee proceedings on a non-voting basis. The directors and management of GridFlorida, Inc. shall have a right to attend all meetings of the Advisory Committee.

4.5. Conduct of Business. The Advisory Committee shall comply with the following provisions: (i) each representative to the Advisory Committee shall have one vote; (ii) a majority of the representatives then currently appointed to the Advisory Committee shall constitute a quorum for the conduct of business; (iii) the affirmative vote of a majority of the representatives present and voting at a meeting of the Advisory Committee at which a quorum is present shall constitute the action of the Advisory Committee; (iv) each stakeholder group may direct its



representatives to vote in such a manner as to split the votes allocated to the representatives of such stakeholder group into an affirmative component and a negative component, based on the individual votes of the Market Participants (and Pooled Stakeholders) participating in such stakeholder group, in direct proportion to the votes cast for and against a particular matter by such Market Participants (and Pooled Stakeholders), rounded to two decimal places; (v) in the event that the representatives present and voting at a meeting of the Advisory Committee are unable to unanimously agree on any issue addressed by the Advisory Committee during one of its meetings, minority opinions regarding any such issue shall be presented to the management and/or board of directors of GridFlorida, Inc.

## **ARTICLE V**

### **Independent Compliance Auditing**

5.1. Appointment of Compliance Auditor. On an annual basis, the Advisory Committee shall select a firm that (i) is one of the ten largest accounting firms in the United States, (ii) is not the independent public accountant for GridFlorida, Inc., and (iii) is not then doing business with, or has not in the past five years done business with, GridFlorida, Inc., other than in the capacity of the Compliance Auditor contemplated hereunder (such firm selected, the "Compliance Auditor") to serve as the independent compliance auditor of GridFlorida, Inc. As soon as practicable following the Advisory Committee's selection of the Compliance Auditor, the board of directors of GridFlorida, Inc. shall appoint the Compliance Auditor as the independent compliance auditor of GridFlorida, Inc. (but not the independent public accountant for GridFlorida, Inc.).

5.2. Responsibilities of Compliance Auditor. GridFlorida, Inc. shall require the Compliance Auditor to develop and implement a system of independent compliance auditing to ensure that the director, officer and employee independence requirements contained in the Articles of Incorporation, the By-Laws and the Code of Conduct are fully satisfied and are consistent with the requirements of Order No. 2000. In performing such duties, the Compliance Auditor shall be authorized to conduct such audits of the directors, officers and employees of GridFlorida, Inc. as such Compliance Auditor, in its discretion, deems necessary to implement its system of independent compliance auditing. The Compliance Auditor shall be authorized to report any findings and recommendations to the FERC without the prior approval of GridFlorida, Inc., provided, however, that the Compliance Auditor shall request confidential treatment of any such reports or recommendations to the extent they are based on confidential corporate or personal information or data. Except as required

by (or ensuring compliance with) law, the Articles of Incorporation, the By-Laws or this Plan, the Compliance Auditor shall keep confidential all information relating to the security holdings of a director, officer or employee of GridFlorida, Inc.

5.3. Annual Compliance Affidavit. GridFlorida, Inc. shall require each of its directors, officers and employees to file annually with the Compliance Auditor an affidavit certifying that such director officer or employee is in compliance with the independence requirements contained in the Articles of Incorporation, the By-Laws, and the Code of Conduct.

## **ARTICLE VI**

### **Market Monitor**

6.1. Market Monitoring Plan. GridFlorida, Inc. shall execute a market monitoring plan to (i) monitor the markets served by or administered by GridFlorida, Inc. under its transmission tariff, (ii) ensure the development and reporting of objective information concerning the structure and operation of those markets, (iii) provide a vehicle for proposing appropriate action regarding any opportunities for efficiency improvement, market design flaws, market rule violations, and market power identified by that information, and (iv) ensure that the monitoring program is conducted in a manner that is independent, objective and consistent with safe and reliable operations of GridFlorida, Inc.'s transmission system, and that minimizes interference with open and competitive markets.

6.2. Establishment of Market Monitoring Corporation. GridFlorida, Inc. shall establish a separate, non-profit corporation with a three person board to carry out the market monitoring function provided for in this Article VI (the "Market Monitoring Corporation").

6.3. Selection of Board of Directors of Market Monitoring Corporation. GridFlorida, Inc. shall retain a nationally recognized search firm (such firm retained, the "Monitor Search Firm") to propose to GridFlorida, Inc.'s board of directors and to the Advisory Committee a list of seven candidates for election as initial directors of the Market Monitoring Corporation, which candidates must satisfy all of the qualifications described below. GridFlorida, Inc. shall require the Monitor Search Firm to propose its pool of candidates as soon as practicable following its retention of the Monitor Search Firm. Except for such disclosure as may be necessary for customary reference checks and for advising individuals proposed by the Monitor Search Firm of the names of other individuals so proposed, the identities of those individuals proposed by the Monitor Search Firm shall be kept in the

strictest confidence by the Monitor Search Firm, the board of directors of GridFlorida, Inc. and the Advisory Committee, and shall not be shared with any other Person. The Monitor Search Firm, all directors of GridFlorida, Inc., and all participants on the Advisory Committee shall be required to agree, in writing if any one of the Monitor Search Firm, the board of directors of GridFlorida, Inc. or the Advisory Committee so requests, to maintain the confidentiality of such information.

Each candidate proposed by the Monitor Search Firm must be independent, i.e., satisfy the standards for independence set forth in Section 6.4 below. Each candidate proposed by the Monitor Search Firm must have extensive business experience in or with competitive industries. The candidates may, but need not, have experience in the electric industry. GridFlorida, Inc.'s board of directors will choose one person from the list of candidates provided by the Monitor Search Firm to serve as a director. The Advisory Committee will choose one person from the list of candidates provided by the Monitor Search Firm to serve as a director, for which decision each representative to the Advisory Committee shall have one vote, and the candidate with the most votes shall be elected. In the event of a tie, there shall be a run-off among the tied candidates. If a tie again occurs, the chairman of the Advisory Committee will choose from among the tied candidates one individual to serve as a director. The initial two directors selected by GridFlorida, Inc. and the Advisory Committee will select the third director from the remaining list of candidates proposed by the Monitor Search Firm. The initial two directors may ask the Monitor Search Firm to identify additional candidates if they cannot agree on any of the candidates from the initial list.

#### 6.4. Independence of Directors of Market Monitoring Corporation.

No person shall be nominated or elected a director of the Market Monitoring Corporation, nor may any person serve or continue to serve as a director of the Market Monitoring Corporation, unless and until such person and all members of his or her Immediate Family has no financial interest in, including the ownership of securities of, any Market Participant, except that such a person and any member of his or her Immediate Family will be permitted to own securities of a Market Participant through diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segments thereof). Notwithstanding the foregoing, any such person and any member of his or her Immediate Family who holds a financial interest in a Market Participant may (i) hold such a financial interest for a period not to exceed six months following such person's initial election to the board of directors and (ii) petition (or the Market Monitoring Corporation, on behalf of any such person and any member of his Immediate Family, may petition) the FERC for (x) an exception to the foregoing

prohibition on holding any such financial interest or (y) an extension of time to dispose of any such financial interest (with respect, however, in either case to only those financial interests held by such person and any member of his or her Immediate Family at the time of such person's initial election to the board of directors), which exception or extension the FERC may grant if the FERC determines that the required disposition of such financial interest will result in economic hardship to such person or any member of his or her Immediate Family due to tax effects or legal restraints on the transfer of such financial interest and that granting such exception or extension will be consistent with the public interest. No person shall be in violation of the foregoing if he or she or any member of his or her Immediate Family continues his or her pre-existing participation in a qualified defined benefits pension plan and/or health benefits plan of a Market Participant for purposes of receiving pension benefits and post-employment health benefits or remaining eligible to receive such benefits at a future time so long as the benefits to such person under any such pension plan do not vary with the economic performance of such Market Participant or the value of any of such Market Participant's securities held by such plan; provided, however, that if any such person is able to transfer his or her pension account to another unrelated firm without suffering adverse financial consequences in the opinion of the board of directors of Market Monitoring Corporation, such person shall be required to effect such transfer. In addition to the foregoing provisions, no director nor any member of his or her Immediate Family shall be an employee, director or officer of any Market Participant. For purposes of this Section 6.4, the term Market Participant shall include GridFlorida, Inc.

6.5. Term and Removal of Directors of Market Monitoring Corporation. Initial directors of Market Monitoring Corporation will serve terms as follows: (i) the initial director chosen by GridFlorida, Inc. will serve a two year term, (ii) the initial director chosen by the Advisory Committee will serve a three year term, and (iii) the initial director chosen by the other directors will serve a four year term. Subsequent directors will serve three year terms. A new director will be chosen to replace the exiting director by the same group that selected the exiting director. For example, if the exiting director was chosen by GridFlorida, Inc., GridFlorida, Inc. will choose the new director. Subsequent directors must be selected from a list of at least three candidates provided by an independent search firm. A director can be removed from the board of Market Monitoring Corporation upon the affirmative vote for removal of GridFlorida, Inc. and the Advisory Committee. A new director will be chosen to replace the removed director by the same group that selected the removed director. For example, if the exiting director was chosen by GridFlorida, Inc., GridFlorida, Inc. will choose the new director.

Subsequent directors must be selected from a list of at least three candidates provided by an independent search firm.

6.6. Selection and Requirements of the Market Monitor. The board of directors of Market Monitoring Corporation will choose a suitably qualified individual, entity or other Person to act as the market monitor (the "Market Monitor"). The Market Monitor must satisfy the standards for independence described in Section 6.4 above. The board of directors of Market Monitoring Corporation may remove the individual, entity or other Person acting as Market Monitor upon a majority vote; in such event, the board of directors of Market Monitoring Corporation will take timely action to replace the Market Monitor.

6.7. Selection and Requirements of Staff of Market Monitoring Corporation. The Market Monitor will be responsible for choosing necessary staff personnel of Market Monitoring Corporation. Staff personnel must satisfy the standards for independence described in Section 6.4 above.

**EXHIBIT C**

**AMENDED PLANNING PROTOCOL**

## ATTACHMENT N

### Planning Protocol

#### I. Overview.

This Attachment N describes the process to be used by the Transmission Provider in planning the Transmission System. Nothing in this Attachment is intended to restrict or expand existing state laws or regulatory authority.

The Transmission Provider shall be responsible for performing the planning function for the Transmission System and shall serve as the point of contact (i.e., one stop shopping) for all market participants with respect to ~~GridFlorida's~~ GridFlorida's transmission services and planning. The Transmission Provider has the ultimate responsibility and authority for developing and approving a comprehensive and integrated GridFlorida-wide transmission plan through an annual planning process described in this Attachment. The GridFlorida planning process is an open, transparent and participatory 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 (e.g., utility generation, network generation, merchant generation, IPPs, LSEs) seeking long-term Network Transmission Service, Point-to-Point Transmission Service or Generator Interconnection Service under this Tariff, including planning for new interties with non Participating Owners and ~~control areas~~ Control Areas located outside the Transmission System in a non-discriminatory manner. An important element of the open and participatory process is the Transmission Planning Committee established by the Transmission Provider.

## **II. GridFlorida Planning Bill Of Rights.**

The GridFlorida planning process shall also (i) identify and facilitate, in a timely manner, the adoption and implementation of transmission projects and/or potential generation alternatives that can effectively relieve congestion; (ii) identify and evaluate longer range needs and facilitate transmission projects to expand competitive markets, including increased intertie capacity at the interfaces; (iii) maintain and enhance the efficiency and reliability of the Transmission System; (iv) consider whether expansion plans required to provide requested transmission service can be combined into a more efficient expansion plan; and (v) assess whether expansion can efficiently reduce overall Transmission System losses.

This process shall encourage and provide opportunities for meaningful, in-depth participation by all users of the Transmission System, 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, of transmission projects proposed or endorsed; the underlying assumptions and data on which the proposal is based; analysis relied upon by the Transmission Provider concerning its proposed transmission plan or proposed generation alternatives offered by users of the Transmission System; and documents supporting assumptions underlying the



proposed transmission expansion plan that are challenged by users of the Transmission System in the GridFlorida planning process.

**H-III. The Transmission Provider, The Transmission Planning Committee And The FRCC.**

The planning function for GridFlorida shall be the responsibility of the Transmission Provider. The process for carrying out the planning of the Transmission Provider shall be collaborative with the ~~Transmission Provider~~, POs, LSEs, generators, Transmission Customers, the FRCC, ~~the FPSC~~ and other market participants. ~~The Transmission Provider shall be organized to engage in such planning activities as are necessary to fulfill its obligations under the PO Management Agreement and this Tariff.~~ In exercising such authority, the Transmission Provider shall (i) receive, evaluate and respond to requests for transmission service (e.g., requests associated with Network Service, Network Resources, Network Loads and attendant new or modifications to existing points of delivery, Point-to-Point Service, and Generator Interconnection Service); and (ii) develop a comprehensive GridFlorida-wide transmission plan (hereinafter the "GridFlorida Plan"). In order to carry out this planning function, the Transmission Provider shall have the following responsibilities, set forth in more detail in subsequent Sections of this Attachment N: (i) to calculate ATC; (ii) to develop cost-effective plans to resolve transmission constraints that inhibit requested transmission service and alleviate congestion in an efficient manner; and (iii) to create the GridFlorida Plan by integrating, evaluating, and modifying the transmission plans

(refer to Exhibit N.1 of this Attachment N for timelines), and other findings from (a) studies (including but not limited to System Impact Studies and Facilities Studies), (b) plans and analyses developed by the individual POs, LSEs, and other market participants, to define transmission needs within their respective system(s), (c) plans and analyses developed by the Transmission Provider to define regional needs, and (d) Transmission Provider analyses giving consideration to information from the Transmission Planning Committee and other sources. The Transmission Provider shall make the final determination in the process, subject to the ~~Dispute Resolution Procedures~~ dispute resolution procedures set forth in this Tariff and subject to review by the ~~FERC Commission~~ or FPSC where appropriate.

There is hereby created a Transmission Planning Committee with the same member representation as the stakeholder Advisory Committee representatives. ~~To the extent possible,~~ It is intended that representatives on the Transmission Planning Committee shall have transmission planning experience. The Transmission Provider will coordinate with the Transmission Planning Committee (i) in developing additional procedures, standards, and requirements associated with the planning process, (ii) in developing the GridFlorida Plan, including identifying matters that require resolution and possible alternatives to such matters, and (iii) other matters deemed appropriate by the Transmission Provider. The Transmission Provider shall exercise its discretion in how it utilizes the advice provided by the Transmission Planning Committee.

The FRCC's role in the reliability and planning process shall be to review and

assess the plans and reliability assessment of the Transmission Provider (including POs as necessary), and, in coordination with NERC, develop reliability standards, and monitor and ensure compliance with such standards.

#### ~~III~~IV. Calculation Of ATC.

The Transmission Provider shall be responsible for calculating ATC for the Transmission System. In calculating ATC, the Transmission Provider shall: (i) take into account transmission limits; (ii) use planning criteria compatible with operations, including the use of appropriate equipment ratings; (iii) follow the general principles set forth in the NERC documents, Transfer Capability (May 1995) and Available Transfer Capability: Definition and Determination (June 1996) and in accordance with ~~Attachment~~ Attachments C and O to this Tariff, as those documents may be revised from time to time; (iv) provide for projected load growth, all relevant committed transactions and their resulting power flows throughout the interconnection; and (v) use appropriate analytical tools to determine thermal, voltage, and stability constraints.

The Transmission Provider shall adhere to applicable reliability criteria of NERC and the FRCC, or successor organizations, and planning criteria consistent with the planning, design and construction standards discussed in Section ~~IX~~ X of this Attachment N. The Transmission Provider shall also apply equipment capability ratings provided by the POs for their respective Transmission System facilities. The process to be used by the Transmission Provider to validate the ratings is discussed in Section ~~V~~ VI of this Attachment N. Disputes regarding equipment capability ratings may

be resolved through the ~~Dispute Resolution Procedures~~ dispute resolution procedures set forth in this Tariff. The Transmission Provider shall at all times comply with the procedures of this Tariff for calculating ATC.

