State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: AUGUST 8, 2002

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

FROM: OFFICE OF MARKET MONITORING & STRATEGIC ANALYSIS (R. BASS, BUCHAN, BUTLER, COLLINS, GROOM, LOWE, NORIEGA)
OFFICE OF THE GENERAL COUNSEL (C. KEATING, BRUBAKER)
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FUTRELL)
DIVISION OF ECONOMIC REGULATION (BALLINGER, BOHRMANN, BREMAN, FLOYD, HARLOW, HEWITT, KUMMER, BAXTER, SPRINGER, WHEELER, E. DRAPER) JDT

RE: DOCKET NO. 020233-EI - REVIEW OF GRIDFLORIDA REGIONAL TRANSMISSION ORGANIZATION (RTO) PROPOSAL.

AGENDA: AUGUST 20, 2002 - REGULAR AGENDA - ISSUES 1, 2A, 2B, 2D, 2G, 3A, 3B, 5 ARE POST-HEARING AND PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF; ISSUES 2C, 2E, 4A, 4B, 4C ARE PROPOSED AGENCY ACTION AND INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\MMS\WP\020233.RCM

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CASE BACKGROUND

On October 3-5, 2001, the Commission held an evidentiary hearing in Docket Nos. 000824-EI, 001148-EI, and 010577-EI to determine the prudence of the formation of and the participation in the proposed GridFlorida regional transmission organization (GridFlorida or RTO) by Florida Power Corporation (FPC), Florida Power & Light Company (FPL), and Tampa Electric Company (TECO) (collectively referred to as the "Applicants" or the "GridFlorida Companies"). As a result of the hearing, the Commission issued Order No. PSC-01-2489-FOF-EI on December 20, 2001 (Order No. PSC-01-2489-FOF-EI or December 20 Order). In the December 20 Order, the Commission found, in part, that the Applicants were prudent in proactively forming GridFlorida. The Applicants were ordered to file with this Commission a modified RTO proposal that conformed the GridFlorida proposal to the findings of the Order and used an independent system operator (ISO) structure in which each utility maintains ownership of its transmission facilities. The modified proposal was due 90 days following the issuance of the Order. A new generic docket, Docket No. 020233-EI, was opened to address the modified proposal.

The Applicants filed a modified proposal (compliance filing) on March 20, 2002. A Commission workshop to discuss the compliance filing was held on May 29, 2002. Parties to this docket were provided the opportunity to file Pre-Workshop and Post-Workshop Comments and to participate in meetings and conference calls regarding the compliance filing. As a result of comments at the workshop, the GridFlorida Companies modified certain aspects of the compliance filing. These changes (modified compliance filing) were filed with the Commission on June 21, 2002. The following persons intervened in this docket and provided comments: Florida Municipal Group (FMG) which is comprised of Lakeland Electric, Kissimmee Utility Authority, Gainesville Regional Utilities, and the City of Tallahassee, Florida; Florida Municipal Power Agency (FMPA); JEA; Mirant Americas Development, Inc., Duke Energy North America, LLC, Calpine Corporation, and Reliant Energy Power Generation, Inc. (Joint Commenters); Reedy Creek Improvement District (Reedy Creek); Seminole Electric Cooperative, Inc. (Seminole); Seminole Member Cooperatives (Seminole Members); Trans-Elect, Inc. (Trans-Elect); Florida Industrial Power Users Group (FIPUG); and Office of Public Counsel (OPC).

This recommendation addresses the compliance filing of the GridFlorida Companies. The recommendation has been divided essentially into 4 areas of compliance. Issue 1 discusses certain issues that represent modifications to the original GridFlorida proposal (also referred to as the "Transco filing"). The issue is framed in terms of whether the various changes to the original proposal comply with the Commission's December 20 Order. The interveners to this docket have indicated their agreement with the modifications addressed in Issue 1.

Issue 2 and its subparts discuss certain changes and whether those changes comply with the Commission's December 20 Order. These issues differ from those addressed in Issue 1 in that while the interveners agree that a change in the identified area complies with the Commission's December 20 Order, there is not consensus among the interveners that the change incorporated in the proposal is the appropriate change.

Issue 3 and its subparts discuss certain changes that were made to the original proposal that have been questioned by the interveners as to whether those changes, based on the Commission's December 20 Order, were necessary to comply with the Order.

Issue 4 and its subparts address changes to the pricing protocol and rate design that the Commission deferred ruling in its December 20 Order.

Issue 5 addresses a revised proposed market design concept that differs significantly from the market design that was approved in the Commission's December 20 Order.

The Commission is vested with jurisdiction over the subject matter addressed herein through the provisions of Chapter 366, Florida Statutes, including, but not limited to, Sections 366.04, 366.05, 366.06, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Acting by written consent by the Board of Directors; and,
b. Participating in or listening to Board of Directors' conference calls?

RECOMMENDATION: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI. (GROOM)

STAFF ANALYSIS:

a. Acting by written consent by the Board of Directors

Section 6 of the By-Laws set forth in the Transco filing allowed "actions to be taken at any meeting of the Board of Directors or any committee without a meeting, if all the members of the Board of Directors or committee, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee." However, once GridFlorida was restructured as a not-for-profit ISO, it became necessary to add provisions that require GridFlorida to have more accountability to the public.

Since there was some concern by FMPA, in its Pre-Workshop Comments, that this ability to act by written consent may be used to avoid the rules for open meetings, the Applicants amended the By-Laws that permitted the Board's ability to act by written consent. Section 6 was omitted providing that both regular and special meetings of GridFlorida's Board are now open to the public. This change is consistent with the change to an ISO structure as required by the Commission's December 20 Order, and thus should be found in compliance with that Order.

b. Participating in or listening to Board of Directors' conference calls

Article III, Section 4 of the By-Laws states that Board of Directors meetings will generally be open to the public, and that such meetings may be conducted via conference call. However, FMG, in Pre-Workshop Comments, has asserted that 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." Article III, Section 7, in fact provides the following:

> 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 7 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.

Under Article III, Section 4 of the By-Laws, the Board of Directors will give proper notice of all meetings to the public, including conference calls. Therefore, FMG's argument that meetings via conference calls can be used to skirt the open meeting requirement has been addressed.

Changes made to Article III, Sections 4 and 7 of the By-Laws were a direct result of the restructuring of GridFlorida as a not-for-profit ISO. Therefore, the Commission should find that these changes are in compliance with the Commission's December 20 Order.

ISSUE 2A: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Quantity of members and composition of the Board Selection Committee;
b. Role of the Stakeholder Advisory Committee in regard to the Board of Directors and the Board Selection Committee;
c. Adequacy of Information Policy to provide guidance on public versus confidential RTO information;
d. Exclusion of the Board of Directors from the Sunshine Requirements;
e. Applicants "causing" candidates for the Board of Directors to become Directors;
f. Guidelines to determine discretionary closed meetings of the Board of Directors; and,
g. Elimination of "Planning Bill of Rights"?

RECOMMENDATION: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI. (BUCHAN, GROOM, NORIEGA)

STAFF ANALYSIS:

a. Quantity of members and composition of the Board Selection Committee

When originally proposed as a Transco, GridFlorida only had an eight-member Board Selection Committee (BSC). However, under the current not-for-profit ISO framework, the Applicants stated that a ninth seat was added in response to stakeholder concerns. When the Transco proposal was submitted for approval to FERC with an eight-member BSC, it was certain that the IOUs would have at least two seats (and the potential was there for them to have three seats). Even considering that the investor-owned utilities (IOUs) could have three out of eight seats, the Federal Energy Regulatory Commission (FERC) approved the proposal. In the FERC's Order on RTO Compliance Filing, issued January 10, 2001, the FERC stated:

> The Commission also disagrees with interveners 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 of determining the slate of initial Director candidates ensures a fair and non-discriminatory selection of initial Directors. The Board Selection Committee itself, which chooses the search firm that establishes the pool of candidates, reflects substantial diversity among stakeholder groups, and we agree with Applicants that it cannot be assumed that a third or fourth transmission owner that represents a non-IOU stakeholder group will share similar viewpoints or perspectives as transmission owners which represent the IOU stakeholder groups. A difference in perspective is particularly likely to be present if the representative of the former group comes from a municipally-owned or cooperative utility.

This issue appears to be one of the most controversial in the Governance section. The primary controversy surrounds awarding each of the IOUs a seat on the BSC. Several of the interveners (FMPA, FMG, and JEA) have expressed the concern that by allowing the investor-owned utilities to have three out of nine votes, the latter could control the Board of Directors' selections. In its Pre-Workshop Comments, FMG states:

> Specifically, while the board is to consist of seven members, each Director is to be selected by a majority vote of a nine-member committee (i.e. a vote of at least five of the committee members). As the IOUs are automatically entitled to three votes, they require only two other votes to form an absolute majority. If such a "coalition" forms and holds together, it would be able to appoint <u>all</u> seven board members, essentially negating participation by the four non-coalition members of the selection committee.

In defense of the proposed composition of the Board Selection Committee, the Applicants argue in their Post-Workshop Comments that because they "own the significant majority of the transmission assets (84%) 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 ... that one could argue that the Applicants are under-represented."

Staff is persuaded that a nine-member panel, requiring five votes to seat a Director and six votes to remove a Director, is a reasonable and balanced representation of the industry. Staff also believes that since the IOUs will be turning over control of their assets to GridFlorida, it is appropriate for the Applicants to have a large voice in selecting those Directors that will manage their assets. Since IOUs will only have three out of nine seats, which is not enough to seat or remove Directors without two or three additional votes, staff does not share the concerns of FMG, FMPA, or JEA that the IOUs will be able to control the selection process. What really matters is that all other market participants on the BSC have enough votes to seat or remove a Director against the will of the IOUs. Thus, staff believes that the other six members on the BSC will provide adequate "checks and balances" on the IOUs.

Another issue that was raised considered whether the ninth seat on the BSC should be held by the Florida Public Service Commission, or if it should be filled by the Advisory Committee. In its Pre-Workshop Comments, FMG stated, "...the Commission could assert itself into the process used to select the GridFlorida's Board of Directors, such as by requiring a Commission Staff person(s) to sit on or advise the Board Selection Committee." FMG cited the New York ISO's board selection process that contemplates that two members of the BSC will be employees of the New York State Department of Public Service.

In opposition to the proposal to have a member of the FPSC sit on the BSC, JEA, in its Post-Workshop Comments, states the following:

> JEA is strongly opposed to allowing a member of the Commission or its staff to sit on either the BSC or the Advisory Committee. It is an inherent conflict of interest for a Commission member to sit on either committee. The Commission is statutorily required to rule on the need for any proposed GridFlorida projects and the prudence of the IOU's requests for cost recovery for those projects. To the extent that as a member of the AC a Commissioner, or a Commission staffer, was instrumental in developing the recommendations for grid expansion to be presented to the Board, neither the Commissioner nor staffer can be said to be unbiased with regard to those recommendations. The permanent exclusion of that Commissioner, and any staff who assisted the

> Commissioner in committee duties, from any docket involving GridFlorida projects would be necessary in order to maintain the integrity of the Commission's actions.

Staff agrees with JEA's comments that it would be inappropriate for the FPSC to have a seat on the BSC or the Advisory Committee to GridFlorida and then serve in a quasi-judicial role in regards to GridFlorida matters. The ninth seat should be selected by the Advisory Committee as proposed in the Applicant's compliance filing.

Based on the foregoing discussion, staff recommends that the GridFlorida BSC should be approved as proposed in the compliance filing. This change results from restructuring GridFlorida as a not-for-profit ISO and complies with the Commission's December 20 Order.

b. Role of the Stakeholder Advisory Committee in regard to the Board of Directors and the Board Selection Committee

The Stakeholder Advisory Committee is charged with advising the management and Board of Directors of GridFlorida on matters of concern or interest to the Advisory Committee. While the GridFlorida Formation documents do not describe the educational background or qualifications of stakeholder representatives, information exchanged during the workshop and other meetings indicated that the stakeholder representatives are expected to be technically-proficient engineers, accountants, economists, and system planners. These advisors are also expected to have the technical background and experience necessary to offer constructive technical advice to the newly formed RTO Board of Directors and Officers. However, the Stakeholder Advisory Committee members are neither employees of GridFlorida nor do they receive any remuneration for the time they spend assisting GridFlorida. Instead, the Stakeholder Advisory Committee members are representatives of GridFlorida's market participants.

The BSC is similar to the Stakeholder Advisory Committee in that those Committee members are neither employees of GridFlorida nor do they receive any remuneration for the time they spend performing their duties as members of the BSC. Instead, as in the case of the Stakeholder Advisory Committee, BSC members are representatives of GridFlorida's market participants. Again, the

BSC member description is silent. However, during the Workshop, the BSC Members were described as the senior officers of the market participants' companies. The assumption here is that a president, CEO, or CFO of a market participant would be in the best position to recognize the leadership qualities of a candidate seeking a seat on GridFlorida's Board of Directors.

In contrast, the Board of Directors will not only be paid for the service it provides to GridFlorida, but is also ultimately responsible for managing the business and affairs of GridFlorida. The By-Laws permit the Board of Directors to delegate to officers such additional responsibility and authority as the Board of Directors deems appropriate. It is expected that these officers will comprise the management of GridFlorida and that, together with other GridFlorida employees, will be responsible for the day-to-day operations of GridFlorida under the direction and supervision of the Board of Directors. All such officers must be elected by, and are subject to removal by, the Board of Directors. The GridFlorida Formation documents clearly state that candidates being considered for the Board of Directors shall have qualifications equivalent to those of Directors of corporations with equivalent or larger revenues and assets, and shall be of a caliber that will engender credibility in the marketplace and provide GridFlorida with quality and experienced leadership.

FMPA and the Joint Commenters have expressed the concern that the Advisory Committee members would have their comments limited during the Board of Directors meetings to a primary opinion and one minority opinion. FMPA also states that the meetings between the Board of Directors and the Advisory Committee should afford all advisory representatives an opportunity to speak without undue procedural restrictions. In addition, FMPA believes that all proposed restrictions on the airing of minority opinions should be removed because all Advisory Committee representatives should be permitted to make presentations to the Board at their own discretion, subject to reasonable time limits and rules of order that the Board of Directors may adopt. To followup on FMPA's comments, the Joint Commenters believe that if minority views are suppressed, the Board of Directors' decision-making process will become biased and lack the full benefit of experience and expertise available on the Advisory Committee.

The Applicants point out that even though the proposed approach was already litigated before FERC, and eventually approved by FERC, they have added an additional provision as part of the compliance filing that provides the Board of Directors with the discretion to invite other members of the Advisory Committee to present additional views during Board meetings (Formation Plan, Section 4.1.). The Applicants argue that the present plan strikes an appropriate balance between providing access to the Board of Directors and permitting the Board of Directors to act in an orderly and efficient manner. They believe that hardwiring additional reports and presentations by members of the Advisory Committee into each meeting would cause the meetings to be unduly burdensome and lengthy. Further, it would allow the Advisory Committee to conduct any deliberations that have already occurred at the Advisory Committee level for the second time. Allowing second presentations to occur would essentially minimalize the role of the Advisory Committee by making the committee's deliberations virtually meaningless and reducing the impact and effectiveness of the presentations made by the majority and minority views. Finally, the Applicants note that the Advisory Committee members may send reports or recommendations to the members of the Board of Directors at any time.

Staff agrees with the Applicants that one purpose of the Advisory Committee meetings is to combine their shared concerns and to present them to the Board of Directors with the full weight of the entire body supporting their comments. If all Advisory Committee members are allowed to speak at every Board of Directors meeting, the role of the Advisory Committee is negated. Staff also believes that sufficient opportunities are being provided to the Advisory Committee members to share their ideas and concerns with the Board of Directors, and that there is no need to modify the proposal. However, FMPA made a suggestion that GridFlorida adopt a procedure similar to one found in the Midwest ISO Agreement, Article II, Section VII.A (Original Sheet No. 47) as follows:

> The procedures adopted by the Board for the conduct of such meetings shall allow interested members of the public, including those stakeholders represented on the Advisory Committee, to provide oral and written comments at such meetings concerning any matter that may come before the Board, Board Committees and working groups, Advisory Committee, or Members, whichever is applicable during the open portion of such meetings.