**IVV. Evaluation Of Transmission Service Requests.**

The Transmission Provider shall receive, evaluate, and respond (i.e., one stop shopping) to all requests for transmission service that involve the use of the Transmission System. With respect to all such requests, the Transmission Provider shall analyze and make the determination on access to the Transmission System, including the amount of transmission service which the Transmission System can support. The Transmission Provider shall document all requests for transmission service, the disposition of those requests, and supporting data. In order to carry out this function the Transmission Provider reasonably shall consult with the transmission planning representatives of the affected POs on matters such as facilities, equipment, procedures, maintenance, reliability, and public or worker safety. The Transmission Provider shall provide the transmission planning representatives of each PO with sufficient information to model local conditions and to monitor local consequences of the Transmission Provider's decisions related to requests for transmission service.

Additionally, the Transmission Provider shall coordinate with affected POs to process requests for service involving the use of distribution facilities relating to service under this Tariff in accordance with the Agency Agreement.

**VVI. Resolution Of Transmission Constraints.**

When the evaluation of posted ATCs reveals apparent transmission constraints that would preclude a requested transaction, the Transmission Provider shall act in a manner consistent with the provisions of this Tariff.

~~The Transmission Provider shall follow the procedures of this Tariff when conducting studies. Upon receipt of an executed study agreement, the Transmission Provider shall form, chair, and direct the activities of an Ad Hoc Working Group that includes representatives of all affected POs. The Ad Hoc Working Group shall develop expansion alternatives, perform the described studies, and develop the resulting options and costs, which shall be provided to the Transmission Customer by the Transmission Provider.~~

Each PO shall file with the Transmission Provider information regarding the physical ratings of all of its equipment in the Transmission System. This information is intended to reflect the normal and emergency ratings routinely used in regional load flow and stability analyses. In carrying out its responsibilities, the Transmission Provider shall apply ratings that have been provided by the respective POs and have been verified and accepted as appropriate by the Transmission Provider where such ratings affect the reliability of the Transmission System. When requested by the Transmission Provider, POs shall provide specific methods by which the ratings of equipment are calculated. If the Transmission Provider and the POs'POs' respective planning representatives cannot reach agreement on a rating, the dispute shall be resolved through the Dispute Resolution Procedures dispute resolution procedures set forth in this Tariff. However, the Transmission Provider shall use the ratings provided by the PO unless and until such

ratings are changed through the ~~Dispute Resolution~~ dispute resolution process or by voluntary agreement with the affected PO.

**VIVII. Development Of GridFlorida Transmission Plan.**

The Transmission Provider shall develop the GridFlorida Plan, consistent with Good Utility Practice and taking into consideration long-range planning horizons, as appropriate. The Transmission Provider shall develop this plan for expected use patterns and analyze the performance of the Transmission System in meeting both reliability needs and the needs of the competitive bulk power market, under a wide variety of contingency conditions. The Transmission Provider shall update this plan to include projects related to interconnection service and ~~Transmission Service~~ transmission service.

The GridFlorida Plan will give full consideration to the transmission needs of all market participants, and identify expansions needed to support competition in bulk power markets and in maintaining reliability taking into consideration demand side options and generation alternatives to transmission expansion. This analysis and planning process shall integrate into the development of the GridFlorida Plan among other things: (i) the transmission needs identified from studies (including but not limited to System Impact Studies and Facilities Studies) carried out in connection with specific transmission service requests to the Transmission Provider; (ii) the transmission needs identified by the POs and LSEs in connection with their planning analyses to provide reliable power supply to their connected load; (iii) the transmission planning obligations of a PO, imposed by federal or state law(s) or regulatory authorities, which can no

longer be performed solely by the PO following transfer of operational control of its transmission facilities to the Transmission Provider; (iv) the inputs provided by the Transmission Planning Committee; (v) the inputs, if any, provided by the FRCC and the FPSC; and (vi) the transmission needs identified by the Transmission Provider and market participants in order to expand trading opportunities, better integrate the grid and alleviate congestion in an efficient manner. 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 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~~ to the POs as delineated in Exhibit N.2 to this Attachment N.

The Transmission Provider shall seek out opportunities to coordinate or consolidate, where possible, individually defined transmission projects into more comprehensive cost-effective developments subject to the limitations imposed by prior commitments and lead time constraints. This multi-party collaborative process is designed to ensure the development of the most efficient and cost-effective GridFlorida Plan that will meet reliability needs and expand competitive markets, better integrate the grid, and alleviate congestion, while giving consideration to the inputs from all stakeholders.

The Transmission Provider shall test the GridFlorida Plan for adequacy and security based on all applicable criteria. The GridFlorida Plan shall adhere to applicable

reliability requirements of NERC, FRCC, or successor organizations, ~~its~~ and planning criteria consistent with the planning, design and construction standards discussed in Section ~~IX~~ X of this Attachment N. To the extent there are any disagreements with any element of the GridFlorida Plan, the dispute may be resolved through the ~~Dispute Resolution Procedures~~ dispute resolution procedures set forth in this Tariff or by the ~~FERC~~ Commission or FPSC, where appropriate. The GridFlorida Plan shall have as one of its goals the satisfaction of all regulatory requirements. That is, the Transmission Provider shall not require that projects be undertaken where it is reasonably expected that the necessary regulatory approvals for construction and cost recovery will not be obtained.

The proposed GridFlorida Plan shall include specific projects already approved as a result of the Transmission Provider entering into Service Agreements with Transmission Customers where such agreements provide for identification of needed transmission construction, its timetable, cost, and PO or other ~~parties'~~ parties' construction responsibilities. Approval of the GridFlorida Plan by the Board certifies it as the Transmission ~~Provider's~~ Provider's plan for meeting the transmission needs of all stakeholders subject to any required approvals by federal or state regulatory authorities. The Transmission Provider shall provide, as necessary, a copy of the approved GridFlorida Plan to all applicable federal and state regulatory authorities.

The FPSC has the right to review the GridFlorida Plan (and supporting data) and to provide input to the ~~Transmission Provider and POs 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 and POs 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.

The Transmission Provider shall post on the OASIS and provide as required to appropriate state regulatory authorities, a five-to-ten-year (5-to-10-year) planning report representing the GridFlorida Plan. ~~Annual~~ Additionally, the Transmission Provider shall post on the OASIS final reports and planning reports ~~shall be available to interested parties upon request.~~ studies consistent with Commission policy.

#### **VIII. Construction Of Facilities Identified by GridFlorida.**

For facilities that will be connected to a single PO's PO's system, that PO shall be designated by the Transmission Provider as the party responsible to construct, own, and maintain such facilities, unless the Transmission Provider and PO otherwise agree. For facilities that will be connected between two (2) or more ~~POs'~~POs' facilities, those POs shall be designated as the parties equally responsible to construct, own, and maintain such facilities, unless such POs otherwise agree. For facilities within the GridFlorida footprint that will be connected between a PO's system and a system or systems that are not part of the Transmission System, that PO initially shall be designated as the party responsible to construct, own, and maintain such facilities unless the Transmission Provider, the PO and the non-GridFlorida party or parties otherwise agree.

The Transmission Provider shall notify each designated PO of the PO's initial designation as the entity responsible to own and construct facilities under the GridFlorida Plan. If the designated PO notifies the Transmission Provider that it does not wish to own and construct such facilities, alternate arrangements 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.

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 major new transmission facilities shall be

competitively bid by the entity responsible for owning such facilities. The Transmission Provider shall have the right to participate in the review and selection of the bids, costs and construction schedules associated with the construction of any major new transmission facilities. To the extent that the Transmission Provider and the PO are unable to agree on any aspect associated with the construction of the major new transmission facilities, such dispute shall be submitted to the dispute resolution process for resolution. The PO shall have the right to construct the required facilities by matching the lowest bid for construction of the required facilities.

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.

~~VIII. Planning Responsibilities Of POs.~~

**IX. Coordination Between the Transmission Provider and POs, and Obligation of POs to Support the Transmission Provider.**

~~To fulfill their roles in the collaborative process for the development of the GridFlorida Plan, the POs shall assist the Transmission Provider in developing the GridFlorida Plan while taking into consideration the needs of (i) connected loads, including load growth, (ii) new customers and new generation sources within the PO's system, and (iii) known transmission service requests. However, the~~

Transmission Provider will have the responsibility and

GridFlorida shall be responsible for and have ultimate authority for performing the planning function, and developing a comprehensive and integrated GridFlorida-wide transmission plan. In performing these functions, coordinating the performance of the studies and implementing the results of such studies. POs shall provide to the Transmission Provider necessary modeling or supporting data shall reasonably consult and coordinate with POs whose facilities are affected and other affected market participants, including forming, chairing, and directing the activities of Ad Hoc Working Groups to support the planning function and to develop a comprehensive and integrated GridFlorida-wide transmission plan. The Ad Hoc Working Groups shall include affected POs and market participants, and any other party the Transmission Provider deems appropriate. The Transmission Provider and the Ad Hoc Working Groups shall consult and coordinate, perform studies, develop expansion alternatives, and develop the resulting options and costs.

The POs shall provide support reasonably requested by the Transmission Provider. POs shall carry out other duties that in performing its planning function and in its development of a comprehensive and integrated GridFlorida-wide transmission plan. Such support the objectives of shall include: (i) a PO shall provide to the Transmission Provider ~~planning process, the calculation of ATC, or regional reliability analyses.~~ necessary modeling or supporting data associated with such PO's Transmission Facilities, as reasonably requested by the Transmission Provider, (ii) POs shall participate in the integration and testing of the GridFlorida Plan. ~~POs shall serve on Ad~~

~~Hoc Working Groups established~~ as reasonably requested by the Transmission Provider to respond to transmission service requests and other matters. In, (iii) POs whose Transmission facilities are affected shall serve on the Ad Hoc Working Groups, and (iv) in accordance with the Agency Agreement, POs may also need to calculate ATC whose Transmission Facilities are affected shall provide information and support for the calculation of ATC by the Transmission Provider at points of delivery to or receipt from distribution facilities, as required (i.e., points that are not on the Transmission System), as reasonably requested by the Transmission Provider. In addition, POs shall reasonably support other duties associated with the objectives of the Transmission Provider planning process, such as the calculation of ATC by the Transmission Provider and regional reliability analyses.

**X. ~~IX Planning And Facilities Standards. And Provisions For Enhanced Facilities And Expedited Construction~~**

The Transmission Provider shall develop standards in collaboration with POs, LSEs, generators and other market participants for the planning, design and construction ("the GridFlorida Planning and Facilities Standards") of new facilities that are part of the Transmission System. The GridFlorida Planning and Facilities Standards shall apply on a comparable basis to all facilities included in the Transmission System, and will be phased in over a period of time not to exceed five years from the commencement of the Transmission Provider operations. A ~~Transmission Customer may request the application of higher standards. Such a request may be made for any reason (e.g., enhanced reliability, environmental,~~

~~aesthetic and other land-use planning reasons~~). Until such time that the GridFlorida Planning and Facilities Standards are developed, the ~~POs'~~POs' standards associated with planning, design and construction shall be followed, unless the Transmission Provider can demonstrate that a ~~PO's~~PO's standards are below what constitutes Good Utility Practice, in which case the Transmission Provider shall impose standards consistent with Good Utility Practice. In the event that the Transmission Provider questions the appropriateness of a ~~PO's~~PO's planning, design, or construction criteria, the matter may be resolved through the ~~Dispute Resolution Procedures~~dispute resolution procedures set forth in this Tariff. Until any such dispute is resolved, the ~~PO's~~PO's criteria shall govern.

A Transmission Customer may request the application of higher standards. Such a request may be made for any reason (e.g., enhanced reliability, environmental, aesthetic and other land-use planning reasons) and shall be granted, provided that (i) the Transmission Customer submits a detailed written request to the Transmission Provider detailing the proposed enhanced design and construction standards; (ii) the design and construction standards must not impair the reliability of the Transmission System when compared to the GridFlorida Planning and Facilities Standards or the PO standards then in effect; and (iii) the Transmission Customer must agree to reimburse the applicable PO for all costs incurred by such PO as a result of applying the higher design and construction standards to the subject transmission facilities.

**XI. Provisions For Enhanced Facilities And Expedited Construction.**

In the event a Transmission Customer has special needs that require either

enhanced facilities or facilities that need to be constructed on an expedited basis, the Transmission Customer may request the Transmission Provider, and the PO shall consistent with Section ~~IX~~ X of this Attachment N be obligated to provide, and where applicable interconnect ~~enhanced or special facilities, Enhanced or Special Facilities~~,<sup>1</sup> regardless of whether such facilities have been identified as necessary by the Transmission Provider as part of the planning process. Such request may be made at any time and for any reason (e.g., enhanced reliability, environmental, aesthetic and other land-use planning reasons). Such request will be granted, provided that (i) the requested facilities do not adversely affect system reliability; and (ii) the requesting party agrees to ~~pay~~ reimburse the applicable PO for any ~~additional~~ costs incurred by such PO in connection with the ~~such~~ Enhanced or Special 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 the PO but for the request to construct the Enhanced or Special Facilities or to place them in service earlier than planned.

A ~~In order to meet special circumstances,~~ a Transmission Customer may construct a delivery point or ~~enhanced facilities~~ Enhanced or Special Facilities itself on an expedited basis, provided such facilities meet ~~the standards~~ or exceed the

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<sup>1</sup> “Enhanced or Special Facilities” are facilities which meet or exceed the minimum Planning and Facilities Standards adopted by the Transmission Provider and include, but are not 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 the Transmission Provider, are not scheduled to be in-service at the time requested by the

Planning and Facilities Standards described in this Section IX X. As soon as reasonably practicable after the Transmission Customer determines that it will construct such facilities itself, the Transmission Customer will inform the Transmission Provider and applicable PO, and will provide them with conceptual plans of the facilities to be constructed. At least 90 days prior to commencing construction of such facility, the Transmission Customer shall submit its request to the Transmission Provider and applicable PO specifying the facilities, along with detailed plans for such facilities consistent with GridFlorida Planning and Facilities Standards. The plans will be reviewed for the purpose of determining whether the facilities adversely affect reliability. 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. Prior to interconnecting any such facilities to the Transmission System, the Transmission Provider and PO shall have the right to inspect the facilities to ensure that they will not adversely affect the reliability of the Transmission System.

**X-XII. Coordination Between of the Transmission Provider with other RTOs**

The Transmission Provider ~~Operating And Planning Staffs~~ will coordinate all inter-regional planning.

The Transmission Provider ~~planning staff shall provide support to the Transmission Provider operating staff in determining and posting ATC in accordance~~

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Transmission Customer, and (5) an alternative Point of Delivery on the Transmission System.



~~with Attachment O to this Tariff and in developing and reviewing operating procedures will develop practices to ensure the coordination of reliability and market interface practices among regions. The Transmission Provider ~~planning staff~~ also shall assist the operating staff ~~by performing operational planning assessments for near term system configurations. Within their respective time horizons, the operating and planning staffs shall have the same general responsibilities for determining whether the Transmission System can accommodate a specific transaction. The planning staff shall be responsible for all responses to requests for transmission service that require an expansion of the Transmission System.~~ 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 the Commission on its progress in the development of coordination standards within one year of its commencement of operations.~~

**XIXIII. Additional Responsibilities Of The Transmission Provider.**

Among other general responsibilities, the Transmission Provider shall also:

- (i) develop the GridFlorida Plan taking into consideration Points of Delivery principles consistent with Exhibit N.3 to this Attachment N;
- (ii) facilitate communications among POs, transmission customers, generation suppliers, and other stakeholders;
- (iii) develop databases (e.g., load flow, dynamic and short circuit) used in the planning process incorporating information provided by the applicable parties;
- (iv) coordinate planning with non POs ~~and other RTOs~~; and
- (v) periodically monitor real-time data to identify emerging trends that require modification of planning

assumptions to assure the reliable operation of the Transmission System in the future.

## **Exhibit N.1**

### **To The Planning Protocol**

#### **Annual Transmission Planning Process**

To implement the transmission expansion plan, a timeline is established as set forth below in order to effectuate an "Annual Transmission Planning Process."Process. The Transmission Provider will establish the date the procedures below will commence.

1. At the time determined by the Transmission Provider, 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 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, 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, at any time during the year. Such request for service will be processed based on:

- (i) the existing Transmission System;
- (ii) the GridFlorida Plan;
- (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 plan subsequent to the initial planning cycle, a confirmed request for long-term firm transmission service or GIS submitted prior to the annual data submittal date of the Transmission ~~Provider's~~ Provider's Network customers Customers will be included in the base assumptions for that ~~year's~~ year's Annual Transmission Planning Process.

4. The Transmission Provider shall determine 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, the Transmission Provider shall post on its OASIS an initial GridFlorida Plan that provides for the transmission needs of the users. The posting shall invite comments on the initial GridFlorida Plan by interested parties, including ~~Non~~ non Participating Owners. Such comments shall be submitted to the Transmission Provider in

30 days.

6. Two weeks after the receipt of comments, the Transmission Provider shall conduct a 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 initial GridFlorida Plan. In developing the final GridFlorida Plan, the Transmission Provider shall take into consideration such comments relating to the initial GridFlorida Plan.
7. Ten weeks after the Planning Conference, the Transmission Provider shall finalize the GridFlorida Plan and post it on the OASIS. The entire process will take eleven months from the time of the data submittal date.

To the extent that a user of the Transmission System or the FPSC does not agree with the GridFlorida Plan, 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 in this Tariff.

**Exhibit N.2  
To The  
Planning Protocol**

**Development of the Initial GridFlorida Plan**

1. The initial GridFlorida Plan shall include:
  - (a) Any new generation that is identified within the planning horizon in the most recent Ten Year Site Plans of the POs as filed with the FPSC prior to the commencement of the first GridFlorida Annual Planning Process;
  - (b) Any new or modified facility that is within the ten year 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 as filed with the ~~FERC~~ Commission prior to the commencement of the first GridFlorida Annual Planning Process; and
  - (c) Any facility improvement necessary to meet the reliability targets established pursuant to Section I.D.3 of the Transmission Provider Operating Protocol planned by a PO prior to the commencement of the Transmission ~~Provider's~~ Provider's operations.
2. The ten year plans adopted by the Transmission Provider shall be included in the Transmission ~~Provider's~~ 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 PO and which is superior to that ten year plan, the Transmission Provider shall consult with the PO to attempt to reach agreement on the cancellation or delay. If the Transmission Provider cannot reach agreement with the PO, the PO may request dispute resolution.

3. 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 (2) above.

**Exhibit N.3  
To The  
Planning Protocol**

**Points of Delivery**

The GridFlorida planning process shall consider the following in regards to Points of Delivery:

1. 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 in collaboration with the applicable PO, shall incorporate the LSE's LSE's justification into an overall evaluation of alternatives to the proposed new Point of Delivery.
2. 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' 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~~ LSE's requested alternative, based on the above criteria. Except as otherwise provided for in Section ~~IX~~ X of this Attachment N and notwithstanding any other provision of this Tariff to the contrary, upon the request of any Transmission Customer, a PO 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 for the difference in costs incurred in constructing the requested Point of Delivery and the alternative the Transmission Provider otherwise would have selected.

3. Subject to Section ~~IX~~ X of this Attachment N, the Transmission Provider in consultation with the applicable PO shall be responsible for the design and construction 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~~ 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 applicable PO shall be responsible for the design and construction 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 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 LSE or PO whose facilities serve such LSE.

4. 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.
5. The Transmission Provider in coordination with the POs shall, as 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.
6. 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'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.

7. The Transmission System can, under some circumstances, be subject to voltage instability and collapse. An essential element in the reliability of the Transmission System is the installation of power factor correction devices (e.g., capacitor banks) that compensate for the reactive power demands at Points of Delivery (i.e., point where power exits the Transmission System). Points of Delivery should be designed and operated so that the power factor at such Points of Delivery, measured at the point where power exits the Transmission System, is between 95% lagging and 99% leading during summer peak load conditions. Further, in order to avoid transmission system over voltages, Point of Delivery power factor correction devices should be controllable so that the power factor measured at the Point of Delivery (i.e., point where power exits the Transmission System) is unity or lagging during spring or valley load conditions. Point of Delivery connections to the Transmission System shall meet the power factor requirements listed above. In order to assess power factor, the Point of Delivery real (kW) and reactive demands (kVar) shall be recorded at the time of the GridFlorida Transmission System summer peak load (June, July, or August) and at the minimum spring load (March, April, or May). For compliance assessment purposes, the LSE can aggregate ~~P~~ Points of Delivery that are in close electrical/geographical proximity (by summing kW and kVar values). Should an LSE occasionally experiences unusually high loads outside of the summer period (e.g. 7 a.m. peak loads associated with winter cold fronts), the LSE should cooperate to

the extent feasible with requests from the Transmission System operator to help support system voltage.

-FOOTNOTE 1-

“Enhanced or Special Facilities” are facilities which meet or exceed the minimum Planning and Facilities Standards adopted by the Transmission Provider and include, but are not 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 the 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.

**EXHIBIT D**

**AMENDED TERMS AND CONDITIONS  
OF SERVICE APPLICABLE TO  
POINTS OF DELIVERY FOR  
NETWORK INTEGRATION SERVICE**

**ATTACHMENT R**

**TERMS AND CONDITIONS OF SERVICE**

**APPLICABLE TO POINTS OF DELIVERY FOR**

**NETWORK INTEGRATION SERVICE**

~~A Point of Delivery (“POD”) for Network Integration Terms and Conditions of Service (“NIS”) is a point where power exits the Transmission System and enters a NIS Customer’s facilities where load is ultimately served. Each such POD is specifically described in a separate exhibit to the Customer’s NIS Agreement (“NISA”). The general terms and conditions for service applicable to PODs are described herein. Applicable to Points of Delivery~~ To the extent that there are any disputes ~~between~~ among GridFlorida, ~~the~~ PO and ~~the~~ Customer involving ~~Point of Delivery~~ POD matters, including disputes concerning GridFlorida standards and practices, and whether the affected facilities are appropriate or necessary under the circumstances, such disputes shall be subject to the Dispute Resolution ~~Provision~~ Procedures (“DRP”), Section 12, of the OATT.

**1. TERMS AND CONDITIONS OF SERVICE SUPPLIED TO DELIVERY POINTS TO PODs**

a. ~~Power will be delivered to the Customer’s POD~~ GridFlorida and/or PO will deliver power pursuant to the GridFlorida OATT to a Customer at a Point of Delivery in the form of three-phase, alternating current at a frequency of approximately 60 Hertz, and at the nominal voltage indicated on an Exhibit to the Customer’s NISA for each such ~~Point of Delivery~~ POD.

~~b. GridFlorida shall operate the GridFlorida System and the Customer shall operate its respective systems in accordance with Good Utility Practice, so as to maintain voltage levels at the Point of Delivery within acceptable ranges.~~

b. ~~The POD~~ The Point of Delivery shall not be electrically connected with any other source of electricity without prior written notice to GridFlorida ~~and/or,~~ which in turn shall immediately provide prior written notice to the PO, as applicable, and prior agreement with GridFlorida ~~and/or~~ and the PO, as applicable, on such measures or conditions, if any, as may reasonably be required for the metering, telemetry, protection, operation and reliability of ~~both systems.~~ each Party's system.

c. ~~GridFlorida The Systems can, under some circumstances, be subject to voltage instability and collapse. An essential element in the reliability of the GridFlorida System is the installation of power factor correction devices (e.g., capacitor banks) that compensate for the reactive power demands at PODs (i.e., point where power exits the GridFlorida System). PODs should be designed and operated so that~~ shall operate the Transmission System and the Customer shall operate its respective system in accordance with Good Utility Practice, so as to maintain voltage levels at the POD within acceptable ranges and in accordance with the power factor at such PODs, measured at the point where power exits the GridFlorida System, is between 95% lagging and 99% leading during summer peak load conditions. Further, in order to avoid transmission system over voltages, POD power factor correction devices should be controllable so that the power factor measured at the POD (i.e., point where power exits the GridFlorida System) is unity or lagging during spring or valley load conditions. POD connections to the GridFlorida System shall meet the power factor requirements listed above. In order to assess power factor, the POD real (kW) and reactive demands (kVar) shall be recorded at the time of the GridFlorida System summer peak load (June, July, or August) and at the minimum spring load (March, April, or May). For compliance assessment purposes, the LSE can aggregate PODs that are in close electrical/geographical proximity (by summing kW and kVar values). Should an LSE occasionally experiences unusually high loads outside of the summer period (e.g. 7 a.m. peak loads associated with winter cold fronts), the LSE should

~~cooperate to the extent feasible with requests from the GridFlorida System Operator to help support system voltage requirements described in Item Number 7 of Exhibit N.3 to the Planning Protocol.~~

d. GridFlorida and the ~~PO~~, as applicable ; PO shall have access, as necessary, to the Customer's Point of Delivery POD facilities in order to inspect the Customer's protective devices installed for the purpose of protecting GridFlorida the Transmission System against adverse conditions or disturbances originating on the Customer's Point of Delivery POD facilities.

**2. CHANGES IN EXISTING DELIVERY POINT VOLTAGE ~~DUE TO GRIDFLORIDA~~**

a. GridFlorida will provide service at the voltages specified for each Point of Delivery POD in an Exhibit to the Customer's NISA, unless GridFlorida notifies the Customer that the voltage will be changed to a specified higher or lower voltage. GridFlorida shall provide the Customer with as much advance notice as reasonably practicable in the event of a change in voltage. The Customer may request changes in delivery voltages as part of the planning process. ~~3-~~

**~~CHANGES IN EXISTING DELIVERY POINT VOLTAGE DUE TO CUSTOMER~~**

a b. To the extent that a change in transmission level voltage is caused required by GridFlorida or requested by the Customer as part of the Local Area Planning Process (Section I.B of the Planning Process Protocol), ~~Customer will design, engineer, install, construct or modify, operate, and maintain the~~ and accepted by GridFlorida, the responsibility for the design, engineering, installation, construction or modification of POD facilities on its side of the Point of Delivery to accommodate such higher or lower voltage. will be consistent with Item Number 3 of Exhibit N.3 to the Planning Protocol.

**3. ESTABLISHMENT OF NEW DELIVERY POINTS PODs**

a. To establish a new Point of Delivery POD, in accordance with the Local Area Planning Process (Section I.B of the Planning Process Protocol), Customer



must execute a new Exhibit with GridFlorida ~~and/or PO, as applicable~~ and the applicable PO, under its NISA, for the new Point of Delivery POD prior to the date upon which the new Point of Delivery POD is to be established. The Exhibit for such new Point of Delivery ~~shall be attached to the TSA and POD~~ shall include any special provisions required for the establishment of the new Point of Delivery. New Point(s) of Delivery POD. New PODs shall be established in accordance with the OATT and the Planning Protocol.

b. The Customer is responsible for all facility rearrangements on the Customer's side of the new Point of Delivery POD that are required for the establishment of the new Point of Delivery. POD in accordance with Item Number 3 of Exhibit N.3 to the Planning Protocol.

#### 4. DELIVERY POINTS AND OTHER FACILITIES

a. The service specifications for each Point of Delivery POD shall be as prescribed in an Exhibit attached to the ~~TSA. Customer's NISA.~~ Further, an such Exhibit between the parties shall set forth appropriate provisions, if required, concerning the installation and maintenance of each Point of Delivery facilities at each POD.

b. Unless otherwise specified in ~~an the Exhibit to~~ for a specific Point of Delivery POD, all facilities on the Customer's side of a Point of Delivery POD shall be considered the ~~system of Customer, shall be paid for by~~ system of the Customer. ~~and Consistent with Item Number 3 of Exhibit N.3 to the Planning Protocol,~~ the Customer is responsible with respect to for its side of the Point of Delivery POD:

- (i) for the installation, operation and maintenance of all necessary poles, lines, substations, transformers, switches, protective equipment, and other equipment ~~necessary for any existing Point of Delivery~~; and
- (ii) for all facilities facility rearrangements required. ~~for any existing Point of Delivery~~

c. Metering and remote terminal unit equipment located on the Customer's side of the ~~Point of Delivery~~ POD that is owned by the ~~GridFlorida or the~~ PO, will be installed, and maintained by ~~GridFlorida or the~~ PO., ~~respectively~~

d. GridFlorida shall have the right to request that the Customer ~~(or with the agreement of the Customer that GridFlorida)~~ install and/or maintain such other facilities on the Customer's side of a ~~Point of Delivery~~ POD as necessary for system reliability consistent with Good Utility Practice. To the extent the Parties disagree on the need for or type of such facilities, the ~~DRP~~ dispute resolution procedures may be invoked to resolve the disagreement; provided, however, if safety or the reliability of GridFlorida's the Transmission System is imminently threatened, GridFlorida shall have the right to have the Customer install and/or maintain such facilities prior to such dispute being resolved. GridFlorida may invoke that right only after sending written documentation to the Customer explaining in detail the safety or reliability concerns substantiating the claim of an imminent threat to the safety or reliability of GridFlorida's the Transmission System.

~~Subsequently, the parties shall request the resolution of the disagreement through DRP.~~

e. The PO and Customer each ~~Each Party (i.e., GridFlorida, PO and Customer)~~ shall install and maintain suitable protective devices on its facilities in order to afford protection to the facilities of the other Party and the Transmission System against adverse conditions or disturbances originating on such other Party's facilities. Such protective devices shall be in accordance and comparable with the applicable GridFlorida standards relating to such similarly situated equipment and consistent with Good Utility Practice.

f. GridFlorida, the PO and Customer shall not utilize or knowingly allow to be utilized any equipment, appliance or device ~~which~~ that tends to materially adversely affect the system of the other or the Transmission System. Each Party

shall maintain a an electrical balance between the phases at each Point of Delivery POD in accordance with Good Utility Practice.

g. ~~GridFlorida or The PO , as applicable,~~ shall install, own, operate, and maintain all lines and equipment located on ~~GridFlorida's or the~~ PO's side of a Point of Delivery POD, as well as ~~the~~ certain meter, metering equipment and remote terminal unit equipment that may ~~, at GridFlorida's or PO's option, as applicable,~~ be located on the Customer's side of the Point of Delivery. ~~In such cases, POD. The~~ Customer shall provide a location, acceptable to the Customer ~~, GridFlorida or~~ and the PO, for the installation of such metering and remote terminal unit equipment that is installed by the PO on the Customer's side of the POD.