Staff believes this is a good suggestion and one that should be considered by GridFlorida in the future. By setting aside a specific time or portion of the Board of Directors' (or any other committee) meetings as open, it would allow any interested party to provide the Board as a whole with information that may be useful in its decision-making process. Staff also believes that the Board of Directors should monitor how long such meetings last and, should there be sufficient time to allow an open segment, they should consider doing so.

Another modification that FMPA proposed was that more authority be given to the Stakeholder Advisory Committee and less be given to the BSC. Several suggestions proposed by FMPA include having the Advisory Committee select GridFlorida's Directors, or if the Advisory Committee rejects a proposed Director by 2/3 vote, the BSC would be required to choose another candidate. In addition FMPA proposed that the Advisory Committee should be vested with the authority to remove sitting Directors. Similarly, the Joint Commenters recommend that the Advisory Committee be allowed to discuss and vote on the issue of Director compensation. Staff disagrees with FMPA's and the Joint Commenters' proposals and believes that it is better to have two separate bodies (the Stakeholder Advisory Committee and the BSC) with separate and distinct functions where the lines of responsibility neither cross nor overlap. Since staff visualizes the Stakeholder Advisory Committee as a strong advocate (or lobbyist) for market participants' issues, it would be completely inappropriate to give the Stakeholder Advisory Committee the power and authority to directly affect the appointment, removal, or compensation for the same people that they are attempting to influence. While the BSC will be comprised of employees selected from the same pool of market participants that the Stakeholder Advisory Committee has to choose from, it will not be the same individuals lobbying one day and voting for that Director's compensation or removal the next.

As previously discussed, staff believes the role of the Stakeholder Advisory Committee in regard to the Board of Directors and the Board Selection Committee as included in the modified compliance filing results from the restructuring of GridFlorida as a not-for-profit ISO and complies with the Commission's December 20 Order.

c. Adequacy of Information Policy to provide guidance on public versus confidential RTO information

The GridFlorida Information Policy describes its purpose and intent regarding the availability of public information possessed by GridFlorida, the various information classifications, and the dispute resolution mechanisms arising from this policy. The information is basically divided between that which is public information and that information which may be deemed confidential or non-public information.

It is GridFlorida's intent to post all public information on its website. This information includes: all data, documents, or other information that is required to be posted on OASIS; all data, documents, or other information that is required by FERC or the FPSC; notices of Board and Advisory Committee meetings and any accompanying written documents; various transmission system load data including forecasts and historical aggregated data; and more. Other information that is of significant size or complexity may not be publicly posted, but is available at a charge. The charge is imposed in order to reimburse GridFlorida for any costs that it may reasonably incur while providing the information.

The Applicants have proposed to allow the Market Monitor to determine which information will be non-public information. In order to determine what is non-public information, the Market Monitor will have to provide a written determination to GridFlorida that release of the specific information would be detrimental to the efficient operation of the market.

Built into this proposal are two checks on the Market Monitor's written recommendations that designate non-public information. The first check is that a market participant may seek recourse for any dispute arising from this policy by using the dispute resolution procedures contained in the GridFlorida Open Access Transmission Tariff (OATT). The second check is that GridFlorida, upon receipt of a written determination from the Market Monitor, must file an amendment to the Information Policy with the FERC in order to conform with the Market Monitor's recommendation. At that time, the FERC has the opportunity to verify the Market Monitor's determination and reverse it if necessary.

Staff believes that the proposed GridFlorida Information Policy is a good beginning to provide open and full information to its market participants. As in every other aspect of this compliance filing, staff recognizes that some refinement to policy may be necessary as GridFlorida becomes operational and matures.

Three interveners raise a number of issues with this section. FMPA's first of several concerns is that information proposed to be available to the public upon request should be open public information posted to the website (such as static studies, plans, and analyses). Staff is sympathetic to the concerns of the Applicants that not everything can be placed on the web. There are documents that are simply too large to scan (i.e., site maps), and there are data runs that are too voluminous to store on-line. Staff believes it is reasonable to make it known that the information is available and then charge a nominal fee for the reproduction of the materials. Thus, staff does not agree with FMPA that all public information should be posted to the website. There are times when the information is simply too large or too voluminous to post.

FMPA also expresses concern that the Applicants, in their compliance filing, narrowed the scope of "Open Public Information" by amending paragraph 2.1.1(i) of the Information Policy to require disclosure only of "significant" action taken by GridFlorida as security coordinator, and by eliminating the language requiring disclosure of actions taken as congestion manager. FMPA asserts that standards are neither provided for determining what constitutes significant action, nor are explanations given for eliminating the reference to actions taken as congestion manager. FMPA states in its Pre-Workshop Comments that while paragraph 2.1.1(g) of the Information Policy was amended to require the disclosure of "other market information related to . . . the management of congestion on GridFlorida's transmission system or the allocation of transmission rights," the phrase "other market information" is too vague to give any real indication of what information about the subject will be provided.

Staff agrees with the Applicants' decision to narrow the posting of actions taken by GridFlorida as security coordinator. There will be actions taken by GridFlorida as security coordinator that will be common day-to-day operations not warranting noticing and posting on the website. However, anything of significance should be noticed and posted. It should be noted that once

GridFlorida is operational, if the stakeholders see that GridFlorida (as security coordinator) is not posting information that is of value to them, then the stakeholders may notify GridFlorida, and GridFlorida may begin posting that information.

FMPA's second concern is that the Applicants, in their compliance filing, eliminated the language requiring disclosure of actions taken by GridFlorida as congestion manager from section (i) and moved it to section (g). Staff believes that those changes were logical, because the type of information originally provided in (g), such as intrazonal congestion costs, were all congestion-related types of information. It made sense to move information relating to the management of congestion all to one place. Unlike FMPA, staff reads section (g), which includes specific information that must be provided by the congestion manager in addition to the phrase "as well as other market information," as broadening the information that should be provided.

Finally, FMPA raises the concern that non-public information appears to be a default category. They state that all information should be public unless specifically determined to be non-public. In its Pre-Workshop Comments, FMPA has interpreted Section 2.2 of the Information Policy as establishing "non-public information" as the default category.

Staff does not agree with FMPA's interpretation. There is neither a direct reference to a default category nor is it stated that non-public information is the default category. Instead, staff believes that Section 2.3.1 of the Information Policy makes it very clear that all information is public information until and unless the Market Monitor provides a written determination.

FMG expresses concern that Section 2.3.1 of the RTO Information Policy vests the Market Monitor with unilateral discretion to determine certain information confidential that would otherwise be open to the public. FMG objected to entrusting the Market Monitor with that much discretion. Instead, FMG recommends that the decision to withhold information from the public should be subject to FPSC review. In the alternative, FMG suggests that a process could be developed where the Advisory Committee is provided a redacted explanation regarding the information the Market Monitor seeks to withhold, then the Advisory Committee would be given the opportunity to petition the FPSC to compel disclosure. Staff does not share FMG'S concern. Staff believes that since both the dispute resolution option for market participants and FERC's review of all written recommendations appear to be vehicles providing sufficient control over the Market Monitor, no further review is necessary at this time.

The Commission should find that the changes to the GridFlorida Information Policy's guidance on public versus confidential RTO information is adequate. Staff believes the changes were warranted by the restructuring of GridFlorida as a not-for-profit ISO and complies with the Commission's December 20 Order.

d. Exclusion of the Board of Directors from the Sunshine Requirements

The GridFlorida formation documents provide a requirement for Director independence. Article III, Section 11 of the By-Laws states that no person may be considered for the Board of Directors unless his or her immediate family members have no financial interest in any of the market participants, nor may his or her immediate family be employed by any of the market participants. In addition, to ensure each Director's independence from the market participants, the By-Laws also create a compliance auditor position to examine the Directors' independence once they are appointed.

The same requirements for the independence of Board of Directors nominees is repeated in the Articles of Incorporation, Article VII, Section H. Further, if there is any concern that a Director is not independent or impartial, the BSC can remove that Director with six votes, assuming a nine member Board Selection Committee.

Several interveners expressed a desire to see government-like restrictions placed on the Board of Directors, similar to Florida's Government in the Sunshine Law. Specifically, Reedy Creek stated that the Florida Government in the Sunshine Act should provide a suitable model for the RTO. GridFlorida, however, is not a government agency. Thus it would be inappropriate to apply government-like restrictions on GridFlorida's Board of Directors. However, the independence requirements that are placed on the nominees for Director should provide some level of assurance.

Seminole and FMPA express concern that if the Board of Directors has no ex-parte restrictions then it would provide them carte blanche to discuss anything at any time. This would allow the Directors to discuss with each other, or with various market participants, critical issues and make their decisions prior to a public meeting. Then, in the public meeting, the Directors could take action on critical issues without full public discussion and consideration. Staff shares this concern. However, the market participants, through the Board Selection Committee, have the power to remove those Directors that engage in such behavior.

Finally, FMPA expresses concern that if the Board of Directors has no ex-parte restrictions, then, to preserve the integrity and independence of GridFlorida's decision-making, the Directors should be required to maintain publicly-available logs of all contacts each Board member has with stakeholders outside of formal Board meetings. Staff is not convinced that having a publicly-available log of all the contacts of each Board member will help to preserve the integrity and independence of the decision-making process. Such a list would provide only the identity of those who called, wrote, or visited the Board member. The list would not reflect the amount of time spent, how well the information was received, or whether the Board member bothered to read or listen to the information provided. Staff believes this once again attempts to inappropriately place a government-like restriction on a nongovernmental body.

Based on the previous discussion, staff believes that no change should be made and the exclusion of the Board of Directors from the Government in the Sunshine Requirements is appropriate based on the restructuring of GridFlorida as a not-for-profit ISO and complies with the Commission's December 20 Order.

e. Applicants "causing" candidates for the Board of Directors to become Directors

As proposed, the selection of GridFlorida's initial Directors, the removal of Directors, and the filling of Board vacancies all will be performed by the BSC. Article III, Section 3.5 of the RTO Formation Plan, <u>Election of Directors and Initial Meeting</u>, specifically provides that immediately following the declaration of a slate of candidates by the BSC, the Applicants will cause the slate of candidates to be elected or named as initial Directors of GridFlorida, and the classes of Directors will be designated.

In their Pre-Workshop Comments, the Joint Commenters submit that there is no reason why the Applicants alone should elect

Directors and determine the classes of Directors. Rather, they believe that the BSC should make those decisions based on a majority vote of the Committee so that input from all Market Participants is received. In addition, Seminole asserts, in its Pre-Workshop Comments, that GridFlorida should be established by independent incorporators, and thereafter the input of the Applicants should cease, except, like all other stakeholders, as members of the Advisory Committee.

The GridFlorida RTO Formation Plan regarding the appointed Directors clearly states that the BSC will declare the slate of candidates to serve as initial Directors of GridFlorida, select one candidate to serve as initial Chairman, and determine the class of Directors in which each candidate will serve.

Once the BSC has selected the initial slate of Directors and designated the classes in which they will serve, the names and classes of such Directors are to be inserted into the Articles of Incorporation, as approved by FERC. These organizational documents also require that the Articles of Incorporation must be filed with the Secretary of State, without alteration (Formation Plan, Section 2.2). Since the Applicants have prepared all other GridFlorida documents, it is logical that they complete the process by simply submitting the results of the BSC vote, thus "causing" the candidates to become Directors.

Staff believes that requiring another process to incorporate GridFlorida with an independent incorporator rather than what the Applicants propose is unnecessary. The current process proposed by the Applicants in which the BSC selects the Board of Directors, including the name and classes of Directors as selected by the BSC, seems appropriate and acceptable. Moreover, the Applicants have no discretion as to the content of the filing with the Secretary of State. Quite simply, the Applicants are obligated to make the ministerial filing once the Board has been selected and classified.

The Commission should find that the proposed method of causing candidates for the Board of Directors to become Directors is appropriate, consistent with the restructuring of GridFlorida as a not-for-profit ISO, and in compliance with the Commission's December 20 Order.

f. Guidelines to determine discretionary closed meetings of the Board of Directors

Article III, Section 4 of the GridFlorida By-Laws addresses meetings of the Board of Directors. This section provides that all actions of the Board must be taken at a regular or special meeting. It further provides that all meetings shall be open to the public and notice of such meetings shall be posted on GridFlorida's website.

The section also includes a provision for meetings closed to the public when confidential information is to be discussed. A list of subjects considered to be confidential is included. The compliance filing contained a list of confidential subjects including a "catch-all" category that allowed the Chairman of the Board or a majority of the Board to designate matters confidential.

The Joint Commenters and FMPA assert that the specific list of confidential subjects appears to be suitably comprehensive and that the catch-all provision should be eliminated. These interveners further assert that this catch-all provision could be used frequently and, perhaps, improperly to avoid the open meeting requirement. The Applicants agreed to amend the By-Laws to remove the catch-all provision, leaving only the list of the types of confidential matters for the Board to consider in closed meetings.

The Joint Commenters also expressed concern that meetings of committees designated by the Board of Directors were not subject to the requirements of being noticed or open to the public. The Applicants have amended Article III, Section 8 to provide that any action taken on behalf of GridFlorida by a committee shall be decided at a meeting of the committee that is open to the public and subject to both notice and posting requirements.

In its Post-Workshop Comments, FMPA expressed concern that there is no mechanism to review the Board's determination whether a matter is confidential, or at least a mechanism for determining after-the-fact whether minutes of closed sessions should be treated confidentially or made public. FMPA suggests giving the public advance notice of topics to be considered in closed session and allow parties an opportunity to challenge the designation ahead of time. The Applicants have included in the By-Laws a detailed, exhaustive list of matters that will be considered confidential. Staff believes it is not necessary to provide for challenges of items designated as confidential. If the item is not on the list, then it would not be considered confidential. As to FMPA's suggestion that there be a way to determine after-the-fact whether minutes of closed sessions should be treated confidentially, staff is unsure how such a mechanism would work or who would make such a determination. Staff does not believe such a mechanism is necessary since the actions and/or the basis for actions taken by the Board of Directors or by Board designated committees will continually be subject to public scrutiny.

The changes to Article III, Section 4, of the By-Laws were necessitated by the restructuring of GridFlorida as a not-for-profit ISO. As all meetings of the Board of Directors are open to the public, the subject of how confidential matters would be discussed needed to be addressed. That has been accomplished in the change discussed here. Staff believes the guidelines to determine discretionary closed meetings of the Board of Directors are appropriate, consistent with the restructuring of GridFlorida as a not-for-profit ISO, and in compliance with the Commission's December 20 Order.

g. Elimination of "Planning Bill of Rights"

The Joint Commenters, in their Pre-Workshop Comments, express concern regarding the absence of the "Planning Bill of Rights", which was incorporated in the RTO Formation Plan of the Transco filing. The "Planning Bill of Rights," which was originally included in the Formation Plan, has been moved to Attachment N, Planning Protocol, of the OATT. The Applicants initially inserted this item in the Formation Plan only because the RTO proposal was filed with FERC before that level of detail was included in the transmission tariff. FMPA continues to express concern regarding the extent of the incorporation. While the transfer of the language of the "Planning Bill of Rights" may not have been verbatim, the words omitted do not change the requirement of GridFlorida to provide "timely, regular and complete public disclosure" of its planning process.

Since this change essentially involves moving the "Planning Bill of Rights" from the RTO Formation Plan to the OATT, there has been no overall impact on the GridFlorida proposal. Therefore, the Commission should find that even though the "Planning Bill of Rights" was moved, this portion of the GridFlorida proposal continues to comply with the Commission's December 20 Order.