## **5. 6 ACCESS TO DELIVERY POINTS**

a. To the extent that ~~GridFlorida or the PO , as applicable,~~ has installed or needs to install equipment on the Customer's side of the Point of Delivery ~~pursuant to the TSA~~ POD, the duly authorized agents of ~~GridFlorida or the PO , as applicable,~~ upon providing notice, shall have the right to access the premises of the Customer at all reasonable hours for the purpose of installing equipment, metering information, inspecting ~~GridFlorida's or the PO's , as applicable,~~ wiring and apparatus, or replacing ~~GridFlorida's or the PO's , as applicable,~~ property on the premises of the Customer, and removing such property at the time of or at any time after suspension or termination of service under the TSA NISA.

b. To the extent that the Customer has installed or needs to install equipment or facilities on ~~GridFlorida's or the PO's , as applicable,~~ side of the Point of Delivery POD pursuant to the TSA NISA, the duly authorized agents of the Customer, upon providing notice, shall have the right of access to the premises of ~~GridFlorida or the PO , as applicable,~~ at all reasonable hours for the purpose of installing facilities, inspecting the Customer's wiring and apparatus, changing, exchanging, or repairing the Customer's property on the premises of the PO, and

removing such property at the time of or at any time after suspension or termination of service under the NISA.

c. GridFlorida and the PO shall protect the Customer's facilities and equipment located on the Transmission System and shall permit, with the Customer's permission, only qualified representatives of the Customer, GridFlorida or the PO, as applicable, to handle same. The Customer shall protect the PO's and removing such property at the time of or at any time after suspension or termination of service under the TSA. c. ~~GridFlorida or the PO, as applicable, shall protect Customer's facilities and equipment located on GridFlorida's Transmission System and shall permit no one but Customer's, and GridFlorida's or the PO, as applicable, qualified representatives to handle same. Customer shall protect GridFlorida's or the PO's, as applicable, equipment located on Customer's system and shall permit no one but GridFlorida's or PO's, as applicable, and Customer's, with the PO's permission, only qualified representatives of GridFlorida, the PO, or the Customer to handle same.~~

**EXHIBIT E**

**AMENDED PARTICIPATING  
OWNERS MANAGEMENT AGREEMENT**

**PARTICIPATING OWNERS MANAGEMENT AGREEMENT**

# PARTICIPATING OWNERS MANAGEMENT AGREEMENT

## TABLE OF CONTENTS

1	<u>PURPOSES OF THE AGREEMENT</u> .....	2
2	<u>DEFINITIONS</u> .....	2
2.1	<u>Agency Agreement</u> .....	2
2.2	<u>Agreement</u> .....	2
2.3	<u>Ancillary Services</u> .....	2
2.4	<u>Code Of Conduct</u> .....	3
2.5	<u>Controlled Facility Or Controlled Facilities</u> .....	3
2.6	<u>Dispute Resolution Procedures</u> .....	3
2.7	<u>Transfer Date</u> .....	3
2.8	<u>Eligible Customer</u> .....	3
2.9	<u>Emergency</u> .....	3
2.10	<u>Existing Transmission Agreements</u> .....	3
2.11	<u>Federal Power Act Or FPA</u> .....	3
2.12	<u>FERC</u> .....	3
2.13	<u>FPSC</u> .....	3
2.14	<u>Florida Reliability Coordinating Council or FRCC</u> .....	3
2.15	<u>Good Utility Practice</u> .....	3
2.16	<u>GridFlorida</u> .....	4
2.17	<u>GridFlorida OATT</u> .....	4
2.18	<u>Information Policy</u> .....	4
2.19	<u>Market Participant</u> .....	4
2.20	<u>NERC</u> .....	4
2.21	<u>Network Operating Agreement</u> .....	4
2.22	<u>NRC</u> .....	4
2.23	<u>Open Access Same-Time Information System Or OASIS</u> .....	4
2.24	<u>Operating Protocol</u> .....	4
2.25	<u>Operational Control</u> .....	4
2.26	<del><u>Planning Protocol</u></del> .....	4
2.27	<u>Participating Owner Or PO</u> .....	4
2.27	<u>Planning Protocol</u> .....	5
2.28	<u>Regional Transmission Organization Or RTO</u> .....	5
2.29	<u>Service Agreement</u> .....	5
2.30	<u>Third Party Agreement Start-Up Costs</u> .....	5
2.31	<u>Transmission Customer</u> .....	5
2.32	<u>Withdrawal</u> .....	5
3	<u>TRANSFER OF OPERATIONAL CONTROL</u> .....	6

4	<u>TERM OF AGREEMENT</u> .....	6
5	<u>TRANSFER DATE</u> .....	6
6	<u>RIGHTS AND OBLIGATIONS OF GRIDFLORIDA</u> .....	8
	<u>6.1 Operational Control</u> .....	8
	<u>6.2 Provision Of Transmission Service</u> .....	8
	<u>6.3 Reliability</u> .....	8
	<u>6.4 Planning And Expansion</u> .....	9
	<u>6.5 Interconnection Agreements With Generation Owners</u> .....	9
	<u>6.6 OASIS</u> .....	10
	<u>6.7 Ancillary Services</u> .....	10
	<u>6.8 Current Documents</u> .....	10
	<u>6.9 Code of Conduct</u> .....	10
	<u>6.10 Compliance With Orders Of Regulatory Agencies</u> .....	10
	<u>6.11 Avoidance Of Damage</u> .....	10
	<u>6.12 Credit Standards</u> .....	10
	<u>6.13 Standards Of Performance</u> .....	11
	<u>6.14 Existing Transmission Agreements</u> .....	11
	<u>6.15 Maximization Of Efficient Use</u> .....	11
	<u>6.16 Third Party Agreements</u> .....	11
7	<u>RIGHTS AND OBLIGATIONS OF POs</u> .....	12
	<u>7.1 Operations</u> .....	12
	<u>7.2 Maintenance</u> .....	12
	<u>7.3 Planning</u> .....	12
	<u>7.4 Construction</u> .....	12
	<u>7.5 Provision Of Information</u> .....	12
	<u>7.6 Facilities Access</u> .....	13
	<u>7.7 Acquisition, <del>Redesignation</del> Construction Or Sales</u> .....	13
	<u>7.8 Reserved Rights</u> .....	13
	<u>7.9 Emergencies</u> .....	14
	<u>7.10 Agency Agreement</u> .....	14
	<u>7.11 Avoidance Of Damage</u> .....	15
	<u>7.12 Standards Of Performance</u> .....	15
8	<u>RATES AND DISTRIBUTION OF REVENUES</u> .....	15
	<u>8.1 Rate Filings By GridFlorida</u> .....	15
	<u>8.2 Rate Filings By POs</u> .....	15
	<u>8.3 Collection And Distribution Of Revenues</u> .....	16
	<u>8.4 Stranded Costs</u> .....	17
	<u>8.5 Reimbursement Of Start-Up Costs</u> .....	17



9	<u>WITHDRAWAL OF FACILITIES</u> .....	17
	9.1 <u>Right To Withdraw Facilities</u> .....	17
	9.2 <u>Transmission Customers Held Harmless</u> .....	18
	9.3 <u>Existing Obligations</u> .....	18
	9.4 <u>Construction Of Facilities</u> .....	18
	9.5 <u>Other Obligations</u> .....	19
	9.6 <u>Regulatory And Other Approvals Or Procedures</u> .....	19
10	<u>LIABILITY AND INDEMNIFICATION</u> .....	19
	10.1 <u>Liability For Acts Or Omissions Of GridFlorida</u> .....	19
	10.2 <u>Liability For Acts or Omissions of the PO</u> .....	19
	10.3 <u>Limitation Of Liability Related To Sovereign Immunity</u> .....	19
	10.4 <u>Limitation Of Liability For Indirect, Exemplary, Punitive, Incidental Or</u> <u>Consequential Damages</u> .....	20
	10.5 <u>Filings To Revise Liability Provisions</u> .....	20
	10.6 <u>Insurance</u> .....	20
	10.7 <u>No Agency Relationship Intended</u> .....	21
11	<u>INSPECTION AND AUDITING</u> .....	22
	11.1 <u>Inspection And Auditing Of GridFlorida</u> .....	22
	11.2 <u>Inspection And Auditing Of POs</u> .....	22
12	<u>PERFORMANCE OF REGULATORY OBLIGATIONS</u> .....	22
13	<u>DISPUTE RESOLUTION</u> .....	23
14	<u>REPRESENTATIONS AND WARRANTIES</u> .....	23
15	<u>MISCELLANEOUS PROVISIONS</u> .....	24
	15.1 <u>Confidentiality</u> .....	24
	15.2 <u>Descriptive Headings</u> .....	24
	15.3 <u>Governing Law And Jurisdiction</u> .....	24
	15.4 <u>Successors And Assigns</u> .....	24
	15.5 <u>No Implied Waivers</u> .....	25
	15.6 <u>Severability</u> .....	25
	15.7 <u>Renegotiation</u> .....	25
	15.8 <u>Further Assurances</u> .....	26
	15.9 <u>Notices</u> .....	26
	15.10 <u>Force Majeure</u> .....	26
	15.11 <u>Claims By Employees</u> .....	27
	15.12 <u>Survival</u> .....	27

<u>15.13</u>	<u>Entire Agreement</u> .....	27
<u>15.14</u>	<u>Amendments</u> .....	27
<u>15.15</u>	<u>Cooperation</u> .....	27
<u>15.16</u>	<u>Good Faith Efforts</u> .....	27
<del>15.18</del>		
<u>15.17</u>	<u>No Third Party Rights</u> .....	28
<del>15.19</del>		
<u>15.18</u>	<u>No Partnership, Joint Venture Or Lease</u> .....	28
<del>15.20</del>		
<u>15.19</u>	<u>Remedies</u> .....	28
<del>15.21</del>		
<u>15.20</u>	<u>Rights Or Obligations Between Or Among POs</u> .....	28
<del>15.22</del>		
<u>15.21</u>	<u>Documents Incorporated By Reference</u> .....	28
<del>15.23</del>		
<u>15.22</u>	<u>Waiver of Jury Trial</u> .....	29
<del>15.24</del>		
<u>15.23</u>	<u>Counterparts</u> .....	29

EXHIBITS A - \_\_: LIST OF EACH PO'S CONTROLLED FACILITIES  
~~EXHIBITS \_\_ \_\_ LIST OF EACH PO'S THIRD PARTY AGREEMENTS~~

EXHIBIT \_\_: REVENUE DISTRIBUTION

EXHIBIT \_\_: PERSONS AUTHORIZED TO RECEIVE NOTICE

## PARTICIPATING OWNERS MANAGEMENT AGREEMENT

This Participating Owners Management Agreement (hereinafter "Agreement") is entered into by and among the undersigned Participating Owners ("POs") and GridFlorida, Inc, ("GridFlorida") a Florida not for profit corporation (collectively referred to as "Parties" and individually referred to as a "Party").

WHEREAS, pursuant to FERC Order No. 2000, certain transmission owners in the state of Florida have caused the formation of GridFlorida, which shall serve as the Regional Transmission Organization ("RTO") for the Florida Reliability Coordinating Council ("FRCC") region of Florida; and

WHEREAS, certain transmission owners propose to transfer Operational Control over the Controlled Facilities to GridFlorida, and this Agreement shall regulate the respective rights and obligations of GridFlorida and such transmission owners; and

WHEREAS, GridFlorida will exercise Operational Control over the Controlled Facilities; and

WHEREAS, GridFlorida will offer non-discriminatory open access transmission services over the Controlled Facilities; and

WHEREAS, the integrity and reliability of the Controlled Facilities must be maintained by GridFlorida; and

WHEREAS, among the objectives of GridFlorida is the receipt of adequate revenues to provide for the operation and maintenance of the Controlled Facilities, and to enable each PO an opportunity to earn a reasonable rate of return on and to recover the capital invested in its Controlled Facilities, and to provide for the operation of the Controlled Facilities in a manner that promotes such objectives; and

WHEREAS, the POs have fiduciary obligations to their investors or members to protect their transmission facilities and to protect their investors or members from liability that may result from the operation of those facilities, and GridFlorida must operate in a manner so as to reasonably allow each PO to fulfill such obligations; and

WHEREAS, the POs have obligations to provide safe and reliable service to the public, and GridFlorida must operate in a manner so as to allow each PO to fulfill such obligations; and

~~WHEREAS, each PO has rights and obligations with respect to third parties pursuant to Third Party Agreements that relate to the Controlled Facilities, and GridFlorida must exercise Operational Control over the Controlled Facilities in a manner so as to allow each PO to exercise such rights and fulfill such obligations;~~

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties do hereby agree with each other, for themselves and their successors and assigns, as follows:

## 1 PURPOSES OF THE AGREEMENT

The purposes of this Agreement, which are material to this Agreement, among other things, are to:

- 1.1.1. Transfer Operational Control over the Controlled Facilities to GridFlorida and provide for the prudent and safe operation of Controlled Facilities by GridFlorida;
- 1.1.2. Provide for full recovery through GridFlorida rate schedules under a FERC-approved OATT of a fully allocated share of the transmission revenue requirement of each PO in accordance with Section 8.1 hereof, and any other charges established in accordance with GridFlorida OATT;
- 1.1.3. Distribute the revenues from the collection of GridFlorida charges to each PO in accordance with this Agreement and the GridFlorida OATT;
- 1.1.4. Carry out the provisions concerning transitional arrangements set forth in the GridFlorida OATT, as applicable, with regard to Existing Transmission Agreements;
- 1.1.5. ~~Carry out, as applicable, the provisions concerning Third Party Agreements;~~
- 1.1.6. ~~1.1.6~~ Carry out the provisions of this Agreement related to liability, indemnification and insurance;
- 1.1.7. ~~1.1.7~~
- 1.1.8. Carry out the provisions of this Agreement regarding the prohibition against modification of the GridFlorida OATT to require, directly or indirectly, either wheeling to end users (except as authorized by the FPSC or another entity with jurisdiction) or a sham wholesale transaction (as defined in FPA Section 212 (h)).

## 2 DEFINITIONS

### 2.1 Agency Agreement

Means an agreement between GridFlorida and a PO whereby GridFlorida acts as the agent for the PO to arrange for delivery of power for Eligible Customers under the GridFlorida OATT, over PO facilities that are not Controlled Facilities.

### 2.2 Agreement

Means this Participating Owners Management Agreement.

### 2.3 Ancillary Services

Has the same meaning as the definition of Ancillary Services contained in the GridFlorida OATT, as such definition may be amended from time to time.

- 2.4 Code Of Conduct**  
Means the GridFlorida Code of Conduct, as the same may be amended from time to time.
- 2.5 Controlled Facility Or Controlled Facilities**  
Means all of the 69 kV and above electric facility or facilities in the FRCC region, owned or leased by a PO, as provided in Attachment Q of the GridFlorida OATT. A list of initial Controlled Facilities is attached to this Agreement as Exhibits A - \_\_\_. GridFlorida shall make current lists of Controlled Facilities publicly available.
- 2.6 Dispute Resolution Procedures**  
Means the Dispute Resolution Procedures provided for in the GridFlorida OATT, as such procedures may be amended from time to time.
- 2.7 Transfer Date**  
Means, with respect to each PO, the Transfer Date as determined in the notices issued pursuant to Section 5 of this Agreement.
- 2.8 Eligible Customer**  
Has the same meaning as the definition of Eligible Customer contained in the GridFlorida OATT, as such definition may be amended from time to time.
- 2.9 Emergency**  
Has the same meaning as provided in Section 7.9 of this Agreement.
- 2.10 Existing Transmission Agreements**  
Has the same meaning as the definition of Existing Transmission Agreements contained in the GridFlorida OATT, as such definition may be amended from time to time.
- 2.11 Federal Power Act Or FPA**  
Means the statute codified at 16 USC §§ 791a et seq., as the same may be amended from time to time.
- 2.12 FERC**  
Means the Federal Energy Regulatory Commission and any successor entity.
- 2.13 FPSC**  
Means the Florida Public Service Commission and any successor entity.
- 2.14 Florida Reliability Coordinating Council or FRCC**  
Has the same meaning as the definition of FRCC contained in the GridFlorida OATT, as such definition may be amended from time to time.
- 2.15 Good Utility Practice**  
Has the same meaning as the definition of Good Utility Practice contained in the GridFlorida OATT, as such definition may be amended from time to time.

- 2.16 GridFlorida**  
Means that certain Florida not for profit corporation that serves as the Regional Transmission Organization within the FRCC region, and any successor entity.
- 2.17 GridFlorida OATT**  
Means the FERC-approved Open Access Transmission Tariff applicable to the provision of transmission service by GridFlorida, as the same may be amended from time to time.
- 2.18 Information Policy**  
Means the document that establishes the rules and guidelines regarding the disclosure of information in connection with the operation of or participation in GridFlorida, as the same may be amended from time to time.
- 2.19 Market Participant**  
Has the same meaning as the definition of Market Participant contained in Section 35.34 of the Commission's regulations (18 CFR § 35.34), as such definition may be amended from time to time.
- 2.20 NERC**  
Means the North American Electric Reliability Council and any successor entity.
- 2.21 Network Operating Agreement**  
Has the same meaning as the definition of Network Operating Agreement contained in the GridFlorida OATT, as such definition may be amended from time to time.
- 2.22 NRC**  
Means the Nuclear Regulatory Commission and any successor entity.
- 2.23 Open Access Same-Time Information System Or OASIS**  
Has the same meaning as the definition of Open Access Same-Time Information System or OASIS contained in the GridFlorida OATT, as such definition may be amended from time to time.
- 2.24 Operating Protocol**  
Means the GridFlorida Operating Protocol, as amended from time to time.
- 2.25 Operational Control**  
Means the ability of GridFlorida to control the operation of the Controlled Facilities as provided for in this Agreement and in the Operating and Planning Protocols.
- 2.26 Participating Owner Or PO**  
Means each transmission owner that has placed its Controlled Facilities under the Operational Control of GridFlorida by entering into this Agreement. Participating Owners or POs means all such transmission owners collectively.

**2.27 Planning Protocol**

Means the GridFlorida Planning Protocol, as amended from time to time.

**2.28 Regional Transmission Organization Or RTO**

Has the same meaning as the definition of Regional Transmission Organization contained in the GridFlorida OATT, as such definition may be amended from time to time.

**2.29 Service Agreement**

Means the initial agreement and any amendments or supplements thereto entered into by a Transmission Customer and GridFlorida for transmission service under the GridFlorida OATT.

**2.30 Start-Up Costs**

Means each PO's costs associated with development of GridFlorida, including, but not limited to, regulatory expenses, the costs of development of GridFlorida structures and the GridFlorida OATT, federal and state regulatory proceedings, legal and consulting fees, and participation in FERC RTO development proceedings related to GridFlorida, collaborative process costs, including the costs associated with meetings with interested parties, computer system costs, including the costs of consultants, hardware and other equipment, license fees, internal costs, and training, project management costs, including internal and external costs, accounting, insurance and travel costs, costs associated with any GridFlorida board members or interim personnel such as recruiting fees, relocation expenses, salaries and benefits, and carrying costs associated with the above-noted costs.

~~**2.31 Third Party Agreement**~~

~~Means any contractual agreement between a PO and a third party, other than an Existing Transmission Agreement, which relates to a PO's Controlled Facilities or the real property on which such Controlled Facilities are located, and copies of which have been provided to GridFlorida by such PO. Third Party Agreements may include, but are not limited to, indentures, mortgages, deeds of trust, joint ownership, operation, or maintenance agreements, franchise agreements, pole attachment agreements, right of way agreements, easements, and use permits.~~

**2.31 2.32 Transmission Customer**

Has the same meaning as the definition of Transmission Customer contained in the GridFlorida OATT, as such definition may be amended from time to time.

**2.32 2.33 Withdrawal**

Has the same meaning as provided in Section 9 of this Agreement.

### **3 TRANSFER OF OPERATIONAL CONTROL**

Upon its respective Transfer Date, each undersigned PO shall transfer Operational Control over all of its Controlled Facilities to GridFlorida, except as provided in Section 7.7.2 of this Agreement. The rights and obligations of GridFlorida resulting from such transfer and the retained rights and obligations of the PO after such transfer are specified in this Agreement.

### **4 TERM OF AGREEMENT**

The term of this Agreement shall commence on the date that GridFlorida and any one PO first execute and deliver this Agreement, and shall continue, unless earlier terminated, until the twentieth (20th) anniversary of such first execution, following which it shall renew automatically on an annual basis on the anniversary of such first execution.

An individual PO may terminate the Agreement with respect to itself under any of the following circumstances:

- 4.1 By providing notice that it does not wish to renew the Agreement at least 12 months prior to the end of the term of the Agreement or the term of any renewal period. The provisions of Section 9 of this Agreement shall apply to termination under this Section 4.1;
- 4.2 By withdrawing pursuant to Section 9 of this Agreement. The provisions of Section 9 shall apply to termination under this Section 4.2;
- 4.3 A PO that has executed and delivered this Agreement within the first six months of its term, may terminate this Agreement if GridFlorida shall not have met the condition set forth in Section 5.6 of this Agreement on or before the date that is six months following the commencement of the term of this Agreement. Termination rights under this Section 4.3 may only be exercised within 60 days of the date that is six months following the commencement of the term of this Agreement. The provisions of Section 9 shall not apply to termination under this Section 4.3.

This Agreement shall continue in effect for GridFlorida until all POs have elected not to renew or have withdrawn pursuant to Section 9 of this Agreement; provided, however, that certain rights and obligations of GridFlorida shall survive termination as provided in Section 15.12 of this Agreement.

### **5 TRANSFER DATE**

Upon execution of this Agreement by a PO, this Agreement shall become effective with respect to GridFlorida and such PO. A Transfer Date with respect to GridFlorida and a PO shall occur upon (1) a written notice delivered by such PO to GridFlorida indicating that the condition precedent of obtaining all necessary federal, state, and local regulatory approvals applicable to such PO has been satisfied, and that such PO shall have in place all means necessary to carry out its obligations under this Agreement, including but not



limited to the necessary physical facilities, personnel, hardware and software, and completion of necessary testing and verification; and (2) a written notice delivered by GridFlorida to such PO certifying that all conditions precedent set forth in 5.1 through 5.7 have been satisfied, and then on such date certain as specified by GridFlorida in such notice.

- 5.1 FERC shall have issued an order authorizing this Agreement to become effective and approving the transfer of Operational Control over the POs' facilities to GridFlorida as contemplated by this Agreement;
- 5.2 FERC shall have issued an order authorizing the formation and operation of GridFlorida.
- 5.3 All necessary state and local regulatory approvals applicable to GridFlorida have been obtained.
- 5.4 GridFlorida and such PO shall have executed, as necessary, an Agency Agreement, and FERC shall have issued an order or orders allowing such Agency Agreement to go into effect.
- 5.5 GridFlorida shall have in place all means necessary to carry out its obligations under this Agreement, including but not limited to the necessary physical facilities, personnel, hardware and software, and completion of necessary testing and verification.
- 5.6 GridFlorida shall have obtained and closed on financing in an amount sufficient to repay Start-Up Costs that have been submitted to GridFlorida prior to the date that is six months following the commencement of the term of this Agreement, repay loans that have been made by a PO to GridFlorida (or its predecessor in interest) prior to such date, and extinguish any financial guaranties that have been made by a PO to or for the benefit of GridFlorida (or its predecessor in interest) prior to such date.
- 5.7 GridFlorida shall have received a favorable determination from the Internal Revenue Service that GridFlorida is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code.
- 5.8 For such PO, a list of the Controlled Facilities being transferred by the PO to GridFlorida's Operational Control has been provided to GridFlorida by the PO.
- ~~5.9 For such PO, the Third Party Agreements to which the PO is a party have been provided to GridFlorida by the PO.~~

## **6 RIGHTS AND OBLIGATIONS OF GRIDFLORIDA**

### **6.1 Operational Control**

GridFlorida shall exercise Operational Control over the Controlled Facilities. The rights and obligations of GridFlorida with respect to the exercise of Operational Control are described in more detail in this Agreement.

### **6.2 Provision Of Transmission Service**

- 6.2.1 GridFlorida shall have the obligation and the sole authority to offer transmission service over the Controlled Facilities under this Agreement and shall also have authority to enter into transmission agreements with Eligible Customers for transmission service over non-Controlled Facilities under the Agency Agreement to all Eligible Customers, including the POs, on a non-discriminatory basis, pursuant to the GridFlorida OATT. GridFlorida shall have the obligation and the sole authority to enter into transmission agreements with Eligible Customers relating to the provision of transmission service over the Controlled Facilities and over non-Controlled Facilities under the Agency Agreement, including Network Operating Agreements, point-to-point Service Agreements, and any other transmission agreements provided for by the GridFlorida OATT. As to interconnection to Controlled Facilities that are owned or leased by a PO, such PO shall have the opportunity to execute on its own behalf such interconnection agreements negotiated and entered into by GridFlorida; 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. In connection with the negotiation process, GridFlorida shall coordinate with the affected PO.
- 6.2.2 GridFlorida shall maintain at all times a FERC-approved OATT. GridFlorida shall have the obligation and the sole authority to administer the GridFlorida OATT, including the authority to file under Section 205 of the FPA to amend the GridFlorida OATT, except as provided otherwise in this Agreement. This provision is not intended to prevent POs from exercising any rights they may have to make filings under Section 206 of the FPA with regard to the GridFlorida OATT and associated protocols.
- 6.2.3 GridFlorida shall not seek modification of any provision of the GridFlorida OATT so as to require, directly or indirectly, either wheeling to end users (except as authorized by the FPSC or another entity with jurisdiction) or a sham wholesale transaction (as defined in FPA Section 212 (h)).

### **6.3 Reliability**

GridFlorida shall have the obligation and sole responsibility for the short-term reliability of the Controlled Facilities in accordance with FERC Order No. 2000. The rights and

obligations of GridFlorida with respect to the maintenance of the short-term reliability of the Controlled Facilities are described in more detail in the Operating Protocol and the Planning Protocol. Any disputes regarding existing PO specific reliability requirements and operating guidelines which have not been fully resolved on or before the Transfer Date, shall be resolved in accordance with Section 13 of this Agreement. Pending the resolution of any such disputes, the PO's specific reliability requirements and operating guidelines shall be used by GridFlorida with respect to the PO's facilities until the issue is resolved.

#### **6.4 Planning And Expansion**

GridFlorida shall have the responsibility and ultimate authority to develop, approve and implement a comprehensive GridFlorida-wide plan, through an annual planning process described in more detail in the Planning Protocol. GridFlorida shall work in collaboration with POs, among others, in developing such plan.

#### **6.5 Interconnection Agreements With Generation Owners**

- 6.5.1 GridFlorida shall have the obligation and sole authority to receive and process requests from generation owners to interconnect with the Controlled Facilities. GridFlorida shall have full authority to negotiate and enter into interconnection agreements with the generation owners. As to interconnection to Controlled Facilities that are owned or leased by a PO, such PO shall have the opportunity to execute on its own behalf such interconnection agreements negotiated and entered into by GridFlorida; 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. In connection with the negotiation process, GridFlorida shall coordinate with the affected PO. The rights and obligations of GridFlorida with respect to the interconnection of generation facilities to the Controlled Facilities are described in more detail in the GridFlorida OATT and the Planning Protocol.
- 6.5.2 GridFlorida shall require all generation owners interconnected or interconnecting with Controlled Facilities in connection with the agreements entered into pursuant to Section 6.5.1 above or pursuant to separate operating agreements entered into with GridFlorida, to follow the directions of GridFlorida in redispatching generation and providing reactive power in accordance with the GridFlorida OATT and the Operating Protocol. In addition, interconnection agreements executed pursuant to Section 6.5.1 above shall require that generation owners follow the directions of the PO in the emergency situations under Section 7.9 herein. GridFlorida shall take all prudent steps to renegotiate interconnection agreements with generation owners in existence prior to the Transfer Date to render such agreements consistent with the GridFlorida operational requirements.

## **6.6 OASIS**

GridFlorida shall have the obligation and sole authority to operate an OASIS, or successor system(s) pursuant to the GridFlorida OATT, in its administration of the GridFlorida Controlled Facilities. GridFlorida's OASIS shall conform to the requirements for such systems as specified by the FERC.

## **6.7 Ancillary Services**

GridFlorida shall offer or cause to be offered, in accordance with the GridFlorida OATT, Ancillary Services consistent with the FERC requirements. GridFlorida's responsibility as the provider of Ancillary Services is described in the GridFlorida OATT.

## **6.8 Current Documents**

GridFlorida shall maintain current versions of the Operating and Planning Protocols, Code of Conduct, Information Policy and other similar documents of GridFlorida, and all amendments thereto, and shall post such documents on its Internet World Wide Web site or equivalent form of electronic posting and, upon request, provide copies of such documents to the POs.

## **6.9 Code of Conduct**

GridFlorida and its directors, officers, employees, and agents shall comply with a FERC-approved Code of Conduct.

## **6.10 Compliance With Orders Of Regulatory Agencies**

GridFlorida shall comply with the orders of the FERC and other state and federal regulatory agencies that have applicable jurisdiction over GridFlorida.

## **6.11 Avoidance Of Damage**

GridFlorida and its directors, officers, employees, and agents shall use their individual and collective commercially reasonable efforts to avoid damage to the Controlled Facilities or any property of any PO affected by GridFlorida's activities.

## **6.12 Credit Standards**

GridFlorida shall employ and enforce commercially reasonable and not unduly discriminatory creditworthiness standards to minimize or avoid loss of revenues through non-payment for services. GridFlorida shall recover costs resulting from non-payment of transmission services pursuant to the GridFlorida OATT.

### 6.13 Standards Of Performance

GridFlorida shall exercise its rights and responsibilities hereunder in accordance with Good Utility Practice and shall conform to applicable reliability guidelines, policies, standards, rules, regulations, orders, license requirements and all other requirements of the NRC, NERC, FRCC or their successors, and all applicable requirements of federal or state laws or regulatory authorities. GridFlorida shall fully implement all applicable reliability standards.

### 6.14 Existing Transmission Agreements

GridFlorida shall abide by the provisions of the GridFlorida OATT regarding Existing Transmission Agreements and any arrangements providing for Transmission Customers to transition from Existing Transmission Agreements to the GridFlorida OATT.

### 6.15 Maximization Of Efficient Use

GridFlorida shall seek to maximize the efficient use of the Controlled Facilities.

### 6.16 Third Party Agreements

- 6.16.1 ~~To the extent that a PO is party to any contracts with third parties Each PO shall provide GridFlorida with copies of Third Party Agreements that it has entered into. GridFlorida shall make a list of such Third Party Agreements publicly available, and shall make copies of such agreements available for public inspection at its offices, to the extent consistent with any reasonable confidentiality requirements requested by the applicable PO.~~
- 6.16.2 ~~6.16.2 No PO shall enter into any new Third Party Agreement after its Transfer Date that materially impairs GridFlorida's ability to perform its obligations under this Agreement.~~
- 6.16.3 ~~6.16.3 Except to the extent necessary to fulfill its role as security coordinator, GridFlorida shall not take any action which would interfere with a PO's ability to fulfill its obligations under a Third Party Agreement.~~
- 6.16.4 ~~6.16.4 With respect to provisions of Third Party Agreements that materially affect the operations and Controlled Facilities being transferred from the PO to GridFlorida, including contracts with third parties that provide for the joint ownership, operation, or maintenance of Controlled Facilities, the applicable PO shall notify GridFlorida of such contracts and the PO and GridFlorida shall negotiate between themselves and with any applicable the third parties to effectuate any amendments, assignments, consents or other actions with respect to such contracts, including any appropriate compensation therefor, as may be necessary to allow the PO and GridFlorida to perform under this Agreement. Disputes between the PO and GridFlorida not resolved by negotiations under 6.16.5 Nothing in~~

this Section 6.16 is shall be resolved in accordance with the Dispute Resolution Procedures. Except to the extent necessary to fulfill its role as security coordinator, GridFlorida shall not take any action, and a mediator or arbitrator shall not issue any decision, that would interfere with a PO's ability to fulfill its obligations under such a third party agreement.

6.16.5 This provision is not intended to govern the manner in which Existing Transmission Agreements will be ~~carried out~~ administered upon transfer of Operational Control.

## **7 RIGHTS AND OBLIGATIONS OF POs**

### **7.1 Operations**

The POs shall follow the directions of GridFlorida regarding operation of the Controlled Facilities as provided in the Operating Protocol. Except in the event of an Emergency as provided in Section 7.9, no PO shall place any Controlled Facility into or out of service without instructions or permission from GridFlorida or take any action that interferes with the provision of transmission service by GridFlorida.

### **7.2 Maintenance**

The POs shall follow the directions of GridFlorida regarding the scheduling of maintenance of the Controlled Facilities as provided in the Operating Protocol.

### **7.3 Planning**

The POs shall comply with the requirements of the Planning Protocol.

### **7.4 Construction**

The rights and obligations of the Parties with respect to construction of additional transmission facilities shall be as defined in the Planning Protocol. If GridFlorida has determined that a transmission facility must be constructed, and the PO has incurred costs to construct such facility, but the facility cannot be completed notwithstanding that the PO has exercised due diligence to complete such facility, GridFlorida shall support the PO's efforts to obtain reimbursement for such costs.

### **7.5 Provision Of Information**

The PO shall provide such information to GridFlorida as is necessary for GridFlorida to perform its obligations under this Agreement, the GridFlorida OATT, and the Operations and Planning Protocols. All information shall be treated in accordance with the GridFlorida Information Policy.