ISSUE 2B: Do the following changes to the structure and governance of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Board, committee, subcommittee, and working group meetings being open to the public; and,
b. Sufficiency of the Proposed Code of Conduct?

RECOMMENDATION: Yes. The Commission should find that the changes made to the structure and governance of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI. (BUCHAN)

STAFF ANALYSIS:

a. Board committee, subcommittee and working group meetings being open to the public

In the revised By-Laws contained in the modified compliance filing, the Applicants have explicitly stated that all Board of Directors meetings, with the exception of those discussions containing confidential information, will be noticed and open to the public. Article III, Section 4 of the By-Laws 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.

In addition, the Applicants have also explicitly stated that any subcommittees or working groups formed by the Board of Directors that take action on behalf of the Board of Directors should also have such meetings noticed and open to the public. Article III, Section 8 of the By-Laws states:

> [p]rovided, 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 meetings of the Board of Directors.

However, the By-Laws are silent as to whether subcommittee or working group meetings that do not take action on behalf of the Board of Directors are subject to noticing and open meeting requirements. In regard to Advisory Committee meetings covered in the amended Formation Plan (under Article IV Advisory Committee, Section 4.4 Meetings of the Advisory Committee and 4.5 Conduct of Business), there is no mention of whether the Advisory Committee meetings are open to the public or should be noticed in advance.

Several of the interveners expressed concern that not all GridFlorida meetings are open to the public. In its Pre-Workshop Comments, FIPUG stated the following:

> All meetings of the GridFlorida, including working groups and subcommittees, should be held in the sunshine. Ratepayers must have confidence that the activities of GridFlorida are open and above board. The only way they can have that assurance is if they are able fully to monitor the meetings and activities of GridFlorida.

FIPUG stated in its Post-Workshop Comments that maintaining meetings open to the public is a necessity at all levels of operation.

Finally, the Joint Commenters stated the following in their Pre-Workshop Comments:

> There is no requirement in this section (Article III, Section 8) that the meetings of the committees be open or that the meeting be noticed. To the extent that the actions of the committees are the actions of the full Board of Directors, the same procedural requirements should apply. Otherwise, the committee provisions create a black box of governance against which there is no recourse by market participants, customers of the RTO or the Public Service Commission. This section should be

amended to conform with the notice and open meeting requirements set forth in Article III, Section 4.

Staff believes the proposed provisions for open meetings as contained in the modified compliance filing are consistent with the restructuring of GridFlorida as an ISO and therefore are in compliance with the Commission's December 20 Order.

b. Sufficiency of the proposed Code of Conduct

In general, the purpose of a Code of Conduct for a business is to place in writing the established business ethics expected of its Directors, officers, employees, and agents. A written Code of Conduct is considered to be an internal control mechanism to manage risk. It is completely appropriate that the Applicants would propose to have a Code of Conduct for GridFlorida and that it would apply to its agents, Directors, officers, and employees.

Seminole suggests that the Code of Conduct should also apply to the Stakeholder Advisory Committee and the BSC. In response, the Applicants stated that the BSC is a distinct group of stakeholder representatives charged with the limited purpose of selecting individuals to serve on the Board of Directors of GridFlorida. Similarly, the Stakeholder Advisory Committee advises the management and Board of Directors of GridFlorida. Neither committee controls nor operates the transmission system, and neither is given access to any non-public information regarding the transmission system. Thus, the GridFlorida Companies argue it would be unnecessary to have a code of conduct for the BSC.

Staff agrees with the Applicants that the GridFlorida Code of Conduct should not apply to the BSC or the Advisory Committee. Neither the BSC or the Advisory Committee will have members employed by GridFlorida. Neither committee will have access to non-public information, nor will they have any operational or other controls over GridFlorida.

The Joint Commenters express concern with the Code of Conduct. The Joint Commenters note that Section II.A. of the Transco filing contained a provision that required GridFlorida to seek competitive bids for goods and service. The Joint Commenters believed that this provision offered important protections against self-dealing by market participants. They state that the deletion of this provision is not justified by the required change to an ISO.

Further, the Applicants substituted the competitive bid requirement language with the phrase "without adverse distinction or preference to any Market Participant," which does not cure the flaw, according to the Joint Commenters.

Staff does not share the Joint Commenters' concern that every item purchased by GridFlorida should only be acquired through a competitive bid. It could require extensive resources to bid out many small or inexpensive items. Staff believes the proposed language, in combination with Section II.O. will provide adequate safeguards to protect against self-dealing. Section II.O. establishes a complaint procedure for alleged violations of the Code of Conduct. Staff considers it important that this complaint procedure be in place in order to allow all market participants to provide an adequate check and balance over GridFlorida's purchasing practices. In addition, staff believes this language is consistent with the restructuring of GridFlorida as not-for-profit ISO.

Staff believes that the proposed changes to the Code of Conduct as contained in the compliance filing result from the restructuring of GridFlorida as a not-for-profit ISO. The Commission should find that the changes comply with the Commission's December 20 Order.

ISSUE 2C: Should the Commission order GridFlorida to make additional changes to its structure and governance related to:

a. Board, committee, subcommittee, and working group meetings being open to the public; and,
b. Sufficiency of the Proposed Code of Conduct?

RECOMMENDATION: Yes. The Commission should order GridFlorida to clarify that all meetings of the Advisory Committee, subcommittees and working groups are noticed and open to the public. In addition, the Commission should order GridFlorida to clarify the Code of Conduct by inserting, on page 8, Section K, the words "and GridFlorida's Independent Compliance Auditor to" at the end of the sentence between "FRC" and "audit"; and in Section II.D.1, the words "GridFlorida Independent Compliance Auditor" should replace the words "Board of Directors of GridFlorida." (BUCHAN)

STAFF ANALYSIS:

a. Board committee, subcommittee and working group meetings being open to the public

Staff is in agreement with these interveners that all GridFlorida meetings should be noticed and open to the public. Requiring all GridFlorida meetings to be open to the public allows interested participants that are unable to acquire a seat on any committee the opportunity to stay fully informed of the issues before GridFlorida. As such, the participant may listen to all discussions in person and can gain a better understanding about the issues before GridFlorida and the importance each issue is allotted.

For example, someday there may be a dozen independent power producers actively participating in GridFlorida, yet only two will have seats on the Advisory Committee and one will have a seat on the BSC. The remaining independent power producers would have to rely on the other three for detailed information about the meetings, assuming that there was full participation in every subcommittee or working group event. The limitation is that the quality of the information passed along will be entirely dependent on the effort of the representative present, and this representative will not be elected, but will rather be assigned on a rotational basis. While the independent power producer have a common interest in experiencing a desired set of results from the

RTO, these owners are also competitors and the information revealed in a planning subcommittee may prove valuable in siting and developing their next generating plant. Given this consideration and in the interest of providing a fully transparent market, staff believes that the best course of action would be to allow that all meetings be open to the public and that the applicants should be directed to modify the planning documents to indicate such.

Accordingly, staff believes providing that all meetings be held open to the public should assist in developing a RTO that provides full disclosures of publicly-available information to all participants from day one and beyond. Staff recommends that the GridFlorida Companies should clarify that all meetings of the Advisory Committee, subcommittees and working groups are noticed and open to the public. To the extent the parties agree to this change, staff believes the Commission can approve the change as final agency action. Otherwise, the Commission may approve it as proposed agency action or choose not to approve the change.

b. Sufficiency of the proposed Code of Conduct

Staff suggests a change be made to the current Code of Conduct. Under Section K, page 8, it states:

> Directors, officers, employees and agents of GridFlorida shall strictly enforce all Transmission Tariff provisions established by GridFlorida. In the event any Director, officer, employee or agent of GridFlorida may exercise his or her discretion, or is allowed by the Transmission Tariff to exercise his or her discretion, with respect to transactions or actions covered by the Transmission Tariff, then such discretion shall be exercised fairly and impartially, and such event shall be logged and available for FERC audit.

Staff believes that since GridFlorida has established an Independent Compliance Auditor, that the above-mentioned discretionary log should also be made available to GridFlorida's Independent Compliance Auditor. Staff recommends that the words "and GridFlorida's Independent Compliance Auditor to" be inserted at the end of the sentence between "FERC" and "audit."

The Joint Commenters express concern regarding Section II.D.1 of the Code of Conduct which addresses officers', Directors', or employees' participation in a pre-existing pension plan with interests in a market participant. The section states:

> If the prospective Director, officer, or employee has the opportunity to transfer his or her pension account to another unrelated plan and can do so without adverse financial consequences in the opinion of the Board of Directors of GridFlorida, such transfer will be required.

The Joint Commenters believe that there should be a provision for an independent review of the adverse consequences, perhaps by the Independent Compliance Auditor. They stated that the Board of Directors is not likely to have the expertise to make this determination and may suffer from conflicts of a similar nature. Staff agrees with the Joint Commenters and recommends that the end of that sentence should be changed to read, ". . . in the opinion of the GridFlorida Independent Compliance Auditor, such transfer will be required."

While clarification is not necessary to comply with the Commission's December 20 Order, staff recommends that the Code of Conduct would be strengthened with the following clarifications: 1) make the discretionary log also available to the Independent Compliance Auditor and 2) replace the Board of Directors with the Independent Compliance Auditor when reviewing Director, officer or employee pension account transfers. To the extent the parties agree to these changes, staff believes the Commission can approve the change as final agency action. Otherwise, the Commission may approve it as proposed agency action or choose not to approve the changes.

ISSUE 2D: Do the following changes to the planning and operations aspects of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

a. MISO and GridFlorida Planning Protocol;
b. Eminent domain;
c. Initial adoption of Participating Owners' existing Ten Year Site Plans;
d. Requirement to evaluate generation and demand side management alternatives;
e. Quality and quantity of public information;
f. Ad Hoc Working Groups;
g. The FRCC and NERC role in the RTO;
h. Exemption from certain operating requirements; and,
i. 69kV demarcation point?

RECOMMENDATION: Yes. The Commission should find that the changes made to the planning and operations aspects of the GridFlorida RTO proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI. (BREMAN, HARLOW, BUTLER, FLOYD)

STAFF ANALYSIS:

a. MISO and GridFlorida Planning Protocol

In the compliance filing of March 20, 2002, the Applicants stated on page 7 of Volume 1, Tab 1:

> The GridFlorida Planning Protocol is included in Attachment N to the GridFlorida transmission tariff. The Planning Protocol currently on file with FERC reflects the RTO structure contemplated at the time the protocol was prepared, i.e., GridFlorida as a Transco that would own a significant portion of the transmission assets in the Florida Reliability Coordinating Council.
>
> As part of the transformation of GridFlorida to a non-profit ISO, the Applicants compared the transco Planning Protocol in Attachment N (including how it would need to be changed to apply to an ISO structure) to other Planning Protocols prepared specifically for ISOs. The Applicants determined that the Planning Protocol adopted by the Midwest Independent System Operator, which has been approved by FERC, Midwest Indep. Trans. System

> Operator, Inc., 97 FERC ¶ 61,326 (2001), provided the best platform for preparing a GridFlorida ISO Planning Protocol. That Planning Protocol provides for more of a collaborative process among the ISO, transmission owners, and other market participants, allowing the ISO to better utilize the expertise of the transmission owners and other market participants for planning. It thus will better allow for an expedited and more efficient transition to a GridFlorida ISO structure, better allow the ISO to plan for all users of the transmission system, and better maintain high levels of reliability.

FMG expresses general support for the new Planning Protocol in its Post-Workshop Comments. FMG noted that even though the new protocol relies on greater coordination with participating owners (POs), such coordination is appropriate because the RTO (not-for-profit ISO) lacks the authority to step in and construct facilities when an individual PO declines to construct. FMG's view of the protocol is that it produces benefits in the areas of increased cooperation and a greater opportunity for the Commission to retain its existing authority with regard to transmission planning.

In its Post-Workshop Comments, FMPA expressed its dissatisfaction with the proposed Planning Protocol by filing a suggested marked-up version of the original Planning Protocol (filed by the Applicants when GridFlorida was contemplated to be a for-profit Transco) with its Post-Workshop Comments. However, FMPA did not ask that the Commission rule on the specifics of the changes identified. FMPA asserts that because Attachment N is a FERC-filed tariff, FERC should make a determination as to the appropriateness of the changes in the compliance filing. According to FMPA, this Commission should refrain from blessing the Applicants' Attachment N changes.

FMPA goes on to state that to the extent this Commission addresses the specifics of Attachment N, the Commission should find that the Applicants' proposed reconstruction goes far beyond what was necessary to effectuate compliance with the change to an ISO, and makes it less likely that GridFlorida will achieve the benefits of market-independent regional planning contemplated by this Commission's orders. FMPA concludes by requesting in the alternative that the Commission make clear it is not evaluating whether the Applicants' proposed Attachment N changes were necessary or appropriate.

In their collective comments, Seminole and Seminole Members express their agreement with FMPA that the Planning Protocol filed with the compliance filing should revert to the FERC-filed Planning Protocol.

The relevant question is whether this portion of the Applicants' filing is in compliance with this Commission's December 20 Order. The Commission's December 20 Order required the Applicants to file a modified proposal that conforms the GridFlorida proposal to the findings of the Order and uses an ISO structure in which each utility maintains ownership of its transmission facilities. Given this directive, it was reasonable for the Applicants to use the Midwest Independent System Operator's protocol as a starting point. First, the protocol had already been approved by FERC for use by an ISO. Secondly, the interveners' extensive and constructive criticism of the GridFlorida Planning Protocol filing provides ample justification to conclude that the GridFlorida protocol is, in fact, able to accommodate legitimate modifications. Therefore, staff recommends that the Commission find that the Applicant's use of the Midwest ISO's Planning Protocol as the basis for GridFlorida's protocol is consistent with Commission Order No. PSC-01-2489-FOF-EI to restructure GridFlorida as an ISO, and therefore complies with that Order.

b. Eminent domain

The issue of eminent domain is addressed in Exhibit C, Attachment N, Section VIII, page 13, of the Applicants' Post-Workshop Comments, wherein it states:

> 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.

FMG addresses the eminent domain issue in its Pre-Workshop Comments regarding the above language. FMG states that the concern expressed by the Commission with regard to the GridFlorida transco's eminent domain authority appears to be more pronounced under an ISO structure, because there are no divesting owners to "transfer" their eminent domain authority to the RTO, as suggested by FERC.

While conceding that this language clarifies how the RTO may indirectly exert eminent domain authority, FMG questions whether it is a lawful and/or appropriate clarification. The concern is that a Florida utility may be obligated to support a proposed facility in a condemnation proceeding, even when the facility is not designed to benefit the utility's own customers or the utility simply does not support the project. FMG points to an inherent conflict in requiring a utility to defend in court an RTO-mandated taking that the utility may not support.

One solution mentioned by FMG is to ensure that a third party acquires eminent domain authority when it commits to build a facility deemed necessary by the RTO. FMG asserts that this is the solution proposed by the Governor's Energy 2020 Commission, adjusted to reflect the ISO construct. FMG goes on to recommend that the Commission determine what stand-alone statutory revisions are needed and proceed to have them proposed to the Florida legislature. FMG recommends that, in the meantime, the Commission should require the RTO to pursue interim steps including coming to the Commission for a determination of whether contested facility additions are in fact required to correct an inadequacy of the grid.

Staff has considered FMG's comments. First, the question to be answered in this recommendation is whether the filing complies with Commission Order No. PSC-01-2489-FOF-EI. In that regard, it was appropriate for the Applicants to modify their Transco filing to address the issue of eminent domain in the context of an ISO. Secondly, as to the question of whether the language is lawful or appropriate, staff notes that any entity joining the RTO does so at its own discretion. In addition, FMG has not established that it would be in this Commission's jurisdiction to determine whether the proposed language is lawful. Thirdly, FMG is able to come to its own conclusions regarding what revisions would be needed in the law and put them before the Legislature itself. Finally, staff does not believe it is necessary at this time to overlay the administrative interim steps suggested. If the difficulties contemplated should arise, it should be possible for the POs to request that the conflict be addressed under the GridFlorida tariff's dispute resolution procedures which contemplate the possibility of using an external arbitrator.