## **7.6 Facilities Access**

Each PO shall give GridFlorida such access to the Controlled Facilities as is necessary for GridFlorida (i) to perform its obligations under this Agreement and the Operations and Planning Protocols and (ii) to verify and audit compliance by the PO with this Agreement.

## **7.7 Acquisition, Construction Or Sales**

- 7.7.1 In the event a PO acquires or constructs facilities that qualify as Controlled Facilities and that are (a) not under the control of another RTO, or actively in the process of being placed under the control of another RTO, and (b) not already included in the Controlled Facilities, such facilities shall become Controlled Facilities, and GridFlorida shall exercise Operational Control over such Controlled Facilities, upon the date of acquisition or commercial operations of such facilities. A PO shall provide GridFlorida with reasonable notice of the expected acquisition or commercial operations date of such new facilities. Facilities placed under the Operational Control of GridFlorida under this provision may nevertheless be withdrawn pursuant to Section 9 of this Agreement.
- 7.7.2 A PO shall not be required to turn over Operational Control, as this term is defined in the Operating Protocol, of a Controlled Facility if (a) the PO requested an unqualified opinion from nationally recognized bond counsel that transferring Operational Control over such facility is not expected to adversely affect the exclusion from gross income of interest on any bonds used to finance such facility, and (b) such nationally recognized bond counsel stated in writing that it is unable to provide such unqualified opinion, absent redemption of the bonds used to finance the facility or the taking of other remedial action with respect to such bonds. A PO relying on this provision must, within 60 days of receipt of the statement from bond counsel described in paragraph (b) above, seek an IRS ruling that turning over Operational Control would not adversely affect the exclusion from gross income of interest on any bonds used to finance such facility. If the IRS grants such a ruling the PO shall be required to turn over Operational Control of such facility as provided in this agreement.
- 7.7.3 In the event a PO sells or otherwise transfers a portion or all of its Controlled Facilities to a third party that is not a PO or will not become a PO, the PO shall comply with the provisions of Section 9 regarding Withdrawal.

## **7.8 Reserved Rights**

The POs do not grant any implicit rights to GridFlorida under this Agreement. Any and all rights and responsibilities of POs that have not been expressly and specifically

transferred to GridFlorida under this Agreement remain with the POs. The reserved rights described herein are not exhaustive of the rights retained by POs.

- 7.8.1 Among other things, each PO shall retain legal and equitable ownership of its electric transmission facilities including, but not limited to, the right to sell, transfer or mortgage or effect a Withdrawal of its facilities, subject to Section 9 herein.
- 7.8.2 In addition, and without limiting the generality of the foregoing, the POs may retain existing and add new non-transmission facilities to transmission facilities they own, provided that such non-transmission facilities do not interfere with the operation of the Controlled Facilities and are operated subordinate to GridFlorida's authority to place any Controlled Facilities into or out of service.
- 7.8.3 Each PO shall maintain and repair its Controlled Facilities, at its own cost and expense in accordance with the Operating Protocol. Except as provided in Sections 10.1 and 10.2, all casualty or other liability risks with respect to each PO's transmission facilities shall continue at all times to reside with that PO.

## **7.9 Emergencies**

A situation in which a PO's electric facilities are in danger of suffering physical damage or in which injury or damage to persons or property is threatened is referred to herein as an "Emergency." All POs shall develop local operating rules, subject to GridFlorida review and approval, to govern the connection and disconnection of generation with Controlled Facilities and other actions to be taken in the event of an Emergency. The local operating rules shall include rules, procedures and protocols that are intended to ensure the safety of personnel operating or performing work or tests on transmission facilities. In the event of an Emergency, a PO may take any action consistent with the local operating rules as it deems necessary without first obtaining the permission of GridFlorida, provided that the PO shall inform GridFlorida of the Emergency and the action taken as soon as practicable, and shall follow any subsequent instructions of GridFlorida regarding the Emergency.

## **7.10 Agency Agreement**

Each PO shall enter into an Agency Agreement with GridFlorida. The Agency Agreement shall authorize GridFlorida to grant transmission service requests on behalf of POs for the provision of transmission service for Eligible Customers under the GridFlorida OATT over PO facilities that are not Controlled Facilities, and shall provide for the collection of a separate charge related to service over non-Controlled Facilities.



### **7.11 Avoidance Of Damage**

The PO and its directors, officers, employees, and agents shall use their individual and collective commercially reasonable efforts to avoid damage to the Controlled Facilities or any property of GridFlorida affected by the PO's activities.

### **7.12 Standards Of Performance**

The PO shall exercise its rights and responsibilities hereunder in accordance with Good Utility Practice and shall conform to applicable reliability guidelines, policies, standards, rules, regulations, orders, license requirements and all other requirements of the NRC, NERC, FRCC or their successors, and all applicable requirements of federal or state laws or regulatory authorities.

## **8 RATES AND DISTRIBUTION OF REVENUES**

### **8.1 Rate Filings By GridFlorida**

In connection with its administration of the GridFlorida OATT, GridFlorida may unilaterally file at the FERC pursuant to Section 205 of the Federal Power Act such transmission pricing for transmission service as GridFlorida deems appropriate and may unilaterally file at the FERC pursuant to Section 205 of the Federal Power Act such changes in prices, pricing methods, terms, and conditions as GridFlorida deems to be appropriate; provided, however, that (i) the rates filed by GridFlorida must be calculated and designed to recover, (A) the ~~full recovery~~ fully allocated share of the then-effective annual transmission revenue requirement of each PO established pursuant to the GridFlorida OATT, after allocating an appropriate share of that revenue requirement to any bundled retail load that is exempted from the zonal rate in accordance with the GridFlorida OATT, plus any properly-approved stranded cost recovery charge for each PO, plus (B) coverage of GridFlorida's cost of performing its duties under this Agreement; and (ii) the transmission pricing must be consistent with the GridFlorida OATT.

### **8.2 Rate Filings By POs**

- 8.2.1 Each PO shall have the right at any time to make a unilateral filing at FERC, consistent with the GridFlorida OATT, to establish the annual transmission revenue requirement payable to the PO by GridFlorida.
- 8.2.2 A PO that is not a public utility under the Federal Power Act ("NJ PO") may, at such NJ POs' option, submit its proposed revenue requirements, or any change in those revenue requirements to GridFlorida, along with appropriate supporting documentation. GridFlorida shall, within thirty (30) days thereafter, file such revenue requirements with the Commission for its approval. GridFlorida shall have no responsibility for supporting or defending such revenue requirement, the responsibility for which lies solely with the NJ PO. Under either option (8.2.1 or 8.2.2) the NJ PO shall be entitled to recover through GridFlorida rates only the revenue

requirement that is approved, accepted, or otherwise made effective by the Commission. If the Commission rejects the NJ PO's proposed revenue requirement, suspends it, or otherwise orders refunds, or in a proceeding brought by a third party or upon the Commission's own motion orders any change in the revenue requirement, GridFlorida's payments to the NJ PO shall be modified accordingly to ensure that the NJ PO does not recover more than its Commission-approved revenue requirement, including modifications that are necessary to recoup from the NJ PO any amounts that the Commission determines should be refunded to GridFlorida's Transmission Customers.

- 8.2.3 Nothing in this Agreement shall restrict any rights, to the extent such rights exist, of a PO that is or may become a party to a merger, acquisition, or other restructuring transaction to make filings under Sections 205 and/or 206 of the Federal Power Act with respect to the reallocation or redistribution of the PO's revenues or the assignment of the PO's rights or obligations, to the extent the FPA requires such filings.

### **8.3 Collection And Distribution Of Revenues**

- 8.3.1 GridFlorida shall exercise commercially reasonable efforts to collect, on behalf of the POs, the PO's revenue requirement approved, accepted, or otherwise made effective by the FERC, and any other amounts approved, accepted, or otherwise made effective by the FERC that are collected through GridFlorida rate schedules. GridFlorida does not guarantee that a PO will receive a return of or on any investment the PO may make in Controlled Facilities.
- 8.3.2 All revenues received by GridFlorida for transmission service under the GridFlorida OATT shall be held, used, managed, and distributed in accordance with the revenue distribution protocols set forth in Exhibit \_\_\_ to this Agreement.
- 8.3.3 To the extent that FERC determines that a portion of the revenue requirements of a PO, including a PO that is not a public utility under the FPA, collected under the GridFlorida OATT must be refunded to transmission customers, the PO shall refund any such amounts, including any interest calculated in accordance with FERC's order, to GridFlorida no later than three days prior to the date refunds are due to transmission customers. If the PO does not make such payments within the specified time-frame, GridFlorida may withhold monthly payments to the PO of the PO's revenue requirement provided for under the GridFlorida OATT. GridFlorida shall promptly refund to the transmission customer any such collected rates, including interest, that are refunded to GridFlorida by the PO.

## **8.4 Stranded Costs**

A PO may seek to recover stranded costs in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, a PO must separately file any specific proposed stranded cost charge under Section 205 of the Federal Power Act and/or applicable state law (depending on whether the stranded costs are related to wholesale or retail transactions).

Alternatively, the PO may request GridFlorida to include stranded cost charges in a service agreement under the GridFlorida OATT for filing with the FERC. In such event, GridFlorida shall include such charges in a service agreement and file such agreement with FERC, provided that GridFlorida shall not be responsible for supporting said stranded cost charge.

If the FERC approves stranded cost charges to be recovered through schedules to be implemented by GridFlorida, GridFlorida, as agent, shall charge and collect the applicable charge(s) and distribute the amounts directly to the PO.

## **8.5 Reimbursement Of Start-Up Costs**

Upon transfer of Operational Control, GridFlorida shall reimburse each PO for all of its Start-Up Costs. In the event that FERC disallows the recovery of a portion of the Start-Up Costs that were submitted to GridFlorida by a PO, then that PO agrees to refund GridFlorida for the disallowed cost, including any interest calculated in accordance with FERC's order, to GridFlorida no later than three days prior to the date refunds are due to transmission customers.

GridFlorida shall exercise commercially reasonable efforts to obtain FERC approval of rates that provide for recovery of Start-Up Costs. In addition, GridFlorida shall be required to make a filing to obtain approval of Start-Up Costs incurred by POs, provided that GridFlorida shall have no responsibility for supporting or defending the dollar amount of Start-Up Costs incurred by each PO, the responsibility for which lies solely with the PO.

# **9 WITHDRAWAL OF FACILITIES**

## **9.1 Right To Withdraw Facilities**

Upon submission of a written notice of withdrawal to GridFlorida, a PO may commence a process of withdrawal of a portion of or all of its facilities from the Controlled Facilities and the termination of its Agency Agreement. Such withdrawal shall not be effective until the later of (a) twelve (12) months after such notice is given, or (b) the effective date of all federal or state regulatory approvals required to transfer control of the transmission facilities back to the PO and all other regulatory approvals necessary to effectuate such withdrawal. Any Party may, during the course of such regulatory proceedings, exercise any rights it may have to oppose such withdrawal.

A PO may withdraw immediately upon receipt of all necessary regulatory approvals without providing 12 months' notice (i) in the event the withdrawn facilities will remain under the Operational Control of GridFlorida, or (ii) with respect to the withdrawal of certain of a PO's facilities as a result of the termination, revocation, or reversal of an IRS ruling or favorable opinion of nationally recognized bond counsel obtained pursuant to Section 7.7.2 of this Agreement that transferring Operational Control over such facilities will not have adverse tax consequences, or as a result of the issuance of an IRS Ruling or change in law, regulation or policy such that the PO is unable to obtain the unqualified opinion referenced in Section 7.7.2 of this Agreement. The waiver of the 12-month notice provision under (ii) above applies only to the withdrawal of those facilities that are the subject of the IRS ruling and/or opinion of bond counsel or changed law, regulation or policy.

At such time as the withdrawal is effective, the PO will no longer be bound by this Agreement, except as provided in Section 15.12 of this Agreement. In the event of a merger, consolidation, reorganization, sale, spin-off, or foreclosure, pursuant to which substantially all of the PO's transmission facilities that are part of the Controlled Facilities are acquired by another entity, such acquiring entity shall have the right to withdraw its facilities in accordance with the foregoing. Any withdrawing PO shall be subject to the provisions of Section 9 subsequent to the withdrawal.

## **9.2 Transmission Customers Held Harmless**

Transmission Customers taking service that requires use of the transmission facilities of a withdrawing PO and that involves transmission contracts executed before the PO provided notice of its withdrawal shall continue to receive service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal, unless such contracts are modified by FERC in accordance with its statutory authority or by agreement of the parties. GridFlorida shall continue to provide such transmission service on behalf of the withdrawing PO, and the PO shall receive no more in revenues for that service than if there had been no withdrawal by such PO.

## **9.3 Existing Obligations**

All financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by GridFlorida and the withdrawing PO.

## **9.4 Construction Of Facilities**

Obligations of a withdrawing PO to construct new facilities pursuant to a plan of GridFlorida approved prior to such PO's withdrawal shall be renegotiated between GridFlorida and the withdrawing PO, so as to permit the Parties to effectuate, upon payment of appropriate compensation, the construction and ownership of any facilities necessary for GridFlorida to satisfy its obligations under the GridFlorida OATT and Planning and Operating Protocols subsequent to the PO's withdrawal. If such obligations

cannot be resolved through negotiations, they shall be resolved in accordance with Section 13.

### **9.5 Other Obligations**

Other obligations between GridFlorida and the withdrawing PO shall be renegotiated between GridFlorida and the withdrawing PO, so as to permit the Parties to satisfy, upon payment of appropriate compensation, their obligations under the GridFlorida OATT and Planning and Operating Protocols subsequent to the PO's withdrawal. If such obligations cannot be resolved through negotiations, they shall be resolved in accordance with Section 13.

### **9.6 Regulatory And Other Approvals Or Procedures**

The withdrawal by a PO of its facilities from GridFlorida shall be subject to all applicable federal and state regulatory approvals, and shall not be effective until all such approvals are obtained.

## **10 LIABILITY AND INDEMNIFICATION**

### **10.1 Liability For Acts Or Omissions Of GridFlorida**

GridFlorida shall indemnify and hold harmless each PO from and against all liabilities, damages, losses, claims, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising from the acts or omissions of a PO in carrying out the directions, procedures, or protocols of GridFlorida, except in cases where, and only to the extent that, the gross negligence or intentional wrongdoing of the PO contributes to the claimed injury or damage.

### **10.2 Liability For Acts or Omissions of the PO**

Each PO holds harmless and releases GridFlorida from all claims for damages to the PO's Controlled Facilities arising out of acts or omissions of GridFlorida pursuant to its OATT, except in cases where, and only to the extent that, the gross negligence or intentional wrongdoing of GridFlorida contributes to the damage or losses.

### **10.3 Limitation Of Liability Related To Sovereign Immunity**

The liability of a Party to a PO with sovereign immunity under Section 768.28 of the Florida Statutes, shall be capped at the same dollar amounts set forth in Section 768.28 as such statutory provisions shall be amended from time to time, provided, however, that if such a PO with sovereign immunity carries insurance in excess of such statutory dollar amounts and has effectively waived its sovereign immunity up to the limits of such insurance, then liability of a Party to such a PO shall be capped at the same limits as those of such excess coverage.

#### **10.4 Limitation Of Liability For Indirect, Exemplary, Punitive, Incidental Or Consequential Damages**

No Party to this Agreement shall be liable, even if given prior notice, to any other Party for any indirect, exemplary, punitive, incidental or consequential loss or damage whatsoever, arising out of the Parties' performance of its obligations under this Agreement, including, but not limited to, loss of profits or revenue on work not performed; for loss of use of or under-utilization of facilities; or loss of use of profits or revenue, except to the extent of any indemnification arising out of third party claims.

#### **10.5 Filings To Revise Liability Provisions**

Each Party agrees not to file a request under Section 205 and/or 206 of the FPA to revise the provisions in this Agreement or the GridFlorida OATT related to indemnification and liability unless the Parties to this Agreement unanimously agree in writing to such revisions.

#### **10.6 Insurance**

- 10.6.1 Except as otherwise specified in Section 10.6.7 herein, GridFlorida shall be required, at its own expense, to maintain in effect at all times insurance coverage with limits not less than those set forth below. Failure of GridFlorida to maintain adequate coverage required herein shall not relieve GridFlorida of any contractual responsibility or obligation set forth herein.
- 10.6.1.1 Statutory Workers' Compensation and Employer's Liability with minimum limits of \$1,000,000 per occurrence.
- 10.6.1.2 Commercial General Liability with minimum limits of \$1,000,000 each occurrence for bodily injury (including death) or property damage. The policy shall contain a "severability of interest" endorsement, broad form property damage endorsement and broad form contractual liability coverage.
- 10.6.1.3 Business Automobile Liability with minimum limits of \$1,000,000 each occurrence for bodily injury (including death) or property damage.
- 10.6.1.4 Umbrella or Excess Liability with minimum limits of \$20,000,000 in excess of coverages required under 10.6.1.2 and 10.6.1.3. The Umbrella or Excess Liability should be on a following form basis.
- 10.6.2 Except as provided in 10.1 herein, each Party shall bear the risk of loss for damage to or loss of its own property. Parties shall maintain all risk property coverage or self insurance consistent with prudent utility practices with deductibles reasonably commercially available.

- 10.6.3 Each Party shall release and waive and require its insurance carriers to release and waive, all rights of subrogation against the other Parties, their parent companies, directors, officers, agents and affiliates.
- 10.6.4 In the event coverage required under this Section 10 is on a “claims made” basis, the retroactive date of the policies shall be the effective date of this Agreement. Furthermore, if the policy is on a “claims made” basis, the providing of such coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida. The policies shall not be cancelled or materially altered without at least 30 days written notice to the other Parties.
- 10.6.5 Except as otherwise specified in Section 10.6.7 herein, each PO shall be required, at its own expense, to maintain in effect at all times insurance coverage with limits not less than those set forth below. Failure of a PO to maintain adequate coverage required herein shall not relieve the PO of any contractual responsibility or obligation set forth herein.
- 10.6.5.1 Statutory Workers’ Compensation and Employer’s Liability with minimum limits of \$1,000,000 per occurrence.
- 10.6.5.2 Commercial General Liability with minimum limits of \$1,000,000 each occurrence for bodily injury (including death) or property damage. The policy shall contain a “severability of interest” endorsement, broad form property damage endorsement and broad form contractual liability coverage.
- 10.6.5.3 Business Automobile Liability with minimum limits of \$1,000,000 each occurrence for bodily injury (including death) or property damage.
- 10.6.5.4 Umbrella or Excess Liability with minimum limits of \$20,000,000 in excess of coverages required under 10.7.5.2 and 10.7.5.3. The Umbrella or Excess Liability should be on a following form basis.
- 10.6.6 Upon request either Party shall furnish evidence of insurance or demonstrate its financial ability to self insure to another Party.
- 10.6.7 Parties shall have the ability to self insure any of the obligations in Section 10.6, in a manner that is consistent with prudent utility practices.

## **10.7 No Agency Relationship Intended**

The Parties agree for purposes of Sections 10.1 through 10.6, that, no Party shall be deemed to be an agent of, or owe any fiduciary duty to any other Party and that the liabilities of the Parties, or any of them, arising out of or in connection with this

Agreement or the transactions contemplated by this Agreement, shall be several and not joint.

## **11 INSPECTION AND AUDITING**

### **11.1 Inspection And Auditing Of GridFlorida**

GridFlorida shall grant each PO such access to GridFlorida's books and records as is necessary to verify and audit compliance by GridFlorida with this Agreement. Such access shall be granted in a manner consistent with the Code of Conduct and at reasonable times during business hours and under reasonable conditions with a minimum of 48 hours notice. GridFlorida shall also comply with the accounting, record keeping and reporting requirements of federal and state regulatory authorities (including, but not limited to, the State of Florida) having jurisdiction over GridFlorida with respect to the business aspects of its operations and shall provide to each PO, at a minimum, quarterly and annual reports regarding the activities of GridFlorida. Contacts between officers, employees, and agents of any PO and those of GridFlorida pursuant to this Section shall be strictly limited to the purposes of this Section and shall comply with the applicable Code of Conduct and Information Policy.

### **11.2 Inspection And Auditing Of POs**

Each PO shall grant GridFlorida such access to the PO's books and records as is necessary (i) to verify and audit compliance by the PO with this Agreement and (ii) for GridFlorida to perform its obligations under this Agreement. Such access shall be at reasonable times during business hours and under reasonable conditions with a minimum of 48 hours notice. The PO shall also comply with the accounting and reporting requirements of any federal or state regulatory authorities (including, but not limited to, the State of Florida) having jurisdiction over the PO with respect to aspects of GridFlorida's business operations. Contacts between officers, employees, and agents of GridFlorida and those of the PO pursuant to this Section shall be strictly limited to the purposes of this Section and shall conform to GridFlorida's Code of Conduct and Information Policy.

## **12 PERFORMANCE OF REGULATORY OBLIGATIONS**

- 12.1 GridFlorida shall have responsibility for meeting all regulatory obligations applicable to it.
- 12.2 Each PO shall have responsibility for meeting all regulatory obligations applicable to it.
- 12.3 With respect to all regulatory obligations arising under this Agreement , including FPSC regulatory obligations, and regulatory obligations imposed by other regulatory authorities, GridFlorida and each PO shall coordinate their actions to the extent practicable, and in accordance with Section 15.15.



### **13 DISPUTE RESOLUTION**

Any disputes arising under this Agreement shall be resolved in accordance with the same procedures as provided for in the Dispute Resolution Procedures contained in the GridFlorida OATT. Nothing in this Section is intended to restrict or expand existing federal or state laws or regulations.

### **14 REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Parties as follows:

- 14.1 It is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized, is qualified to do business in the jurisdictions necessary to perform this Agreement, and has all requisite corporate and/or legal power and authority to own, lease, and operate its material assets and to carry on its business as it is now being conducted.
- 14.2 It has full corporate and/or legal power and authority to execute, deliver, and perform under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite action, and do not conflict with any applicable law, any of the terms or conditions of its governing documents, or with any other binding agreement.
- 14.3 It has duly executed and delivered this Agreement and, assuming that this Agreement is duly and validly executed and delivered by the other Parties, this Agreement constitutes the legal, valid, and binding obligation of the Party enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws affecting the enforcement of creditor's rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.
- 14.4 It has obtained or, by the Effective Date will have obtained, all regulatory authorizations and approvals necessary for it to legally perform its obligations under this Agreement. As to any entity that requires approval of the Administrator of the Rural Utilities Service ("RUS"), the provisions of this Agreement and of any subsequent amendment(s) are subject to the approval of the Administrator of the RUS. Such entity will be responsible for obtaining approval of this Agreement from the RUS and will seek to obtain such approval promptly.
- 14.5 There are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it or to its knowledge threatened against it.
- 14.6 There are no actions at law, suits in equity, proceedings, or claims pending or, to

its knowledge, threatened against it before or by any federal, state, foreign, or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance of its obligations hereunder.

- 14.7 It is not in violation of any applicable laws, statute, order, rule, regulation or judgment promulgated or entered by any federal, state or local governmental authority that reasonably could be expected to materially affect the performance of its obligations hereunder.

## **15 MISCELLANEOUS PROVISIONS**

### **15.1 Confidentiality**

All documents and information exchanged by the Parties in connection with this Agreement shall be handled in accordance with the GridFlorida Information Policy and applicable law.

### **15.2 Descriptive Headings**

The descriptive headings of Sections, subsections and other provisions of this Agreement have been inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect the construction or interpretation of any of the provisions of this Agreement.

### **15.3 Governing Law And Jurisdiction**

This Agreement shall be interpreted, construed, and governed by the laws of the State of Florida, except to the extent preempted by the laws of the United States of America. With respect to any claim or controversy arising from this Agreement or performance hereunder within the subject matter jurisdiction of the federal courts located in Florida or the state courts of the State of Florida, the Parties agree that no other federal civil court or state court will have jurisdiction or venue, except on appeal.

### **15.4 Successors And Assigns**

- 15.4.1 Except as provided in Sections 15.4.2 and 15.4.3, this Agreement shall inure to the benefit of, and be binding upon, each of the Parties, their respective successors and assigns permitted hereunder. This Agreement shall not be assigned by any Party, by operation of law or otherwise, without the prior approval of the other Parties, which shall not be unreasonably withheld or delayed; provided, however, that such approval shall not be necessary in the case of an assignment to a successor in the ownership of a PO's Controlled Facilities by reason of a merger, consolidation, reorganization, sale, spin-off, or foreclosure, as a result of which substantially all such Controlled Facilities are acquired by such successor and such successor becomes a PO under this Agreement, agrees to be bound by this Agreement, and executes and delivers to GridFlorida such documents as may be necessary to accomplish the foregoing;

provided, further, that such approval shall not be necessary in the case of GridFlorida assigning its rights and obligations under this Agreement to another Commission-approved RTO. Where the approval of a Party is required for an assignment, such Party shall take into account the FERC policies regarding the scope of RTOs.

15.4.2 Notwithstanding any other provision of this Section, the interest of any entity subject to the jurisdiction of the RUS may be assigned, transferred, mortgaged or pledged by said entity without any other Party's consent only for the purpose of creating a security interest for the benefit of the United States of America, acting through the RUS (and thereafter the RUS, without the approval of any Party, may cause the RUS's interest in this Agreement to be sold, assigned, transferred or otherwise disposed of to a third party).

15.4.3 Notwithstanding any other provision of this Agreement, each Party has the right to assign this Agreement for security purposes and as collateral to or for the benefit of any lender that provides financing to the Party. In connection with such collateral assignment by a Party to a lender, each other Party agrees to execute and deliver, at the requesting Party's cost and expense, a consent to such assignment for the benefit of the lender, in form and substance as may be reasonably requested by such lender.

## **15.5 No Implied Waivers**

The failure of a Party to insist upon or enforce strict performance of any of the specific provisions of this Agreement at any time shall not be construed as a waiver or relinquishment to any extent of that Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance, or as a waiver to any extent of any specific provision of this Agreement; rather, the same shall be and remain in full force and effect.

## **15.6 Severability**

Except for Section 9 of this Agreement, each provision of this Agreement shall be considered severable, and if for any reason any provision of this Agreement, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision shall be replaced with a suitable and equitable provision pursuant to Section 15.7 of this Agreement in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid, void, or unenforceable provision.

## **15.7 Renegotiation**

If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, is held by a court or regulatory authority of competent jurisdiction to be

invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, then the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the Parties under this Agreement immediately prior to such holding, modification, or condition. If such negotiations are unsuccessful, then the Parties may exercise their withdrawal or termination rights available under this Agreement.

#### **15.8 Further Assurances**

Each Party agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required and useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

#### **15.9 Notices**

Except as otherwise expressly provided herein, notices required or permitted under this Agreement shall be in writing and shall be sent by first class U.S. mail, overnight courier, hand delivery, facsimile, or other reliable electronic means. Any notice required under this Agreement shall be deemed to have been given either upon delivery, if by U.S. mail, overnight courier, or hand delivery, or upon confirmation, if given by facsimile or other reliable electronic means. Notices shall be given to the persons specified in Exhibit \_\_ to this Agreement.

#### **15.10 Force Majeure**

A Party shall not be considered to be in default or breach under this Agreement, and shall be excused from performance or liability for damages to any other Party, if and to the extent, and only for so long as, it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, except the obligation to pay any amount when due, arising directly out of or resulting directly from any act, omission, or circumstance occasioned by any act of God, labor disturbance, failure of contractors or suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, explosion, breakage or accident to machinery or equipment, or in consequence of any other cause or causes beyond such Party's reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by the making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of a Party or Parties. Nothing contained in this Section shall relieve any entity of the obligations to make payments when due hereunder. Any Party claiming a force majeure event shall use all commercially reasonable efforts to remove the condition that prevents performance, except the settlement of any labor disturbance shall be in the sole judgment of the affected Party.

### **15.11 Claims By Employees**

A Party shall be solely responsible for, and shall bear all of the costs of, claims by its own employees, contractors, or agents arising under and covered by any workers' compensation law. A Party shall furnish, at its sole expense, such insurance coverage and such evidence thereof, or evidence of self-insurance, as is reasonably necessary to meet its obligations under this Agreement.

### **15.12 Survival**

The following provisions of this Agreement shall survive the termination of this Agreement with respect to any Party or Parties, in accordance with their terms: 9, 10 and 15.

### **15.13 Entire Agreement**

This Agreement and the documents incorporated by reference and made part of this Agreement constitute the entire agreement among the Parties with respect to the subject matter of this Agreement, and no previous or contemporary oral or written representations, agreements, or understandings made by any officer, agent, or employee of any PO or of GridFlorida shall be binding unless contained in this Agreement or the documents incorporated by reference and made part of this Agreement.

### **15.14 Amendments**

This Agreement shall not be subject to change through application to the Federal Energy Regulatory Commission pursuant to the provisions of Section 205 of the Federal Power Act absent the written agreement of all Parties hereto, provided that, the addition to this Agreement of a new PO, without change to any provision hereof, is an amendment that need only be executed by GridFlorida and the new PO. Except as provided in Section 10.5 herein, Parties do not hereby waive their FPA Section 206 rights to seek changes to this Agreement. All amendments are subject to any applicable regulatory approvals.

### **15.15 Cooperation**

To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transactions or actions covered by this Agreement, the Parties shall cooperate with each other to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions, regardless of the Party to whom such approval or acceptance may apply. In addition, the Parties agree to cooperate with each other in order to minimize the tax obligations of a Party which may arise out of its performance of this Agreement, while at the same time securing all necessary and desirable regulatory approvals.

### **15.16 Good Faith Efforts**

Where the consent, agreement, or approval of a Party must be obtained hereunder, such consent, agreement, or approval shall not be unreasonably withheld, conditioned, or

delayed. Where a Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transactions or actions covered by this Agreement, the Parties shall cooperate with all other Parties to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions.

#### **15.17 No Third Party Rights**

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

#### **15.18 No Partnership, Joint Venture Or Lease**

This Agreement is not intended, and shall not be construed, interpreted or applied, to create a partnership or joint venture. This Agreement is also not intended, and shall not be construed, interpreted or applied, to create a lease or other similar arrangement. Instead, it is intended that each PO shall be the legal and equitable owner of its transmission facilities with each PO having retained GridFlorida to exercise Operational Control over its transmission facilities that constitute Controlled Facilities in accordance with and subject to the terms of this Agreement. The obligations of the Parties arising out of or in connection with this Agreement shall be several and not joint.

#### **15.19 Remedies**

The Parties agree that remedies at law are inadequate to protect their interests and that irreparable damage may occur in the event that any of the provisions of this Agreement are not performed by the Parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that the Parties, individually or in conjunction with one or more other Parties, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and specific performance to enforce specifically the terms and provisions thereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which the Parties are entitled at law or in equity.

#### **15.20 Rights Or Obligations Between Or Among POs**

The Parties agree that nothing in this Agreement is intended to confer or take away any rights or obligations between or among the POs.

#### **15.21 Documents Incorporated By Reference**

The following documents are incorporated by reference and made part of this Agreement: GridFlorida OATT and the GridFlorida Information Policy.

**15.22 Waiver of Jury Trial**

Each Party to this Agreement hereby knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect to any litigation based on or arising in connection with this Agreement or any related transaction or instrument, or any course of conduct, course of dealing, statements (whether oral or written), actions or omissions of any Party related hereto or thereto. This provision is a material inducement for each Party to enter into the transactions provided for in this Agreement.

**15.23 Counterparts**

This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all of the Parties, and this Agreement shall be binding upon all the Parties with the same force and effect as if all the Parties had signed the same document, and each such signed counterpart shall constitute an original of this Agreement.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement.