In summary, staff recommends that the Commission find that the manner in which the Applicants addressed eminent domain in their compliance filing is consistent with Commission Order No. PSC-01-2489-FOF-EI to structure GridFlorida as an ISO, and is therefore in compliance with that Order.

c. Initial adoption of Participating Owners' existing Ten Year Site Plans

Exhibit N.2 to the Planning Protocol, Attachment N, addresses the development of the initial GridFlorida Plan. The basis for developing the plan will be the most recent Ten Year Site Plans as filed with the FPSC prior to the commencement of the first GridFlorida Annual Planning Process.

The Joint Commenters', in their Pre-Workshop Comments, question why the Participating Owners' existing Ten Year Site Plans should be adopted immediately by the RTO. The Joint Commenters state that the RTO should have the flexibility to evaluate projects outside the 4-10 year lead time.

Staff agrees with the Applicants' position, as stated in their Post-Workshop Comments, that Attachment N.2 of the Planning Protocol clearly gives flexibility to the RTO to modify projects included in the Ten Year Site Plans. The plans are to be adopted only as a transition mechanism. (See Section VII of the Amended Planning Protocol). Moreover, to the extent that there are disagreements with any element of the GridFlorida plan, the dispute may be resolved through GridFlorida dispute resolution procedures.

Staff, therefore, recommends that the changes in the Planning Protocol addressing the procedure for initial adoption of the POs' existing Ten Year Site Plans is consistent with the Commission's December 20 Order, and is therefore in compliance with that Order.

d. Requirement to evaluate generation and demand side management alternatives

The Pre-Workshop Comments of the Joint Commenters suggested that GridFlorida's Planning Protocol should be revised to include a bidding process for transmission facility construction. This process involves a determination of whether transmission or generation is the least-cost alternative. In its Pre-Workshop Comments, Reedy Creek encouraged the consideration of both demand-side and generation alternatives in GridFlorida's planning process. No specific suggestions are provided by the Joint Commenters or Reedy Creek regarding how GridFlorida's Planning Protocol should be revised to address these concerns.

Staff believes that the language contained in the Planning Protocol contains numerous provisions for the consideration of generation alternatives as part of GridFlorida's planning process. For example, Section VII of the Planning Protocol states:

> 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.

Staff further notes that GridFlorida's planning process will not be performed in a vacuum. The Planning Protocol provides for the input of various interested market participants with the expertise needed to propose cost effective generation alternatives. As stated in Attachment N, Section III of the Planning Protocol:

> The process for carrying out the planning of the Transmission Provider shall be collaborative with the POs, load serving entities (LSEs), generators, Transmission Customers, the Florida Reliability Coordinating Council (FRCC), and other market participants.

Staff believes that the Planning Protocol provides adequate opportunity for the input of interested parties to ensure that generation alternatives are considered in the planning process. POs, as customers of GridFlorida, will have the incentive and expertise needed to inform GridFlorida of potential cost-effective generation alternatives. Staff therefore agrees with the Applicants that no changes to the Planning Protocol regarding the consideration of generation alternatives is warranted at this time.

Staff recommends that the Commission find that the changes in the Planning Protocol regarding the evaluation of generation and demand side management alternatives is consistent with the Commission's December 20 Order, and is therefore in compliance with that Order.

e. Quality and quantity of public information

The Joint Commenters and FMPA, in their respective Pre-Workshop Comments, express concern that the Planning Protocol did not make reports, assumptions, data, and analysis available in sufficient detail and in a transparent manner. The Joint Commenters also suggested that documents explaining the analysis and studies should be available in addition to supporting assumptions.

In its Post-Workshop Comments, FMPA indicates that the more general disclosure requirements of the most recent changes to the Planning Protocol appear to address their concerns. The second paragraph of Section II of the Planning Protocol included in the modified compliance filing reads:

> 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.

Staff agrees with FMPA that this paragraph now requires disclosure of the appropriate level of detail.

In their Pre-Workshop Comments, the Joint Commenters' state that "clarification should be added to the effect that documents explaining the analysis and the study itself should be available, not just the supporting assumptions." Language has been added by the Applicants to Section VII of the Planning Protocol that requires the Transmission Provider to " ... post on the OASIS final reports and planning studies consistent with Commission policy." The Joint Commenters made no further comment in their Post-Workshop Comments regarding quality and quantity of information in the Planning Protocol. Staff believes that the quality and quantity of planning information, as now stated in the Planning Protocol is adequate and reasonable.

Staff believes the changes to the Planning Protocol regarding the quality and quantity of public information is consistent with the Commission's requirement to restructure GridFlorida as an ISO and therefore complies with the Commission's December 20 Order.

f. Ad Hoc Working Groups

In the compliance filing, the Applicants added verbiage to Attachment N, Planning Protocol, that addressed the prescribed procedure for resolving transmission constraints. In Section V, Original Sheet 215 of Volume III, the Transmission Provider is directed to,

> . . . 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.

FMPA, the Joint Commenters, and Seminole discussed this language in their comments. In general, these interveners believed that GridFlorida should be responsible for performing all studies and developing all options. Further, these commenters assert that even if GridFlorida were to seek and evaluate advice from an ad hoc group, GridFlorida should remain the active planner. In that context, it was considered objectionable that the working group was limited to representatives of affected POs. The logic was that under such a paradigm, GridFlorida would merely be a conduit to the Transmission Customer and that the working group, not GridFlorida, would be the decision making body. Seminole stressed that GridFlorida must have discretion to determine how best to proceed to resolve transmission constraints and the formation of Ad Hoc Working Groups should not be required.

The Applicants responded to intervener concerns in their Post-Workshop Comments. The Applicants struck the original language contained in Section V and added language to a new section entitled "Coordination Between the Transmission Provider and POs, and Obligation of POs to Support the Transmission Provider." This language, which is contained on page 15 of Exhibit C (Attachment N) of the Post-Workshop Comments, states:

> 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, the Transmission Provider 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.

Changing from a for-profit Transco to a not-for-profit ISO can reasonably be expected to affect the appropriate role of GridFlorida in the planning process. Therefore, it was reasonable for the Applicants to readdress the role of GridFlorida, as an ISO, in the planning process. The Applicants' modification of its compliance filing adequately addresses the interveners' concerns regarding the inclusion of other market participants in Ad Hoc Working Groups.

In addition, Staff does not share Seminole's opposition to GridFlorida being required to form working groups to address transmission constraints, perform studies, and otherwise support the planning function. The newly proffered language contained in the Applicants' Post-Workshop Comments requires GridFlorida to receive input from all affected participants while it affords GridFlorida enough latitude to give the information the appropriate level of consideration.

In summary, Staff recommends that the Commission find that the change contained in Exhibit C (Attachment N) of the Applicants' Post-Workshop Comments concerning the formation of Ad Hoc Working Groups is consistent with the requirement in Commission Order No. PSC-01-2489-FOF-EI to adopt an ISO structure and is thus in compliance with the Commission's December 20 Order.

g. The FRCC and NERC Role in the RTO

In their joint Pre-Workshop Comments, the Joint Commenters take issue with the role stated for the FRCC and NERC in the Planning Protocol. Specifically, they say that "the FRCC should provide input into the plans and reliability assessment of the RTO but that it should not be an independent reviewer of those standards."

Staff disagrees with the Joint Commenters. As stated in the FERC's Order 2000, open access transmission is the foundation for competitive wholesale power markets. Order 2000 states that the creation of RTOs is a further step to remove existing impediments to competition and will benefit consumers through lower electricity rates resulting from a wider choice of services and service providers. (See Final Rule, Introduction and Summary, page 4). Staff concurs with the Applicants that there be an independent body, not concerned with promotion of commerce, that will review and assess the plans of the Transmission Provider and, in coordination with NERC, develop reliability standards and monitor and ensure compliance with such standards. This is precisely the role that the Planning Protocol has specified for the FRCC. (See the Planning Protocol, Section III, The Transmission Provider, The Transmission Planning Committee and the FRCC).

Staff believes that the role of the FRCC and NERC in the RTO as described in the compliance filing is consistent with the requirement in Commission Order No. PSC-01-2489-FOF-EI to adopt an ISO structure and is thus in compliance with the Commission's December 20 Order.

h. Exemption from certain operating requirements

As currently filed, the Operating Protocol requires POs to obtain the approval of the Transmission Provider before taking controlled facilities out of or into service, except in cases where public or employee safety is at imminent risk. Reedy Creek proposes to add language to the Operating Protocol that would allow owners to take facilities in or out of service "if such action would not materially affect the reliability of the Transmission System and the PO notifies the Transmission Provider of such action."

The Operating Protocol also states that the Transmission Provider must review and approve the proposed maintenance schedules of the POs and any changes to those approved maintenance schedules. Reedy Creek proposes to add language that would exempt owners from such review and approval ". . . for maintenance schedules that would not materially affect the reliability of the Transmission System and the PO notifies the Transmission Provider of such schedules."

The GridFlorida Applicants did not respond to these suggested changes in their Post-Workshop Comments. Although there may be administrative efficiencies to be gained by the concept proposed by Reedy Creek, staff believes that it would be unwise to add the suggested language because the phrase "would not materially affect the reliability" is at best subjective. The prudent course to take is to initially require ISO approval but allow flexibility as operational experience is gained over time. As operational experience is gained, it may be possible for the ISO to allow certain facilities to be taken in or out of service, or to allow certain maintenance schedules to be changed, without prior approval from the Transmission Provider. It is premature to allow such flexibility at this stage of RTO development.

Staff believes that retaining the current language in the Operating Protocol is consistent with the requirement in Commission Order No. PSC-01-2489-FOF-EI to adopt an ISO structure and is thus in compliance with the Commission's December 20 Order.

i. 69kV demarcation point

On page 18 of Commission Order No. PSC-01-2489-FOF-EI the demarcation point for transmission facilities is addressed:

The GridFlorida collaborative effort established the transmission facilities demarcation at 69kV and above. According to the testimony of the Panel, there were four factors considered by the GridFlorida Companies in determining the demarcation point. These factors are: (1) historically, facilities 69kV and above have been considered to be transmission facilities, from a planning/operations and rate making perspective; (2) stakeholders in the collaborative process generally expressed the need for open access to all 69kV and above transmission facilities in Florida; (3) classification of radial facilities as distribution instead of transmission would make access to transmission more complicated than it needs to be; and (4) the rate structure proposed for GridFlorida would result in subsidies across utilities if each utility chose a different demarcation point for facilities to turn over to the RTO. The GridFlorida Companies contend that "a uniform demarcation point is a reasonable approach to achieve fairness and equal access to the transmission system of the RTO."

We agree that a uniform demarcation point is necessary to ensure equal access for all participating companies and to ensure that subsidies resulting from different demarcation points do not occur. There is no evidence in the record suggesting that the demarcation point should be something other than 69kV. In addition, this demarcation point has been consistently used by this Commission when determining appropriate cost allocations to distribution, transmission, and generation facilities.

In response to the Commission's requirement that GridFlorida establish a transmission facilities demarcation at 69kV, the Applicants changed the language in Section 2.5 of the POMA as follows:

2.5 ~~2.5~~ **Controlled Facility or Controlled Facilities**
Means **all of** the **69kV and above** electric ~~transmission~~ facility or facilities
~~owned or leased by GridFlorida or facilities~~ **in the FRCC region**, owned or leased
by a PO ~~and over which Operational Control has been transferred to~~**, as provided**

> **<u>in Attachment Q of the</u>** GridFlorida ~~pursuant to this Agreement~~ **<u>OATT</u>**. A list of **<u>initial</u>** Controlled Facilities ~~for each PO~~ is ~~found at~~ **<u>attached to this Agreement as</u>** Exhibits A~~-[ ] attached hereto~~-__. **<u>GridFlorida shall make current lists of Controlled Facilities publicly available</u>**.

In addressing the 69kV demarcation point issue, Reedy Creek questions whether the Applicants' proposal is required by the Commission's December 20 Order. Reedy Creek objects to the omission of the word "transmission" in the revised definition. In addition, Reedy Creek asserts, in its Pre-Workshop Comments, that the section is not consistent with applicable federal law because the FERC has never used "such a mechanistic approach; rather FERC uses a functional approach to determining the appropriate classification of a facility."

In its December 20 Order, the Commission noted that the GridFlorida Companies had considered that historically, facilities 69kV and above have been considered to be transmission facilities. The Commission also referenced that the GridFlorida Companies had discussed whether to classify radial facilities as distribution instead of transmission. The Commission gave recognition to the GridFlorida Companies' conclusion that to do so would make access to transmission more complicated than it needs to be. Finally, the Commission itself concluded that, among other things, a uniform demarcation point is necessary to ensure equal access for all participating companies.

It is useful to consider FMG's comments at the Commission Workshop when analyzing whether the section is consistent with applicable federal law. FMG's preference for the opportunity to demonstrate that some 69kV facilities are local distribution was discussed. FMG stated the following about the FERC's approach to this issue (See Volume II of the Transcript, page 106.):

> The Commission, the FERC, has never really spoken to that. It was part of the filing that was made by the company, the companies, but in its orders in March, the FERC really rowed by that. It was never really specifically addressed. It's on rehearing before the Commission. And bottom line here is there is no record supporting that I believe has been embraced by any agency, and I would ask you folks just to be aware of

> that as we go along and perhaps to understand where we're coming from in choosing, if we can, to operate on a functional basis in deciding what goes in and not on a bright line basis.

Given that it is uncontested that the FERC has not yet directly addressed the question of 69kV as a bright line demarcation, staff concludes that there is no reason to believe that the Commission's ruling in Order No. PSC-01-2489-FOF-EI is inconsistent with federal law.

In conclusion, Staff recommends that the Commission find that the changes made to Section 2.5 of the POMA comply with Order No. PSC-01-2489-FOF-EI. Retaining the 69kV demarcation point as a "bright line" clearly complies with the Commission's December 20 Order, and the changes to the POMA are consistent with the Order's requirement to adopt an ISO structure.

ISSUE 2E: Do the following changes to the planning and operations aspects of the GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings;
b. Transmission provider project rejection; and,
c. Competitive bidding process for transmission construction projects?

RECOMMENDATION: Yes. The Commission should find that the changes made to the planning and operations aspects of the GridFlorida proposal are in compliance with Commission Order No. PSC-01-2489-FOF-EI. (BREMAN, HARLOW, BUTLER, FLOYD)

STAFF ANALYSIS:

a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings

In their Pre-Workshop Comments, FMPA, the Joint Commenters, and Reedy Creek express concerns about the increased role of the POs in transmission planning and the calculation of Available Transmission Capacity (ATC) under the proposed ISO structure compared to that under the Transco structure. For example, the Joint Commenters stated that the POs should "provide input as needed, but not collaborate with the RTO." Reedy Creek stated that "the RTO should have ultimate authority over determination of ATC."

The Applicants have revised the Planning Protocol in an effort to address these concerns. The Planning Protocol now states 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." The Planning Protocol also now states that "[t]he Transmission Provider shall be responsible for calculating ATC for the Transmission System." This language clearly gives GridFlorida ultimate responsibility for the planning functions, including the calculation of ATC.

FMPA, Seminole and Seminole Members take issue with how the GridFlorida Planning Protocol handles disputes about line ratings and other planning, design or construction criteria. Seminole and Seminole Members state that, in the case of a dispute between the

Transmission Provider and the PO, the views of the Transmission Provider should prevail, pending the outcome of dispute resolution. FMPA states that GridFlorida's stronger role as spelled out in the FERC-filed version of the Planning Protocol should be retained. The Joint Commenters also state that the changes to the Planning Protocol create an over-reliance on the POs.

Staff agrees with the argument contained in the Applicants' Post-Workshop Comments. They point out that under the ISO structure the owner of facilities placed under the control of GridFlorida will retain liability for those facilities. This is a sound argument for leaving the initial determinations of line ratings in the hands of the participating owners. If the determinations made by the participating owners are not appropriate, they may be overturned by the results of the dispute resolution process.

FMPA makes the argument that, under the previous Transco model filed at the FERC, FPC was to retain ownership of its facilities and, therefore, the FERC-filed planning regimen is already designed to work in areas where GridFlorida lacks assets and plays the role of a non-asset-owning ISO. This argument is not persuasive. Under the Transco model that was previously filed, the RTO would have owned a significant share of the total transmission assets of peninsular Florida because FPL and TECO proposed to divest their assets to the RTO. Under that scheme, one could reasonably infer that the Transco would be liable for its own assets and arguably, either directly or indirectly liable for assets that it had operational control over. While there is no specific evidence before us one way or the other on that point, staff believes the Applicants were prudent in taking the more conservative approach because of the liability exposure.

Staff believes the changes regarding the determination of ATC, CBM, and other line ratings contained in the compliance filing are consistent with the Commission's December 20 Order requirement to use an ISO structure and therefore complies with that Order.

b. Transmission provider project rejection

Attachment N of the Applicants' Transco filing, contained language directing GridFlorida to make a final determination as to the best available transmission construction alternative with participation from and coordination with any affected PO or Non-PO

(See Volume III, Original Sheet 230 and 232). GridFlorida was to consider numerous factors in making a final determination, including the feasibility of the entity constructing the facilities obtaining all necessary permits for construction.

In the compliance filing of March 20, 2002, this language was stricken and language addressing similar issues was included (See Volume II, Original Sheet 205):

> 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 Commission's December 20 Order required the GridFlorida Companies to file a modified RTO proposal that conforms the GridFlorida proposal to the findings of the order and uses an ISO structure in which each utility maintains ownership of its transmission facilities. The original filing simply addressed the consideration of the feasibility to obtain the necessary permits for construction. Changing from a for-profit Transco to a not-for-profit ISO where the utilities maintain ownership of the transmission facilities raises the importance of achieving regulatory approvals and cost recovery. Recognizing that no party took issue as to whether this was a necessary change, staff recommends that the Commission rule that this change complies with Commission Order No. PSC-01-2489-FOF-EI.

In conclusion, staff believes the changes regarding the transmission provider project rejection contained in the compliance filing are consistent with the Commission's December 20 Order requirement to use an ISO structure and therefore complies with that Order.

c. Competitive bidding process for transmission construction projects

Section VIII of the Planning Protocol as filed in the Applicant's March 20, 2002, compliance filing requires that the construction of any new major transmission facilities be competitively bid by the entity responsible for owning such facilities. This competitive bidding requirement provides the PO with a right of first refusal to match the lowest bid and elect to self-build the transmission addition.

In its Pre-Workshop Comments, Seminole asserts that the right of first refusal unduly favors the POs and will "serve to undermine the bidding process, since bidders will know that the POs have only to match the lowest bid." The Joint Commenters objected in their Pre-Workshop Comments to the POs' right of first refusal, if self-selection by POs is not evaluated by an independent third party. The Joint Commenters suggested a two-step bidding process for transmission facility construction. The first step of this process is a determination of whether transmission is the least-cost alternative. The second step requires the RTO to develop a request for proposals (RFP) and select a neutral third party to score the proposals. Copies of the RFP package and the selection of the third party evaluator will then be supplied to the Commission. Potential bidders may then request a hearing before the Commission in which to object to the RFP criteria or third party evaluator selected. The third party evaluator would then rank all bids received and select the entity to construct the needed transmission facilities.

The Applicants stated in their Post-Workshop Comments that Seminole's concerns were addressed in the revised Planning Protocol as filed June 21, 2002, by a clarification of the RTO's role in the bidding process "to ensure adequate oversight and review." Section VIII of the Planning Protocol now states that the RTO has the right to participate in the RFP process, including the review and selection of bids, and the costs and construction schedules associated with the construction of any major new transmission facilities. Any unresolved disputes between the RTO and the PO will be submitted to the dispute resolution process for resolution. Seminole did not specifically address these revisions in the Planning Protocol in its Post-Workshop Comments. The Joint Commenters indicated in their Post-Workshop Comments that their concerns have not been addressed by the revisions to the Planning Protocol discussed previously.

Staff agrees with the argument posed by the Applicants in their Post-Workshop Comments, i.e., that it is reasonable to allow an entity that will own a facility to construct that facility as long as the lowest bid is matched. Staff believes that the revisions made to Section VIII of the Planning Protocol highlight the role of the RTO as an independent third party with the right to participate in the RFP process and evaluate construction costs and schedules. This mitigates the concern that the right of first refusal will bias the bidding process towards the PO.

Therefore, staff believes the changes regarding the competitive bidding process for transmission construction projects contained in the compliance filing are consistent with the Commission's December 20 Order requirement to use an ISO structure and therefore complies with that Order.

<u>ISSUE 2F</u>: Should the Commission order GridFlorida to make additional changes to the planning and operations aspects related to:

a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings;
b. Transmission provider project rejection; and,
c. Competitive bidding process for transmission construction projects?

<u>RECOMMENDATION</u>: Yes. The Commission should order GridFlorida to adopt the language identified in the staff analysis to clarify: that CBM is taken into account when calculating the ATC used by GridFlorida; that the requirement to reject projects is clearly conferred upon the transmission provider; and that the bidding process is not biased towards POs. (BREMAN, HARLOW, BUTLER, FLOYD)

<u>STAFF ANALYSIS</u>:

a. Determination of Available Transmission Capacity (ATC), Capacity Benefit Margin (CBM), and other line ratings

In its Post-Workshop Comments, JEA has requested clarification that Capacity Benefit Margin (CBM) be taken into account in calculating the ATC used by GridFlorida. Staff sees merit in JEA's suggestion that Attachment O, Section II (1) of the OATT, should be revised to read:

> The Transmission Provider shall have the sole authority to determine the ATC and TTC of all commercially viable pathways for the Transmission System facilities, taking into account transmission reservations, <u>capacity benefit margins,</u> and scheduled maintenance of generation and transmission facilities, and in accordance with the FRCC ATC Coordination Procedures and NERC standards.

As pointed out by JEA in its Post-Workshop Comments, it appears that the intent of GridFlorida is to take CBM into account since it references an FRCC definition of ATC that explicitly accounts for CBM. Although JEA's suggested clarification does not appear necessary to staff in order to comply with the Commission's December 20 Order, it may help to mitigate concerns that JEA has in joining GridFlorida.

Therefore, staff believes the Applicants should include language that clarifies that CBM is taken into account when calculating the ATC used by GridFlorida. To the extent the parties agree to this change, staff believes this change can be approved by final agency action. Otherwise, the Commission may approve this change as proposed agency action or choose not to approve the change.

b. Transmission provider project rejection

FMPA in both its Pre-Workshop and Post-Workshop Comments requests that certain language be clarified. FMPA states on page 23 of its Pre-Workshop Comments:

> That provision might be acceptable, as long as it clarified that GridFlorida is the entity that determines whether regulatory approval and cost recovery may be "reasonably expected." However, as the provision is currently drafted, there is a significant risk that POs will use it to subvert GridFlorida's authority to direct the expansion of facilities. Whenever they are asked to build facilities that they do not want to build, POs may claim that they have no reasonable expectation of obtaining regulatory approval or cost recovery. In effect, POs may place GridFlorida in the position of having to obtain advance regulatory guarantees of cost recovery before it may require POs to construct needed facilities.

The Applicants responded to FMPA in their Post-Workshop Comments stating that the clarification is not necessary and that if there is a dispute, it will be resolved through the tariff's dispute resolution procedures. The Applicants further asserted that until the dispute is resolved, construction should not commence, as it could result in unnecessary expenditures that harm retail customers.

Staff considers FMPA's concern as legitimate regarding the possibility of abuse by a PO. The language seems to provide an opportunity to obstruct the construction of facilities. At the same time, staff reads the language to mean that GridFlorida would be the entity that determines whether regulatory approval and cost recovery may be "reasonably expected." In addition, the Applicants are claiming that no clarification is necessary, implying that

GridFlorida would, in fact, be the determining entity. Therefore, Staff concludes that there should be no harm in adding clarifying language. Given that the tariff defines the transmission provider as GridFlorida, staff recommends that the following modified language be substituted into Attachment N in the appropriate place:

> 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 **the Transmission Provider concludes that** it is reasonabl~~ey~~ **to** expect~~ed~~ that the necessary regulatory approvals for construction and cost recovery will not be obtained.

Therefore, staff believes the Applicants should include clarifying language that confers upon the transmission provider the requirement to reject projects where it is reasonably expected that the necessary regulatory approvals and cost recovery will not be obtained. To the extent the parties agree to this change, staff believes this change can be approved by final agency action. Otherwise, the Commission may approve this change as proposed agency action or choose not to approve the change.

c. Competitive bidding process for transmission construction projects

As discussed in Issue 2E, part c. above, Seminole and the Joint Commenters expressed concern regarding the right of first refusal by the PO and the potential to bias the bidding process towards the PO. To address these concerns, staff believes a mechanism must also be in place which reduces the incentive for POs to underestimate expected costs in order to self-build.

Staff recommends that Section VIII of the Planning Protocol be further clarified to indicate that if a PO chooses to self-build, the RTO has the right to compare actual construction costs to a PO's final bid. The appropriate regulatory body should also require any entity which elects to self-build to provide its initial bid and any matched bid, as well as justifications for cost overruns, during any cost recovery proceeding. To the extent the parties agree to this change, staff believes this change can be approved by final agency action. Otherwise, the Commission may approve this change as proposed agency action or choose not to approve the change.

ISSUE 2G: Does the proposed transmission rate structure consisting of charges for (1) existing embedded facilities, (2) an adder to recover T.U. facilities not included in the zonal rate, (3) new network facilities, and (4) Grid Management comply with Commission Order No. PSC-01-2489-FOF-EI?

RECOMMENDATION: No. The proposal preserves Commission jurisdiction over only existing bundled retail transmission costs, and only for the initial five-year period of RTO operations. The Commission's December 20 Order provides that the Commission should retain jurisdiction over the total cost of transmission to retail customers on a going forward basis. At the end of the initial five-year operation of the RTO, the Commission should review the transmission rate structure, given the operation of the RTO and the competitive market conditions in Florida. (WHEELER, E. DRAPER)

STAFF ANALYSIS: In response to the Commission's concerns stated in its December 20 Order regarding the retention of its jurisdiction over bundled retail transmission rates, the Applicants modified the pricing protocol previously filed under the Transco model. Under the modified proposal, transmission customers can optionally exempt their retail customers' bundled load from the payment of Zonal Rates for the first five years of RTO operation. The Applicants have indicated that they will exercise this option.

Beginning in year six, transmission customers will pay the RTO rates for all transmission service, including transmission service required to serve retail customers. From the beginning of RTO operations, the Applicants will still pay the Grid Management and System Rate charges attributable to their retail load, as well as a "T.U. adder" that will recover the costs of existing T.U. facilities that are included in the Zonal Rates. These rate components are more fully described below.

Transco Proposal

In the Applicants' Transco filing, all transmission customers were required to pay the trifled rates of the RTO (including Zonal Rates) for all of their load, including their bundled retail load. In addition, retail load was responsible for its load ratio share of the Grid Management Charge and the System Charge.

Zonal Rates. In its initial five years of operation, the RTO would have used Zonal Rates to recover the costs of existing transmission facilities. Existing facilities were defined as those that were in service prior to January 1, 2001. In years six through nine, Zonal Rates would have been phased out at the rate of 20% of the revenue requirement per year, so that beginning in year ten, all transmission customers would have paid a systemwide average rate for service. The purpose of Zonal Rates is to mitigate the cost shifting that would occur if the RTO were to immediately implement a systemwide rate. These cost shifts would have resulted because of differences in the embedded costs of the existing transmission systems in peninsular Florida.

Any transmission owning utility, with the exception of THUS, could form its own separate zone. Each zone would submit a revenue requirement for its existing facilities to the RTO. The revenue requirement would be subject to FERC approval. The proposed OATT listed fourteen zones (See Attachment V to the OATT), although only the three applicants had committed to joining the RTO.

Zonal Rates were determined using the revenue requirements for the facilities located in the zone and the monthly peak loads for the zone. The Zonal Rate would be paid based on the location of the *load served*, and not on the location of the *generator.* For example, if the system consisted of Zones 1 and 2, and a customer was using the transmission system to serve load in Zone 1 from their generator located in Zone 2, the customer would pay the Zonal Rate for Zone 1 only.

System Rate. The System Rate was designed to recover the costs of all new transmission facilities, which were defined as those facilities that went into service on or after January 1, 2001. Beginning in year six, the System Rate would also begin to recover the costs of existing facilities that were recovered entirely through Zonal Rates in years one through five. Each year in years six through ten, 20% of the Zonal revenue requirements would be transferred to the System Rate, so that beginning in year ten, Zonal Rates would cease to exist, and the revenue requirements of all RTO transmission facilities would be recovered through the System Rate.

The System Rate was determined using the revenue requirements of the transmission facilities and the monthly peak loads for the entire system. This differed from Zonal Rates, which were based on revenue requirements for only a single zone, and on the peak loads of the zone. The System Rate would be set by the RTO and would be subject to FERC approval.

Grid Management Charge. The Grid Management Charge (GMC) was a systemwide charge that would be applicable to all transmission customers' service from the outset, including service for bundled retail load. The GMC was designed to recover the RTO's own revenue requirements, including start-up costs (amortized over five years), grid operations and administrative costs, and the costs of market monitoring. The revenue requirement would be set by the RTO, subject to FERC approval.

Cost Recovery. The Applicants sought recovery through an adjustment clause of the incremental costs of transmission service, which they defined as those costs that were not currently being recovered in retail base rate charges. FPL's suggested methodology for recovery of incremental transmission costs included a calculation of the level of transmission costs currently embedded in base rates (expressed in cents per kWh), based on a recent cost of service study. This cost was to be applied to the projected kWh sales for the relevant recovery year to determine the current level of transmission costs recovered in base rate charges. The charges billed to the utility by the Transco in excess of this amount were deemed to be the incremental costs of transmission, and would be recovered from retail ratepayers through the Capacity Cost Recovery Clause.

ISO Compliance Filing

While retaining most aspects of the original pricing proposal, the Applicants have amended the OATT to provide that, at a transmission customer's option, the customer's bundled retail load will be exempted from Zonal Rates for the first five years of RTO operation. The Applicants have indicated that they will exercise this option. The costs of retail transmission service will be recovered directly from the retail ratepayers through their payment of base rate charges, and no revenues will flow through the RTO. Thus, for the first five years of operation, FPL, FPC, and TECO will pay Zonal Rates only for their wholesale use of the transmission system. They will, however, pay the Grid Management Charge, System Rate, and the T.U. Adder applicable to their retail load during the initial five years. These are considered by the Applicants to be "incremental" costs subject to recovery from a retail load. Beginning in year six, the Applicants are required to pay for and receive transmission service for all loads (both retail and wholesale) pursuant to the OATT, just as any other transmission customer.

The ISO OATT also changed the definition of new facilities, which are now defined as those facilities put into service on or after January 1 of the first year of RTO operations, rather than January 1, 2001.