\_\_\_\_\_  
On Behalf of GridFlorida

\_\_\_\_\_  
On Behalf of PO # 1

\_\_\_\_\_  
On Behalf of PO #2

\_\_\_\_\_  
On Behalf of PO # 3

**EXHIBIT \_\_**

**REVENUE DISTRIBUTION**

GridFlorida shall pay revenue requirements to Participating Owners as follows:

1. Payments to Non-TDUs for Existing Facilities

For each month of a calendar year, GridFlorida shall pay the following amount to each Participating Owner that is not a TDU:

$$PEF = NZREF + PTPREF + (SRREF * (MATSP/SMPTSP)), \text{ where}$$

PEF = monthly payment for Existing Facilities;

NZREF = revenues due to GridFlorida during the applicable month for Network Load in the applicable Transmission Rate Zone pursuant to Section 34.1(g) of the GridFlorida OATT, minus amounts due to TDUs under Section 2 below for facilities in the Transmission Rate Zone;

PTPREF = revenues from Long-Term Firm Point-to-Point Transmission Service, Short-Term Firm Point-to-Point Transmission Service, and Non-Firm Point-to-Point Transmission Service under the Tariff that terminate within the Transmission Rate Zone;

SRREF = the approved, accepted, or otherwise effective revenue requirements of the Existing Facilities of the applicable Participating Owner included in the Annual System Transmission Costs;

MATSP = the Monthly Actual Transmission System Peak for the month;

SMPTSP = the sum of the Monthly Projected Transmission System Peaks for the calendar year.

2. Payments to TDUs for Existing Facilities

For each month of a calendar year, GridFlorida shall pay the following amount to each TDU for Existing Facilities:

$$TDUPEF = (TDUZRREF * (MAZP/SMPZP)) + (SRREF * (MATSP/SMPTSP)), \text{ where}$$

TDUPEF = monthly payment for Existing Facilities of a TDU;



- TDUZRREF = the approved, accepted, or otherwise effective revenue requirement of the TDU included in the Annual Zonal Transmission Costs of a Transmission Rate Zone, less any revenue credits under Attachment H that are collected by the TDU;
- MAZP = the Monthly Actual Zonal Peak for the month for the Transmission Rate Zone;
- SMPZP = the sum of the Monthly Projected Zonal Peaks for the calendar year for the Transmission Rate Zone;
- SRREF = the approved, accepted, or otherwise effective revenue requirements of the Existing Facilities of the TDU included in the Annual System Transmission Costs;
- MATSP = the Monthly Actual Transmission System Peak for the month;
- SMPTSP = the sum of the Monthly Projected Transmission System Peaks for the calendar year.

### 3. Payments for New Transmission Investment

For each month of a calendar year, GridFlorida shall pay the following amount to each Participating Owner for New Transmission Investment:

$$PNTI = (SRRNTI * (MATSP/SMPTSP)), \text{ where}$$

- PNTI = monthly payment for New Transmission Investment;
- SRRNTI = New Transmission Investment of the applicable Participating Owner included in the Annual System Transmission Costs, less any revenue credits under Attachment I that are not collected by GridFlorida;
- MATSP = the Monthly Actual Transmission System Peak for the month;
- SMPTSP = the sum of the Monthly Projected Transmission System Peaks for the calendar year;

### 4. Netting of Payments

All payments under this Exhibit shall be netted against amounts owed by the Participating Owner for transmission service under this Tariff.

5. True-Up June 1 of each calendar year, GridFlorida shall notify each Participating Owner of the difference between (a) the amounts paid to the Participating Owner under this Attachment and (b) the amounts that would have been paid to the Participating Owner under this Attachment after the true-up pursuant to Attachment U of the Tariff. Payments of any such negative difference shall be made by the Transmission Provider to the applicable Participating Owner within 30 days of the date GridFlorida provides such notice. Payments of any such positive difference shall be made by the applicable Participating Owner to GridFlorida within 30 days of the date GridFlorida provides such notice. Payments shall include interest calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii). Interest shall be calculated for the difference between the amount paid by GridFlorida for each month and the amount owed by GridFlorida as calculated under this Section 12A.4 for that month, from the original date of receipt of payment by the Participating Owner of amounts owed for the month to the date the true-up notice is provided pursuant to this provision.

**EXHIBIT F**

**AMENDED MARKET MONITOR  
TARIFF PROVISION**

[MARKETING MONITORING CORPORATION]

**Market Monitoring Tariff**

1 Introduction

- 1.1 The objectives of this Market Monitoring Tariff (“Monitoring Tariff”) are to (i) provide the means to monitor the markets served by or administered by the Transmission Provider under its transmission tariff, (ii) ensure the development and reporting of objective information concerning the structure and operation of those markets, (iii) provide a vehicle for proposing appropriate action regarding any opportunities for efficiency improvement, market design flaws, market rule violations, and market power identified by that information, and (iv) ensure that the monitoring program is conducted in a manner that is independent, objective and consistent with safe and reliable operations of the Transmission System, and that minimizes interference with open and competitive markets.
- 1.2 The Market Monitor will carry out the objectives and duties of this Monitoring Tariff in accordance with existing policies of the board of directors of Market Monitoring Corporation.

2 Definitions

Capitalized terms shall have the meanings given below.

- 2.1 **Advisory Committee:** The committee established to advise the management and board of directors of Transmission Provider on matters of concern to the committee.
- 2.2 **Authorized Government Agencies:** “Authorized Government Agencies” has the meaning set forth in Section 3.2.3 hereto.
- 2.3 **Commission:** The Federal Energy Regulatory Commission.
- 2.4 **Immediate Family:** The “Immediate Family” of a person shall mean such person's spouse and dependent children.

Issued by: [insert]  
Issued on: [insert]

Effective Date: [insert]

- 2.5 **Market Monitor:** The President of the Market Monitoring Corporation.
- 2.6 **Market Monitoring Corporation:** The non-profit corporation established to carry out the functions specified under this Monitoring Tariff.
- 2.7 **Market Participant:** “Market Participant” has the same meaning as in 18 C.F.R. § 35.34(b)(2), or any successor regulation thereto, and for purposes of this Tariff such term shall also include GridFlorida LLC.
- 2.8 **Participating Owner:** Participating Owner shall have the same meaning provided for such term in the Participating Owners Management Agreement between the Transmission Provider and certain owners of transmission facilities.
- 2.9 **Person:** Any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, governmental entity or any department or agency thereof.
- 2.10 **Transmission Provider:** GridFlorida, Inc., a Florida not for profit corporation.
- 2.11 **Transmission System:** The transmission facilities operated by the Transmission Provider.

3 Role and Authorities of the Market Monitor and the Market Monitoring Corporation

3.1 Monitoring

3.1.1 The Market Monitor will monitor, investigate, and report on the markets served by or administered by the Transmission Provider under its transmission tariff to ensure that they are open, fair, competitive, efficient, do not create uneconomic incentives, and comply with the tariff and other Transmission Provider agreements and protocols. This authority includes the authority to monitor, investigate, and report on activities that affect such markets, such as actions affecting flows between the Transmission System and other entities or regions. This authority also includes the authority to monitor, investigate, and report on the activities of the Transmission Provider as it relates to such markets, for example, as it relates to the Transmission Provider's performance of congestion management.

3.1.2 The Market Monitor will examine:

- a. The structure and operation of the markets;
- b. Compliance with market rules by Market Participants and the Transmission Provider;
- c. Competitive practices of individual Market Participants, the Transmission Provider, and the market as a whole; and
- d. Market power and market power abuses.

3.2 Reports and Recommendations

3.2.1 The Market Monitor will submit regular reports to the board of directors of the Transmission Provider, the Commission, and the Advisory Committee on the state of markets.

3.2.2 The Market Monitor may make recommendations to the Transmission Provider, and shall notify the Advisory Committee of such recommendations, regarding changes to the Transmission Provider's transmission tariff, agreements, protocols, policies, and practices to correct problems that are identified through the monitoring provided for in this Monitoring Tariff.

3.2.3 The Market Monitor shall notify the Commission and the Florida Public Service Commission immediately upon determining that it has identified a significant market problem that may require (a) further investigation, (b) a change in the GridFlorida transmission tariff or any GridFlorida operating rule, standard, procedure, or practice, or (c) action by the Commission or the Florida Public Service Commission. In addition, the Market Monitor will have the authority to submit at any time market performance reports and recommendations to the Commission and State regulatory agencies, and, if appropriate or required, other state and federal agencies (collectively referred to herein as "Authorized Government Agencies"). This additional authority includes the authority to recommend changes to the Transmission Provider's transmission tariff, agreements and protocols. The Market Monitor will be obligated to file any reports requested by the Commission or the Florida Public Service Commission.

3.3 Information Gathering

- 3.3.1 The Market Monitor may submit a list of data types for Commission approval that Market Participants and the Transmission Provider must provide when requested by the Market Monitor. Prior to the Commission ruling on the Market Monitor's request, the Transmission Provider shall be obligated to provide the Market Monitor with information in its possession regarding the markets that the Transmission Provider monitors, transmission service provided by the Transmission Provider, and the operations of the Transmission Provider's Transmission System, provided that the Transmission Provider shall not be obligated to provide the Transmission Owner's own commercial information or business plans prior to approval of such a request by the Commission. The Market Participants and the Transmission Provider are not required by this Monitoring Tariff to submit any other information requested by the Market Monitor, provided that nothing in this Section 3.3.1 shall prohibit the Market Monitor from seeking authorization from any appropriate tribunal to obtain additional information.
- 3.3.2 Confidential information submitted by Market Participants or the Transmission Provider to the Market Monitor will be subject to appropriate confidentiality limitations.

3.4 Market Power Abuses and Violations of Market Rules

- 3.4.1 The Market Monitor will have the authority to investigate potential market design flaws, potential exercises of market power, potential violations of market rules or other types of anticompetitive behavior.
- 3.4.2 The Market Monitor can seek to impose mitigation measures only (i) to remedy conduct that is inconsistent with competitive conduct and is economically significant or (ii) to mitigate the market effects of a rule, standard, or procedure that allows a Market Participant to impair efficient operation of electric markets.
- 3.4.3 The Market Monitor may request, and Market Participants and the Transmission Provider shall provide, an explanation or justification regarding specific behavior that the Market Monitor considers may reflect

the exercise of market power, may be in violation of market rules, or may otherwise be anticompetitive. The Market Monitor may conduct further investigations of such specific behavior if it determines that the explanation or justification is inadequate. The Market Monitor and, as applicable, Market Participants and/or the Transmission Provider may engage in negotiations in an effort to resolve the situation to the satisfaction of the relevant parties. The Market Monitor will provide the Market Participant(s) and/or the Transmission Provider, as applicable, sufficient information required to allow the Market Participant(s) and/or the Transmission Provider reasonably to understand the basis for the Market Monitor's belief that an action may reflect the exercise of market power, be in violation of market rules, or otherwise be anticompetitive.

- 3.4.4 Through demand letter, the Market Monitor may request a Market Participant or the Transmission Provider to discontinue specific actions that the Market Monitor believes to be an exercise of market power, a violation of market rules, or otherwise anticompetitive. The Market Monitor will provide the Market Participant(s) and/or the Transmission Provider, as applicable, sufficient information required to allow the Market Participant(s) and/or the Transmission Provider reasonably to understand the basis for the Market Monitor's belief that an action may reflect the exercise of market power, be in violation of market rules, or otherwise be anticompetitive.
- 3.4.5 If unable to achieve sufficient corrective action through informal discussions or demand letter, the Market Monitor may submit a complaint regarding specific violations of market rules, exercises of market power, or otherwise anticompetitive behavior directly to the Commission (and, as appropriate, to other Authorized Government Agencies, to the extent relevant) requesting such mitigation measures or other relief as the Market Monitor considers appropriate. The filing must identify the particular conduct and justify the specific mitigation measures as a remedy for the conduct.
- 3.4.6 In addition to responses related to specific actions by Market Participants and the Transmission Provider, the Market Monitor may consider and evaluate a broad range of enforcement mechanisms that may be necessary to assure compliance with market rules, and to prevent or remedy the exercise of market power or other anticompetitive behavior. As part of



this evaluation process, the Market Monitor may consult with Authorized Government Agencies, the Transmission Provider, and the Advisory Committee. To the extent the Market Monitor concludes that additional enforcement mechanisms are necessary, it may seek Commission approval of such mechanisms, identifying the particular conduct and justifying the specific mitigation measures proposed as a remedy for the conduct. If the Commission approves the proposed mitigation measures, the Market Monitor shall be authorized to impose the mitigation measures against a Market Participant on a prospective basis consistent with the terms and conditions approved by the Commission. The Market Monitor shall not apply such measures retroactive to the date that the Market Monitor takes such action against the Market Participant. Notwithstanding the foregoing sentence, the Market Monitor may seek authorization from the Commission to remedy past conduct that violated market rules that existed at the time of the conduct, to restore, to the extent practicable, the outcome that would have occurred had there been compliance with the market rules, provided that Market Monitor will not seek authority to remedy conduct that occurred prior to the date the Commission grants Market Monitor such authority. Market Monitor's proposal will include an obligation to provide the affected Market Participant(s) and/or the Transmission Provider sufficient information required to permit the Market Participant(s) and/or the Transmission Provider to understand the basis for the Market Monitor utilizing its mitigation measures.

- 3.5 Nothing herein shall restrict the monitoring or enforcement rights that Market Participants may otherwise possess. Nothing herein shall restrict a Market Participant's ability to request meetings with the Market Monitor or otherwise to seek to communicate with the Market Monitor.

4 Liability

- 4.1 Market Monitoring Corporation, and its directors, officers, employees, and agents, including the Market Monitor, shall not be liable to any person or entity for any matter, act or omission described in or contemplated by this Monitoring Tariff, as the same may be amended or supplemented from time to time, including opportunity cost, or actual, direct, indirect or consequential damages of any kind resulting from or attributable to any act or omission of the Market Monitoring Corporation or Market Monitor under this Monitoring Tariff.

Issued by: **[insert]**  
Issued on: **[insert]**

Effective Date: **[insert]**

4.2 The Transmission Provider, Participating Owners, and any director, office, employee, or agent thereof, shall not be held responsible for any liability that Market Monitoring Corporation, and its directors, officers, employees, and agents, including the Market Monitor, may have in respect of any matter described in or contemplated by this Monitoring Tariff, as may be amended or supplemented from time-to-time, including opportunity cost, or actual, direct, indirect or consequential damages of any kind, and shall not be liable for any act or omission described in or contemplated by this Monitoring Tariff except as otherwise specifically provided in this Monitoring Tariff.

5 Dispute Resolution

Upon the mutual agreement of the Market Monitor and any other affected Person, disputes under this Monitoring Tariff may be resolved under the dispute resolution procedures provided for in the Transmission Provider's transmission tariff.

6 Budget and Funding

6.1 The board of Market Monitoring Corporation will develop a proposed annual budget and provide its proposed budget to Transmission Provider, the Advisory Committee, and the Florida Public Service Commission at least 60 days prior to the date a filing will be made with the Commission to recover the costs included in the budget.

6.2 Thirty days after providing its proposed budget to Transmission Provider, the Advisory Committee, and the Florida Public Service Commission, the board of Market Monitoring Corporation will meet with one representative of Transmission Provider, one representative of the Advisory Committee, and one representative of the Florida Public Service Commission to discuss the proposed budget and to respond to suggested changes by Transmission Provider, the Advisory Committee, and the Florida Public Service Commission. The board of Market Monitoring Corporation will not be obligated to make any changes proposed by Transmission Provider, the Advisory Committee, or the Florida Public Service Commission. However, the board will have the Transmission Provider post on the Transmission Provider's OASIS the board's proposed budget after consideration of the positions expressed by the Transmission Provider, the Advisory Committee, and the Florida Public Service Commission, and any comments or suggestions provided by the Transmission Provider, the Advisory Committee, or the Florida Public Service Commission that were not adopted by

the board in such proposed budget. The board will submit such budget to the Commission for its review and comment. After completion of the review process, the board will approve and have the Transmission Provider publish on the Transmission Provider's OASIS its final budget, as approved.

- 6.3 Market Monitoring Corporation will be responsible for obtaining Commission approval of its budget. All parties, including the Transmission Provider, will have a right to challenge the proposed budget at the Commission.
- 6.4 The Transmission Provider will recover the costs included in Market Monitoring Corporation's budget through the Transmission Provider's grid management charge.