The Applicants state in the Executive Summary of their compliance filing that their proposal to exempt bundled retail load from Zonal Rates during a transition period has been adopted in other IBOS. Specifically, the Applicants state that "this approach has been adopted in other IBOS to address concerns over state jurisdiction, see Southwest Power Pool, 89 FERC, 61,284 at 61,889 (1999), and FERC recently reaffirmed that it finds such an approach acceptable, Midwest Index. Trans. System Operator, Inc., 98 FERC, 61,141 at 61,413 (2002)('MISO')." In the MISO order, the FERC concluded that "because the existing agreements already provide for recovery of the costs of serving bundled retail and grand fathered customers, these transmission-owning members will be exempt, during the transition period, from rates under the Midwest ISO Tariff for services provided pursuant to the existing agreements . . . " (MISO Order, p. 10)

Mr. Naive, speaking on behalf of the Applicants, explained at the Commission workshop, that at the time of the original filing the companies believed that it was a FERC requirement under Order 2000 to charge retail load pursuant to an RTO tariff. Mr. Naive expanded by stating that "more recently, however, FERC has clarified what they intended in Order 2000, and in a Midwest ISO order FERC approved a phased-in approach in which bundled retail load initially would not be under the RTO tariff." (Transcript, p. 29)

T.U. Adder. The decision to exempt retail load from zonal charges resulted in the addition of a new charge to the OATT, the T.U. Adder. A T.U. is a utility that relies upon another utility's transmission system to integrate its generation and load. According to the Applicants, in peninsular Florida there are two THUS: Seminole and FMPA.

Seminole is a generation and transmission cooperative that provides wholesale power to its ten member retail cooperatives.

Seminole uses the transmission systems of FPL and FPC to transmit power from its generation facilities to its members. Seminole also owns 270 miles of 230kV transmission lines and 140 miles of 69kV transmission lines.

FMPA is a wholesale joint action agency which supplies wholesale power and other project services to its municipal electric utility members. FMPA supplies the full requirements of 13 member municipal utilities and uses the transmission systems of FPC and FPL to serve this load from their generation resources. FMPA also owns approximately 350 miles of 230kV, 138kV, and 69kV transmission lines.

A significant area of dispute with regard to the formation of the RTO has been the manner and timing with which the transmission facilities of THUS will be included for recovery through the rates of the RTO. The THUS have contended that the costs of all their existing transmission facilities should be included for recovery in the Zonal Rates of the RTO from the outset. The timing of the recovery of these T.U. costs is currently a subject of litigation at FERC.

The OATT offers THUS two options with regard to cost recovery of their existing transmission facilities through the RTO rates. The choice is a one-time election that must be made at the time the T.U. joins the RTO. Under the first option, the T.U.'s existing facilities costs can be recovered through the Zonal Rates if they can demonstrate to FERC that the facilities:

1. Are integrated with the RTO transmission system;
2. Provide additional benefits to the system in terms of capability and reliability; and
3. Can be relied upon for the coordinated operation of the system.

Any facilities that FERC deems to have met these standards are included in the Zonal revenue requirement at the time FERC issues its order. Any facilities that do not meet the standard will not be included in the Zonal Rates.

Under the second option, THUS can elect to phase in their entire existing facilities costs into the Zonal Rates over the first five years of operation of the RTO, at the rate of 20% per year, without any demonstration that they are an integrated part of the transmission system.

As noted above, for the first five years of RTO operation, the Applicants have indicated that they will exempt their retail load from the payment of Zonal Rates. Because exempted retail load will not pay Zonal Rates, the RTO will not recover the full revenue requirement of the included T.U. facilities. In order to remedy this problem, the Applicants have proposed a T.U. Adder in the OATT that will be assessed on the exempted retail load (as well as the load of certain grand fathered contracts) for the first five years of operation to recover the retail load's share of the T.U. facilities' costs. Beginning with year six of operations, the T.U. adder will no longer be necessary because the retail load will then be required to pay Zonal Rates.

Cost Recovery. In its petition, the Applicants are seeking explicit Commission approval for recovery of the GMC, the System Rate, and the T.U. Adder costs attributable to their retail load through the Commission's existing Capacity Cost Recovery Clause mechanism, beginning with year 1 of the RTO operations. The Applicants deem these costs to be incremental transmission costs that are not currently being recovered through base rate charges. In their response to staff's informal data request No. 25, submitted on May 6, 2002, the Applicants indicate that because these charges are incurred pursuant to a FERC-approved tariff, the Commission will not have the authority to deny their recovery.

Unlike the proposal contained in the Transco filing, the compliance filing contains no provision for determining the level of transmission costs that are being recovered through base rate charges. Thus, any growth in sales that occurs will serve to increase the level of recovery through base rates of transmission costs, even though the cost of new transmission facilities will be recovered through the System Charge, which the Applicants have proposed to recover through a cost recovery clause.

Interveners' Comments

The comments of the interveners regarding this issue are summarized below.

FMPA, in its Pre-Workshop Comments, states that "although FMPA preferred Applicants' original approach of placing all load under

GridFlorida's rates, we do not object to the proposed rate exemption unless it becomes a platform for discriminating against the wholesale component of transmission." FMPA reiterated its position at the workshop and added that it is important that certain RTO costs be shared by the Applicant's retail customers. (Transcript, p. 84-85) At the Commission's workshop FMG supported the proposal to exempt retail load from zonal rates. (Transcript, p. 107)

OPC strongly objects to the Applicants' compliance filing, stating in its Post-Workshop Comments:

> Acceptance of the compliance filing would mean that the Commission would only regulate the revenue requirement associated with the transmission component of bundled retail sales as it related to existing transmission facilities for five more years. Jurisdiction over the revenue requirement for new transmission assets would be ceded to FERC immediately. Today's Commission would diminish its own present range of authority and decide for another Commission five years in the future (and for the Legislature) that additional, more substantial elements of its statutory jurisdiction had come to an end. Thereafter, FERC alone would set the revenue requirement for the transmission component of bundled retail sales.

OPC further states in its Post-Workshop Comments:

> The Applicants' attempt to alter this regulatory regime and transfer jurisdiction to FERC must be rejected because the Commission cannot permit utilities over whom it exercises total retail authority to decide through voluntary action to lessen the Commission's jurisdiction over them.

Seminole, in its Pre-Workshop Comments, objects to the Applicants' proposal to exempt retail load from zonal pricing. Seminole states that "the effect of this new position by the Applicants is to renege on their commitment in their GridFlorida filing at the FERC 'to take (and pay for) transmission service under the GridFlorida transmission tariff for all of its load (both retail and wholesale).'"

FIPUG does not believe that recovery of any transmission costs should be allowed through a cost recovery mechanism. They assert that such costs should remain in base rates, and be considered just as any other base rate cost component.

Commission Oversight

In Order No. PSC-01-2489-EI, page 14, the Commission stated that "under an ISO model, where the ownership of transmission assets is retained by the individual retail-serving utilities, we believe this Commission would continue to set the revenue requirements needed to support retail transmission service and retain oversight over cost control and cost recovery." By exempting the retail load from Zonal Rates for the first five years of operation, the Applicants assert that the Commission will "have authority during the transition period to set each of the GridFlorida Company's revenue requirements for existing transmission facilities to support retail transmission service." The Applicants have not articulated how this Commission jurisdiction would be exercised.

Conclusion

While the Applicants' OATT allows the Commission to retain jurisdiction over the costs of the existing transmission system for a five-year period, the costs to the retail jurisdiction of any new transmission facilities (the System Charge), as well as the T.U. Adder and the GMC, will be determined by FERC from the outset. Beginning in year six, FERC will have exclusive control over all charges for both retail and wholesale transmission service. Staff believes it is premature at this time to decide whether the Applicants' proposal to phase in systemwide charges after year five of the RTO operation is appropriate. Staff agrees with FMG, who at the workshop supported a "wait-and-see" approach. FMG stated that "there is no reason that if we get to the end of a four- or five-year period and find that there needs to be a change, that it can't be, can't be sought at that point. . ." (Transcript, p. 119).

Based on the preceding analysis, staff does not believe the modified compliance filing provides for preservation of the Commission's jurisdiction over retail transmission rates and, therefore, does not comply with the Commission's December 20 Order. The Applicants should be directed to modify the GridFlorida compliance filing to recognize the Commission's continuing jurisdiction over the total cost of transmission service to retail customers. At the end of the initial five-year operation of the RTO, the Commission should review the transmission rate structure, given the operation of the RTO and the competitive market conditions in Florida.

ISSUE 3A: Were the following changes to the planning and operations aspects of the GridFlorida proposal necessary to comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Comparability of service to all LSEs; and,
b. POs and Third Party Agreements?

RECOMMENDATION: Yes. The Commission should find that the changes to the planning and operations aspects of the GridFlorida proposal were necessary and therefore comply with Commission Order No. PSC-01-2489-FOF-EI. (BREMAN, HARLOW, BUTLER, FLOYD)

STAFF ANALYSIS:

a. Comparability of Service to all LSEs

Seminole and its Members, both in their separate Pre-Workshop Comments and in their joint Post-Workshop Comments, have expressed concerns regarding comparability of service to all load serving entities. These concerns center around Section I.D., Reliability Agreement, of the Operating Protocol and Attachment R, Terms and Conditions of Service Applicable to Points of Delivery, of the OATT.

In their Pre-Workshop Comments, Seminole Members state that "[t]he transmission service to our systems is substantially inferior to that provided to the investor-owned utilities' own retail load. We have chronicled the facts supporting this conclusion in testimony filed with the FERC." The Pre-Workshop Comments of Seminole were similar in nature, adding that "the FERC turned a deaf ear on this very pressing issue, for reasons that fail analysis."

Staff has reviewed the changes made to Section I.D., Reliability Agreement, of the Operating Protocol. We recommend that these changes are in compliance with Commission Order No. PSC-01-2489-FOF-EI because no substantive changes have been made to this section of the Operating Protocol. The changes that were made to the remaining portions of the Operating Protocol were necessary because of the change in going from a for-profit Transco to a not-for-profit ISO, consistent with our Order.

Seminole and FMPA, in their Pre-Workshop Comments, took issue with the Applicants' removal of Attachment R from the OATT.

(Attachment R specifies delivery point interconnection standards.) However, in their most recent Post-Workshop Comments, the Applicants have re-inserted Attachment R, revised to reflect the ISO structure. Seminole and Seminole's Members Post-Workshop Comments state:

> Seminole's preliminary review of Attachment R indicates that the Applicants made the changes necessary to reflect the conversion from a Transco to an ISO, which is what Seminole had urged in its Pre-Workshop Comments (at 29-31).

Staff agrees with Seminole's assessment. FMPA did not make further comments on Attachment R in its Post-Workshop Comments.

Based on the above analysis, staff recommends that the changes made to the Operating Protocol and Attachment R were necessary to comply with the Commission's December 20 Order requiring GridFlorida to be restructured as a not-for-profit ISO.

b. POs and Third Party Agreements

Sections 2.31 and 6.16 of the POMA are additions regarding Third Party Agreements that were included in the compliance filing. FMPA, the Joint Commenters, and Seminole addressed these additions.

These commenters perceived these sections of the POMA as threatening to undermine GridFlorida's operational authority. The section in the preamble to the POMA stating that "each PO has rights and obligations with respect to third parties pursuant to Third Party Agreements that relate to Controlled Facilities . . ." was identified as being problematic by FMPA in their Pre-Workshop Comments. FMPA also criticized the definition of Third Party Agreements as being extremely broad. FMPA further asserts that in the event of an inconsistency between a Third Party Agreement and the POMA, it is not satisfactory to simply subordinate the POMA to the Third Party Agreement. Finally, Section 6.16.2, which reads as follows, was deemed unacceptable by Seminole in its Pre-Workshop Comments:

> No PO shall enter into any new Third Party Agreements after its Transfer Date that materially impairs GridFlorida's ability to perform its obligations under this Agreement.

The Applicants responded in their modified compliance filing by: (1) eliminating the section in the preamble that discussed PO's rights and obligations with respect to Third Party Agreements; (2) eliminating the definition of Third Party Agreement; (3) modifying the section on how to deal with inconsistencies between a Third Party Agreement and the POMA; and (4) eliminating Section 6.16.2.

The modification of the section on how to deal with inconsistencies between a Third Party Agreement and the POMA appears reasonable to staff. Rather than merely subverting the POMA to a Third Party Agreement, any unresolved disputes are set to be dealt with in accordance with the GridFlorida dispute resolution procedures. However, a caveat is included: "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."

Staff understands the need for the POMA to be clear and enforceable. Staff believes the changes contained in the Applicants' Post-Workshop Comments are a reasonable compromise between this interest and the importance of carrying out the obligations contained in the Third Party Agreements.

Staff concludes that the changes made to the POMA regarding Third Party Agreements contained in the Applicants Post-Workshop Comments are necessitated by changing from a for-profit Transco to a not-for-profit ISO in that they address the relationship of Third Party Agreements to the POMA. Staff considers the changes reasonable and necessary, and recommends that the Commission find that the changes made to the POMA regarding Third Party Agreements contained in the Applicants Post-Workshop Comments are in compliance with Commission Order No. PSC-01-2489-FOF-EI.

ISSUE 3B: Were the following changes to the planning and operations aspects of the GridFlorida proposal necessary to comply with Commission Order No. PSC-01-2489-FOF-EI:

a. Attachment T cutoff date; and,
b. POMA termination provision?

RECOMMENDATION: No. The Commission should find that the original language in Attachment T was appropriate in setting December 15, 2000, as the demarcation date and that the new language should be stricken. The Commission should find that Sections 4.3 and 5.6 of the POMA should be eliminated. (BUTLER)

STAFF ANALYSIS:

a. Attachment T cutoff date

The Applicants in their compliance filing, modified language in Attachment T concerning the demarcation date for new facilities. The new language, in pertinent part, changes the demarcation date from "after December 15, 2000" to "on or after January 1 of the year the Transmission Provider begins commercial operation."

Specifically, the modification of the language contained in Attachment T, Original Sheet 377 of Volume III is as follows:

> ~~9.0~~ **8.0** Rules Applicable to Service Entered Into After December 15, 2000
>
> ~~9.1~~ **8.1** Long Term Agreements
>
> If, ~~after December 15, 2000,~~ **on or after January 1 of the year the Transmission Provider begins commercial operations,** a PO ~~or Divesting Owner~~ enters into any new ETA, or agrees to purchase or provide long-term transmission service under an ETA executed prior to that date, the new service provided under such ETA shall be converted to Transmission Provider service upon the commencement of Transmission Provider operations . . .

Seminole and the Joint Commenters request that the Commission find that the Applicants' change of the demarcation date for new facilities is in excess of that which was necessary to comply with the Commission's December 20 Order and find that the change should be withdrawn.

Seminole points out that the proposed change violates the terms of the OATT Attachment T approved by the FERC and exacerbates the ongoing problem of the treatment of grand fathered contracts. For example, this proposed change causes particular concern for Seminole since the company entered into a contract with an independent power producer (Calpine) in anticipation of an RTO being in place before service commences (June 2004). Under the original language, any pancaking of transmission charges would be removed. According to Seminole, the Applicants' proposal would subject the Seminole/Calpine arrangement to pancaked rates.

FMG supports Seminole's position and recommends that the Commission order the GridFlorida Companies to retain the December 15, 2000, cutoff date. According to FMG, the marketplace anticipated that GridFlorida would be up and running by December 15, 2000, as instructed by FERC's Order No. 2000. FMG asserts market participants should not now be penalized for delays beyond their control or reasonable expectations. FMG states retaining the December 15, 2000 cutoff date would preserve the contractual bargains struck by Florida transmission customers and ensure that contracts executed after that date are not subject to unanticipated rate pancaking.

The Applicants discussed the demarcation date issue at the Workshop. They explained that the expected date of operation of the RTO was substantially delayed by virtue of the process before this Commission. For that reason, according to the Applicants, the date that was originally targeted was no longer applicable, and a new date that more closely ties with the actual implementation date was inserted.

The Applicants continued their argument in their Post-Workshop Comments. They claimed that the 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 2000. The Applicants state:

> 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 main argument is a prediction that 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 and new contracts whose costs would be included in the system-wide RTO rate, thereby exacerbating cost shifts among RTO customers.

Seminole addresses the same issue in its Post-Workshop Comments. It stated that the Applicants made no suggestion in their FERC filings that there was any linkage between the December 20, 2000, date in Attachment T and the hoped-for December 15, 2001, RTO implementation date. According to Seminole, the Applicants's justification of the selection of the date was because it prevented gaming prior to the date GridFlorida commences operation, i.e., to prevent entities from entering into ETAs prior to GridFlorida operations for the sole purpose of obtaining ETA status. According to Seminole, at the time of the May 29, 2001, compliance filing at FERC containing the key language to preclude pancaking, it was clear that GridFlorida would not become commercial by December 15, 2001, and the Applicants made no attempt to modify the date.

Staff perceives the critical question to be whether the change in the date was necessitated by Commission Order No. PSC-01-2489-FOF-EI and the change from a for-profit Transco to a not-for-profit ISO. The Applicants have not argued this to be the case even though interveners have taken the position that it was not necessary. The main argument made by the Applicants, i.e., that the relationship in time of the commercial date and the demarcation date should be maintained, is not persuasive. First, as Seminole noted, there were opportunities in the past where the Applicants could either have discussed or made a filing which was consistent with this precept, and notably, they did not. Secondly, the argument made by the Applicants regarding the possible exacerbation of cost shifting is likewise not persuasive. All else equal, if the RTO had come into being when originally expected, the costs now referred to as "extra" would be the same as if the demarcation date is held to the December 15, 2000 date.

For all these reasons, staff recommends that the Commission find that the change in the Attachment T cutoff date is not in compliance with the Commission's December 20 Order and that the new date should be changed.

b. POMA termination provision

The following language is contained in the POMA filed by the Applicants in Exhibit E of the Post-Workshop Comments. Section 4.3 references Section 5.6, and these sections read as follows:

> 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.
>
> 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.

Seminole claims that these two sections are examples of where proposed changes to the POMA fall outside of the ambit of the December 20 Order and are objectionable on the merits. Seminole goes on to argue that these revised sections have the effect of permitting POs to not be subject to the POMA if GridFlorida, within six months following the commencement of the term of the Agreement, has not "obtained and closed on financing in an amount sufficient to repay Start-Up Costs that have been submitted to GridFlorida." Seminole points to Section 8.5, Reimbursement of Start-up Costs, as satisfactorily protecting POs' financial interests. Seminole requests that the language in Sections 4.3 and 5.6 be struck.

Although Seminole effectively argues that these sections are unnecessary and fall outside of the ambit of the December 20 Order, Seminole does not directly address the harm of their inclusion. On the other hand, staff is unable to locate where the Applicants' addressed Seminole's arguments on this point. Therefore, staff has not seen any arguments as to why the inclusion of this language would be necessarily precipitated by a move from a for-profit Transco to a not-for-profit ISO.

For these reasons, staff recommends that the Commission find that Sections 4.3 and 5.6 of the POMA are not in compliance with the Commission's December 20 Order.

ISSUE 4A: Should the Commission approve the proposed method for mitigating the cost shifts resulting from the loss of revenues under existing long-term transmission agreements?

RECOMMENDATION: Yes. The Commission should, however, reexamine the potential impact of the phase-out of existing long-term contract revenues at the end of the initial five-year period of RTO operations. (BAXTER, SPRINGER)

STAFF ANALYSIS: Under the existing transmission regime in peninsular Florida, a transmission system customer may pay charges to two or more transmission systems, depending on the location of the customer's generator and load. The application of these multiple charges is often called "rate pancaking," since charges are "stacked" when moving electricity from the generator to the load across more than one transmission system.

Elimination of these rate pancakes was a stated goal of FERC as articulated in its Order 2000, which states:

> We believe that it is critically important for RTOs to develop rate making practices that: eliminate regional rate pancaking; manage congestion; internalize parallel path flows; deal effectively and fairly with transmission owning utilities that choose not to participate in RTOs; and provide incentives for transmission owning utilities to efficiently operate and invest in their systems. (Order 2000, Docket RM99-2-000, p. 505)

Under the proposed OATT Zonal Rates, the RTO customer (a utility) pays only a single charge for service within the RTO. This charge is based on the zonal rate in effect for the zone in which the customer's load is located. The Applicants were concerned about the impact on transmission owners of the loss of revenues from existing long-term transmission service agreements containing pancaked rates that would result if these agreements were immediately converted to RTO service. The Applicants have proposed a treatment for these agreements to mitigate this impact.

This treatment is described in Attachment T to the RTO OATT, and is applicable to contracts that were entered into prior to January 1 of the year in which RTO operations begin. Any agreements entered into after that date would be subject to the RTO OATT. Staff notes that this cutoff date was changed from the date contained in the Transco filing. In that filing, the cutoff date was December 15, 2000. That change is addressed in Issue 3B.

Paragraph 7 of Attachment T addresses the treatment of existing long-term agreements for transmission service that involve service between two zones of the RTO, where a single transmission customer pays transmission charges on both systems (i.e., pancaked transactions). Such agreements will not be subject to any of the RTO rates. Instead, the transmission owners will continue to collect charges under the agreements for the first five years of operation of the RTO. These revenues will serve to reduce the owners' zonal revenue requirements.

The Applicants propose to phase-out long-term transmission charges under these existing agreements during years six through ten of commercial operation of the RTO. Specifically, Attachment T to the OATT states:

> The transmission charges levied under the ETA [Existing Transmission Agreement] shall remain in effect during Tariff Years 1-5 of Transmission Provider operations and shall be phased out in equal increments (20% per year) over Tariff Years 6-10 of Transmission Provider operations to the extent the contract remains in effect as of those dates.

Thus, beginning in year 10, the transmission owner would no longer receive any of the revenues associated with these existing long-term transmission service agreements.

Staff believes that the Applicants' proposed phase-out of the long-term transmission revenues under existing transmission contracts is an appropriate mechanism to mitigate the cost shifting that would result from the immediate transition to zonal rates. However, staff believes that the Commission should revisit this issue after the initial five-year period of RTO operations in order to reassess the impact of phasing out the revenues under these existing contracts. At that time, sufficient data should be available to make an accurate assessment of the appropriate treatment of any remaining existing contracts.

ISSUE 4B: Does the proposed method for alleviating cost shifting from the elimination of short-term transmission revenues comply with Commission Order No. PSC-01-2489-FOF-EI?

PRIMARY STAFF RECOMMENDATION: No. Transmission owners should be fully compensated for the loss of short-term transmission revenues for the first five years of RTO operation. (BAXTER, SPRINGER)

ALTERNATIVE STAFF RECOMMENDATION: Yes. The proposed method for alleviating cost shifting from the elimination of short-term transmission revenues. It provides immediate benefits to the participants in the RTO and should be implemented. Any adversely affected utility must balance the benefits of participating in the RTO with the commensurate costs. (KUMMER)

PRIMARY STAFF ANALYSIS: A fundamental goal of Order 2000 is the elimination of pancaked transmission rates:

> Non-pancaked rates are a central attribute of RTO formation. We have found that pancaking of access charges acts as a major detriment to competition in the bulk power market. [Order 2000-A, Docket RM99-2-001, page 79]

The Applicants' proposal eliminates charges for short-term wheeling effective with the beginning of RTO operation. In order to mitigate the loss of these revenues, the RTO will reimburse the affected utilities using the revenues received by the RTO for certain point-to-point transactions. To the extent such revenues are available, utilities suffering revenue losses will be reimbursed on a declining percentage basis during the first five years of RTO operation. Unreimbursed costs may be rolled over to subsequent years, however, no reimbursements will be made after year five of RTO operation.

During the stakeholder collaborative process that occurred prior to the GridFlorida Transco filing, it was recognized that utilities that currently pay short-term wheeling charges would benefit from the elimination of such payments, while those receiving the revenues would be harmed if depancaking of transmission rates occurred. The approach to phase out short-term transmission revenues in the first five years, and to phase-out long-term transmission revenues in the second five years was designed to avoid an abrupt reduction in revenues to utilities who receive wheeling revenues today.

While Order No. PSC-01-2489-FOF-EI notes that some type of cost mitigation measure will likely be necessary if short-term wheeling revenues are eliminated, staff believes that the proposal for phasing out short-term wheeling revenue is not appropriate at this time.

The Commission's approval of this cost mitigation plan would make this untested proposal permanent and irrevocable. Approving the proposal would preclude the Commission from adopting alternative cost recovery approaches before any cost or benefits of the RTO can be verified. The Commission should not forfeit the opportunity to make an informed decision based on the measured impacts that can only be determined by an operable Florida RTO.

Financial harm would be done to Florida utilities if the phase-out of short-term wheeling revenues commenced with the start of the RTO. The Applicants have stated that they would lose $8.1 million per year. JEA has stated that it stands to lose approximately $10 million per year. Other utilities may also be affected. The total amount of short-term revenue loss is speculative at this point, and is subject to a great deal of uncertainty as many of the dynamics of a functioning RTO remain to be worked out.

Primary staff believes that the proposed mitigation plan to compensate transmission owners for the loss of short-term wheeling revenues is not appropriate. As an alternative, Primary staff recommends that transmission owners be reimbursed by the RTO for 100% of their lost short-term wheeling revenues for the first five years of RTO operation. The reimbursements should be calculated using a base year amount of revenues from short-term Inter-Zonal service. The base year should be the year prior to January of the year the Transmission Provider begins commercial operations. This reimbursement should be made out of revenues received by the RTO for short-term Firm and Non-Firm Point-to-Point Transmission service, and should continue until all lost short-term wheeling revenue is reimbursed.

<u>ALTERNATIVE STAFF ANALYSIS</u>: The approach to phase-out short-term transmission charges in the first five years, and to phase-out long term transmission contracts in the second five years was designed to avoid an abrupt reduction in revenues to utilities whose transmission facilities provided a conduit for such transactions. Delaying phase-out of long term transmission transactions until Year six allows utilities to adjust to the loss of short-term revenue before dealing with the potentially larger problem of loss of revenues associated with long-term transmission contracts.

The Applicants stated in the Pricing Proposal filed with FERC in their October 16, 2000 filing that the "proposal is intended to minimize the cost shifts associated with combining transmission systems with differing rate levels, thereby maximizing RTO participation and is consistent with the approach taken by every ISO to date." [Order 2000 Compliance Filing by Florida Power & Light, Florida Power Corporation and Tampa Electric Company Volume II in Docket No. RT01-67, page 91]

As compensation for the loss of short-term transmission revenue, Attachment T of the proposed tariff states that:

> Participating Owners that lose short-term wheeling revenue due to the elimination of pancaked rates shall be compensated for such loss through payments by the Transmission Provider out of revenues received by the Transmission Provider for short-term Firm and Non-Firm Point-to-Point Transmission service. The loss of revenue for each Participating Owner shall be calculated using a base year amount of revenues from short- term Inter-Zonal service. The base year shall be the year prior to January of the year the Transmission Provider begins commercial operations. The Transmission Provider shall make payments to each Participating Owner for its base year amount in declining increments (by 20 percent per year) over the first five Tariff Years. If such revenues are insufficient in any Tariff Year to make such payments, the unfunded amounts shall be carried over and paid out of revenues in subsequent Tariff Years (but not to exceed Tariff Year 5). [Paragraph 7.2, Tariff Sheet 307]

It is staff's understanding that the revenue used to compensate owners described in this section refers to revenue received from transporting power through or out of the RTO as opposed to serving load within the RTO.

JEA is the only utility which stated an objection to the phase-out of short-term wheeling revenues, although all utilities that currently wheel power through their territories will be affected, and other utilities may also experience losses. The revenues of concern to JEA are generated by the sale of non-firm wheeling, pursuant to JEA's FERC Transmission tariff, over JEA's portion of the 500 kV lines comprising the Florida/Georgia interface. In its Post-Workshop Comments, JEA indicated that it could lose approximately $10 million per year, or more than $0.90/mWh, under the current proposal, compared to the estimated loss to the Applicants of $8.1 million, or less than $0.06/mWh. This may be mitigated by reimbursements from transmission revenues arising from short-term firm and non-firm transmission revenues realized by the RTO, but there is no information available to determine the amount of these revenues that will be available for reimbursement.

Cost to transmission owners. While JEA is correct that the cost shift is a result of the current planning process for transmission, this is no more true for JEA than it is for any other utility which may lose transmission revenues under the proposal. Seminole, in its Pre-Workshop Comments, states that the FPSC should view its role as the protector of the well-being and equitable treatment of all retail consumers in the state. While this comment referred specifically to the treatment of T.U. facilities, it is equally applicable to the elimination of short-term wheeling. In addition, the RTO is not expected to begin operations until at least 2004. With the phase-out period, JEA will have close to an additional 10 years to plan for alternatives to this revenue source. In the meantime, all citizens of Florida can benefit from lower cost power by the elimination of the short-term wheeling arrangements.

Benefits of the Phase Out. FERC has been very clear about the desire for removing multiple transmission charges. To delay or eliminate this first step may be interpreted as obstructing FERC's intent in establishing RTOs. It is also important that the municipal and cooperative utilities see a short-term benefit from participation in the RTO, in order to encourage them to join. If membership brings no relief from pancaked wheeling charges and carries only the additional cost of operation of the RTO, few utilities would likely find participation attractive. If the decision is made to go forward with an RTO, it is in the best interest of all ratepayers to maximize participation in the RTO to realize the joint planning and operation benefits. Finally, as noted above, the cost of power to many Florida ratepayers will be reduced as a result of this phase-out.

JEA will be placed in the same situation as any transmission owner weighing the perceived benefits from being a participant in the RTO against the cost of not participating. Therefore, the alternative staff recommendation is that the Commission approve the phase-out of short-term revenue as proposed by the Joint Applicants.

ISSUE 4C: Should the Commission approve the proposed method to recover incremental transmission costs as included in the GridFlorida proposal?

RECOMMENDATION: Yes. While the Commission's December 20 Order did not make a determination of the most appropriate mechanism for recovery of costs associated with GridFlorida, staff believes sufficient information is available for the Commission to make such a determination. The Commission should authorize each applicant to recover its incremental transmission costs approved by the FPSC through the capacity cost recovery clause. (BOHRMANN)

STAFF ANALYSIS: The Applicants have stated that the Commission should allow recovery of incremental transmission costs, which include a systemwide charge, a grid management charge, and a T.U. adder, through a cost recovery mechanism for the reasons described below. First, a cost recovery mechanism will allow the Applicants to timely recover their costs without continually resetting their base rates. Second, because these incremental costs are outside the Applicants' control, the Applicants can not minimize these costs. Third, a cost recovery mechanism will avoid overrecoveries and underrecoveries of costs and facilitate review of the level and basis for future transmission costs. Fourth, the Commission can easily implement a cost recovery mechanism because these costs are distinct and easily measurable.

FMPA supports the Applicants' proposal to recover these incremental costs through a cost recovery mechanism.

OPC states that the Applicants could avoid these incremental costs without any degradation of service if the Applicants just chose not to participate in an RTO. OPC states that the Applicants seek recovery of unquantified costs voluntarily incurred in support of a federal endeavor which divests the Commission of its jurisdiction. Thus, OPC questions the logic, as well as the prudence, of the Applicants seeking to recover these incremental costs through a cost recovery mechanism.

While concurring with OPC's comments, FIPUG states that the Commission should authorize the Applicants to recover any RTO-related costs through base rates. FIPUG assets that recovery through base rates provides the Applicants an incentive to minimize these incremental costs, but a cost recovery mechanism would not. Also, FIPUG states that the Commission should put a mechanism in place to ensure that any incremental costs are prudent, reasonable, and further the RTO's goal. Finally, FIPUG believes that any cost recovery mechanism should consider whether each Applicant's net operating income is sufficient to recover these incremental costs, instead of an automatic cost recovery mechanism.

The Applicants propose to recover incremental transmission costs as a new component of the capacity cost recovery clause. The Applicants would allocate these incremental costs to their rate classes on a 12 Coincident Peak (CP), $1/13^{th}$ Average Demand (AD) basis. Hence, each Applicant would allocate $12/13^{ths}$ of these costs to each customer class based upon the contribution of each class to the 12 monthly system peaks. Each Applicant would allocate the remaining $1/13^{th}$ of these costs based upon the contribution of each class to total energy sales. This is the same method used to allocate transmission costs in setting base rate charges. The following table illustrates the preliminary projected costs that each applicant anticipates seeking recovery of through the capacity clause for 2004 through 2008. The source of this information is the Applicants' response to staff's May 6, 2002, informal data request.

Preliminary Projections of Future Incremental Transmission Costs					
($ million)	2004	2005	2006	2007	2008
Florida Power & Light	$75	$113	$143	$171	$202
Florida Power	$29	$43	$53	$63	$74
Tampa Electric	$18	$26	$32	$37	$44

As discussed above, OPC asserts that any incremental costs, i.e., costs beyond those reflected in base rates, associated with charges paid by the Applicants to GridFlorida, cannot be considered prudent for purposes of cost recovery because the Applicants voluntarily incurred these costs by choosing to form and participate in an RTO. Staff notes that the Commission, in its December 20 Order, directly addressed the issues of whether the Applicant's formation of GridFlorida was truly voluntary and whether formation of GridFlorida was prudent. At page 7 of the Order, the Commission stated:

> We find that the GridFlorida Companies were prudent in forming an RTO in response to FERC's Order No. 2000. Although participation in an RTO is voluntary under Order No. 2000, FERC has acknowledged that it may use its regulatory authority in other areas to compel RTO participation. Further, formation of an RTO should provide benefits for Peninsular Florida and its ratepayers, most importantly by facilitating an improved wholesale electricity market, encouraging competition by removing access impediments and restrictions.

In reaching these conclusions, the Commission noted that the GridFlorida Companies, by proactively forming an RTO, avoided forced participation in an RTO in which they would have had no opportunity to be involved in structure and policy decisions. Accordingly, OPC's arguments appear to represent an untimely challenge to the Commission's December 20 Order.

Staff agrees with FIPUG that recovery of incremental transmission costs through base rates would provide the Applicants an incentive to minimize these incremental costs. However, as the table above indicates, the Applicants have projected that these incremental costs will change substantially during the first five years of the RTO. Staff recommends that the Commission retain the jurisdiction to review all charges proposed for recovery, just as is currently done. By authorizing recovery through the capacity clause, the Commission would ascertain that each applicant is fairly compensated for prudent transmission costs incurred to provide its ratepayers with safe, reliable electric service. Also, the Commission will scrutinize these incremental transmission costs to the same degree of any other cost recovered through a recovery clause to determine whether any incremental costs are prudent, reasonable, and consistent with the RTO's goal. Finally, the Commission has historically not considered a utility's earnings as relevant to a utility's ability to recover an otherwise acceptable cost through the cost recovery clause. The Commission should not do so in the instant case.

Staff recommends that the Commission should authorize each Applicant to recover any incremental transmission costs approved by the Commission through the capacity cost recovery clause. The costs incurred to provide transmission should be subject to the same review and discovery as any other cost which is proposed for recovery. Each Applicant should allocate these incremental transmission costs among its customer classes on a 12CP, 1/13th AD basis. The Commission should not consider an applicant's earnings as relevant to whether the Applicant should recover these incremental transmission cost through a cost recovery clause.

ISSUE 5: Does the market design included in the modified GridFlorida proposal comply with Commission Order No. PSC-01-2489-FOF-EI?

RECOMMENDATION: No. The revised market design includes (1) financial transmission rights for transmission capacity allocation; (2) unbalanced schedules with a voluntary day-ahead market; (3) market clearing prices for balancing energy and congestion management; and (4) sharing of gains on real-time energy sales. As such, the revised GridFlorida market design is not in compliance with Commission Order No. PSC-01-2489-FOF-EI, which required (1) physical transmission rights; (2) balanced schedules; and (3) get-what-you-bid pricing for balancing energy and congestion management. The revisions proposed by GridFlorida may be beneficial to retail ratepayers and assist in the efficient operation of the RTO. In order to adequately justify the new provisions, the GridFlorida Companies should be directed to file a petition not later than 30 days from the Commission's vote on this issue. Such a filing will allow the Commission to conduct an expedited evidentiary hearing on the merits of the revised market design proposal and would be consistent with the requirements of Order No. PSC-01-2489-FOF-EI. (BALLINGER, FUTRELL)

STAFF ANALYSIS: Pursuant to Order No. PSC-01-2489-FOF-EI, the Commission agreed with the GridFlorida Companies that the use of balanced schedules and physical transmission rights (PTRs) were an appropriate foundation for an RTO and would allow a gradual transition to a more competitive generation market. However, the Commission disagreed with the use of a market clearing price mechanism for the energy balancing market and congestion management. Instead, the Commission required the use of a get-what-you-bid approach to these markets. On January 4, 2002, the Joint Commenters requested that the Commission reconsider these findings concerning the GridFlorida market design and other issues associated with the GridFlorida filing. Pursuant to Order No. PSC-02-0350-FOF-EI, issued March 14, 2002, the Commission denied the joint request for reconsideration but did not preclude the Joint Commenters from pursuing such issues as part of the Commission's compliance filing review. As part of the March 20, 2002, Compliance Filing, the Applicants complied with the market design requirements of the Order, with changes noted in Attachment P of the OATT. At the Workshop, the majority of the interveners suggested that market design issues, such as PTRs, market power, and market clearing prices, should be addressed by the FERC.

On July 2, 2002, the GridFlorida Companies filed supplemental Post-Workshop Comments addressing market design. In that filing, the GridFlorida Companies propose to revise the market design filed on March 20, 2002, with the following changes:

1. A Financial Transmission Rights (FTRs) model with Locational Marginal Pricing (LMP);

2. A two-settlement system with a voluntary day-ahead market and a real-time market with unbalanced schedules; and

3. Market clearing prices to be calculated and paid to generators for energy balancing and congestion management with any gains from sales in the real-time market allocated to customers and a portion allocated to the IOU as an incentive for participation in the market.

The July 2, 2002, filing also states that other aspects of market design will not change including the following: (1) the annual allocation of transmission rights to load serving entities (LSEs) based on their use of the GridFlorida transmission system; (2) LSE specific capacity requirements through the Installed Capacity and Energy market; and (3) penalties for imbalances in the real-time market that exceed specified imbalance levels.

The GridFlorida Companies contend that adoption of an LMP structure coupled with a two-settlement system will better serve the Commission's goal of a Florida-specific RTO, as concerns about seams issues with neighboring RTOs would be eliminated or minimized. (The FERC issued its Standard Market Design (SMD) Notice of Proposed Rulemaking (NOPR) on July 3, 2002. Staff is currently evaluating that 600 page document.) It is also argued that the revised market design will be easier to implement and evolve over time as a result of multiple RTOs utilizing such a system. The GridFlorida Companies also state that the revised market design will enhance customer protection by limiting gaming by providing price transparency through the posting of nodal prices.

The GridFlorida Companies believe that retail ratepayers will be harmed by the get-what-you-bid method of determining prices for energy balancing and congestion management. They argue that a supplier will bid its estimate of the price at which the market will clear as opposed to bidding its cost and this effect would produce an inefficient mix of resources used to serve load. The companies believe that the method for determining these prices should be separated from the concerns of market power because market power mitigation measures are to be adopted regardless of the system utilized.

On July 12, 2002, interveners filed supplemental comments responsive to the proposed market design amendments. These comments demonstrate a range of opinion as to the proposed amendments and the procedural options this Commission should consider. The proposed amendments are supported in concept by Mirant and Calpine, but both recommend the Commission retain jurisdiction as to specific details. JEA generally supports the proposed amendments but requests a Commission hearing to ultimately resolve the proposed amendments. Reliant supports the proposed amendments as well. Seminole requests that the Commission deny the proposed amendments and defer consideration of the issues until after issuance of FERC's SMD rule. FMPA supports the Commission allowing the GridFlorida Companies to move forward at FERC with an SMD-consistent market design. FMG proposes deferral of ruling on market design pending completion of FERC's SMD rulemaking or deferring action on GridFlorida entirely pending the outcome of both FERC's SMD rulemaking and the Southeastern Association of Regulatory Utility Commissioners' (SEARUC) RTO cost/benefit study. Reedy Creek states that regardless of the implementation of an FTR or PTR system, transmission rights should be allocated to existing users of the system and reallocated to the load serving entity upon expiration of existing agreements.

It is clear that the proposed amendments are not in compliance with Order No. PSC-01-2489-FOF-EI. That Order is based on a fully developed record of evidence. Reversal of the Commission's direction on market design in that order, based on the arguments in a nineteen page filing is not appropriate at this time. The GridFlorida Companies have not petitioned the Commission for approval of these changes, as suggested by Order No. PSC-01-2489-FOF-EI, nor have they filed with the Commission an amended OATT including the changed market design to allow a thorough review in this docket.

In addressing balanced schedules, the Commission stated in Order No. PSC-01-2489-FOF-EI:

> In an effort to transition to a more competitive generation market, any RTO should start with balanced schedules as a foundation. As experience is gained and market participation increases, the RTO can evolve to accommodate such changes. In addition, however, the GridFlorida Companies shall be required to seek this Commission's approval before changing from the proposed balanced schedule approach in order to ensure that retail ratepayers are not adversely affected.

The Commission clearly recognized that change may be appropriate in the future. The changes proposed by the GridFlorida Companies may be beneficial to retail ratepayers and to the efficient operation of the RTO. However, the Order required the GridFlorida Companies to explicitly seek the Commission's approval of a departure from balanced schedules so it could assure itself that such a departure not adversely impact retail ratepayers. The July 2, 2002, filing does not meet these requirements. Instead, the GridFlorida Companies rely on a yet to be determined penalty for over-reliance on the real time market to bring discipline to the market.

In addressing the balancing energy market and congestion management, the Commission stated in Order No. PSC-01-2489-FOF-EI:

> In keeping with the step-by-step approach that we are taking in this Order, we think that the "get what you bid" alternative is preferable for all transactions until the GridFlorida Companies can demonstrate that sufficient participants exist and that localized market power has been adequately addressed. The modified GridFlorida proposal to be filed pursuant to this Order shall utilize this alternative.

The market clearing price mechanism proposed is contrary to the order. The Commission emphasized its concern regarding market power as stated above. The get-what-you-bid approach was deemed preferable particularly while the RTO is in its formative stages. Exposing retail ratepayers to the vagaries of a market-based balancing energy market without the establishment of a strong market monitor is not appropriate. Material changes to the approach approved by the Commission may be appropriate when the GridFlorida Companies can demonstrate that a strong market monitor will be in place.

The GridFlorida Companies also support an incentive to be received on gains from sales in the real-time market. They state that a substantial portion should be allocated to retail customers, but provide no further detail. The Commission has already established a mechanism whereby Florida electric investor-owned electric utilities, including the Applicants, can earn a shareholder incentive for gains on non-separated wholesale sales if a three-year rolling average of such gains is bettered. More information is needed to better understand the intent of the Applicants with this proposal, i.e., how the proposal is intended to relate to the current incentive mechanism. It is staff's understanding that this concept was rejected by the FERC in the initial GridFlorida filing.

The GridFlorida Companies have not met the requirements of the Commission's December 20 Order to demonstrate that localized market power has been adequately addressed. In the revised market design filing, the GridFlorida Companies simply state "that market clearing prices should be established and paid to suppliers, and that narrowly tailored market power mitigation mechanisms should be developed to address market power concerns."

In addressing transmission rights, the Commission stated a preference for PTRs, and gave the following direction in Order No. PSC-01-2489-FOF-EI, "We find that the approach of using PTRs shall remain fixed until such time that GridFlorida petitions this Commission and justifies a different approach." Again, the July 2, 2002, filing by the GridFlorida Companies does not meet the requirements of the Commission's December 20 Order. The revised market design, as proposed, may be of benefit to retail ratepayers. It is not appropriate, however, to reverse the Commission's Order without a more substantive examination of the issue. For example, there are questions about how FTRs will be allocated and valued and how the revenues derived from the sale of FTRs will be treated. In addition, it is unclear how the revised market design will mitigate market manipulation and at what cost.

On July 30, 2002, the GridFlorida Companies and the interveners filed consensus language that stated the following: (1) the congestion management system for GridFlorida should not be a PTR system, and the Commission should remove its prior requirement for GridFlorida to adopt a PTR system; (2) a hearing is not needed to move away from a PTR system or for the Commission to remove its prior requirement to implement a physical rights system; and (3) these consensus views should not be construed as prejudicing a party's position on any other issue, as such positions and any related requests regarding Commission action have been previously expressed.[1] While the consensus language indicates that a hearing is not necessary for the Commission to move away from using a physical rights system, there is no consensus language addressing how the Commission should proceed to adopt an alternative market design.

In order for the GridFlorida Companies to adequately justify the new market design provisions, including: (1) financial transmission rights for transmission capacity allocation; (2) unbalanced schedules with a voluntary day-ahead market; (3) market clearing prices for balancing energy and congestion management; and (4) sharing of gains on real-time energy sales, the GridFlorida Companies should be directed to file a petition addressing these changes no later than 30 days from the date of the Commission's vote on this issue. Such a filing will allow the Commission to conduct an expedited evidentiary hearing. A hearing will allow the Commission and parties to fully understand the proposed changes and address those changes in a timely manner.

[1]According to the July 30, 2002, filing, those parties that have expressed their support for this consensus language are: Calpine Corporation, Duke Energy North America, Florida Municipal Power Agency, Florida Power Corporation, Florida Power & Light Company, the City of Gainesville d/b/a Gainesville Regional Utilities, Kissimmee Utility Authority, the City of Lakeland, Florida d/b/a Lakeland Electric, Mirant Americas Development, Inc., Reliant Energy Power Generation, Inc., Seminole Electric Cooperative, Inc., the City of Tallahassee, Florida, Tampa Electric Company. Reedy Creek Improvement District has stated that it does not oppose the consensus language. JEA does not agree with the consensus language. While JEA agrees with an LMP model as a general principle, the lack of detail regarding the revised market design proposal prevents JEA from supporting it at this time. JEA believes that a hearing would facilitate the development of the details necessary for both JEA and the Commission to adequately review the revised market design proposal.

ISSUE 6: Should this docket be closed?

STAFF RECOMMENDATION: The docket should be closed after the time for filing an appeal has run on those issues resolved as final agency action, or upon issuance of a consummating order on those issues resolved by proposed agency action, whichever occurs later. If no person whose substantial interests are affected by proposed agency action taken by the Commission on any issue in this docket files a protest, the docket should be closed after the time for filing an appeal has run on the issues resolved as final agency action, or upon issuance of a consummating order on the issues resolved by proposed agency action, whichever occurs later. (C. KEATING)

STAFF ANALYSIS: If no person whose substantial interests are affected by proposed agency action taken by the Commission on any issue in this docket files a protest, the docket should be closed after the time for filing an appeal has run on the issues resolved as final agency action, or upon issuance of a consummating order on the issues resolved by proposed agency action, whichever occurs later.

To the extent the Commission requires, as proposed agency action, any modifications to GridFlorida beyond those found necessary to comply with the Commission's December 20 Order, such modifications should be filed for administrative approval within 30 days of the issuance of the Order in this docket.

Upon issuance of the order that results from this recommendation, the Commission should provide the FERC with a copy of its order along with a cover letter explaining the nature of the order and the main points addressed in the order. A draft cover letter to the FERC can be presented for consideration by the Commissioners at an Internal Affairs meeting. Consistent with the Commission's December 20 Order concerning GridFlorida, the Commission should indicate that we intend to continue working cooperatively with both the FERC and the GridFlorida Companies to ensure development of an RTO that satisfies both Federal and State policy concerns.