

**ORIGINAL**

**JOHN & HENGERER**  
A LAW PARTNERSHIP  
1200 17TH STREET, N.W.  
SUITE 600  
WASHINGTON, D.C. 20036-3013

DOUGLAS F. JOHN  
EDWARD W. HENGERER  
KEVIN M. SWEENEY  
KIM M. CLARK  
GORDON J. SMITH  
MATTHEW T. RICK  
ELIZABETH A. ZEMBRUSKI

**September 17, 2002**

TELEPHONE  
(202) 429-8809

TELECOPIER  
(202) 429-8805

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

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

Dear Ms. Bayo:

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

Thank you very much for your assistance and please do not hesitate to contact me at (202) 429-8801 if you have any questions.

Sincerely,



Douglas F. John  
John & Hengerer  
1200 17<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036-3013  
Phone: (202) 429-8809  
E-mail: [djohn@jhenergy.com](mailto:djohn@jhenergy.com)

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM 5 \_\_\_\_\_  
CTR \_\_\_\_\_Enclosures  
ECR \_\_\_\_\_ec: Service List  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER DATE

09945 SEP 18 02

FPSC-COMMISSION CLERK

02 SEP 18 AM 10:33  
DISTRIBUTION CENTER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 020233-EI  
Filed: September 18, 2002

MOTION FOR RECONSIDERATION OF LAKELAND ELECTRIC,  
KISSIMMEE UTILITY AUTHORITY, GAINESVILLE REGIONAL UTILITIES,  
AND THE CITY OF TALLAHASSEE, FLORIDA,

Pursuant to Rule 25-22.060 of the Florida Administrative Code, the City of Lakeland, Florida d/b/a Lakeland Electric (Lakeland), the City of Tallahassee, Florida (Tallahassee), Kissimmee Utility Authority (KUA), and the City of Gainesville, Florida d/b/a Gainesville Regional Utilities (GRU) – collectively referred to herein as the Florida Municipal Group (FMG)<sup>1</sup> – submit this Motion for Reconsideration of the Commission's September 3, 2002, order in the above-captioned proceeding (September 3<sup>rd</sup> order).<sup>2</sup>

**EXECUTIVE SUMMARY**

The FMG urges the Commission to (i) reconsider its decision to hold a hearing on market design issues at this time, and (ii) reconsider its acceptance of the bright-line, 69 kV standard for determining which facilities participating owners must turn over to GridFlorida for operational purposes.

**BACKGROUND**

On December 20, 2001, the Commission issued an order in Docket No. 010577-EI that addressed certain components of the GridFlorida RTO proposal (December 20<sup>th</sup> order).<sup>3</sup> The September 3<sup>rd</sup> order reviewed GridFlorida's modified RTO filing submitted in purported

---

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

<sup>2</sup> Order No. PSC-02-1199-PAA-EI.

<sup>3</sup> Order No. PSC-01-2489-FOF-EI.

DOCUMENT NUMBER-DATE  
09945 SEP 18 02  
FPSC-COMMISSION CLERK

compliance with the December 20<sup>th</sup> order. The Commission convened a hearing to review certain market design proposals that were found to be non-compliant and accepted other proposals that were found to be compliant (including the proposal to adopt a bright-line, 69 kV standard for determining which facilities a participating owner must turn over to the RTO for operational purposes).

### **DISCUSSION**

The FMG members urge the Commission to reconsider its decision (i) to convene a hearing on market design issues at this time, and (ii) to accept the bright-line, 69 kV standard.

**A. The Commission Should Reconsider its Decision to Convene a Hearing on Market Design Issues at this time.**

The September 3<sup>rd</sup> order found certain GridFlorida market design proposals to be non-compliant with the December 20<sup>th</sup> order, including proposals to adopt locational marginal pricing, financial transmission rights, market clearing prices, and unbalanced schedules. Nonetheless, the Commission recognized that such proposals "may be of benefit to retail ratepayers" and initiated a hearing process to review the proposals further.<sup>4</sup>

Although the FMG members fully support the Commission's desire to play a critical role in determining GridFlorida's market design, they urge the Commission to reconsider its decision to convene a hearing on these issues at this time. As the Commission is well-aware, the Federal Energy Regulatory Commission (FERC) proposed a Standard Market Design (SMD) in a Notice of Proposed Rulemaking (NOPR) issued on July 31, 2002.<sup>5</sup> FERC has since modified

---

<sup>4</sup> September 3<sup>rd</sup> order at p. 69.

<sup>5</sup> *Remedying Undue Discrimination through Open Access Transmission Service and Standard Market Design*, Notice of Proposed Rulemaking issued in FERC Docket No. RM01-12-000 (July 31, 2002) (SMD NOPR).

the comment schedule for the NOPR, included dates for both initial and reply comments, and scheduled at least three technical conferences.<sup>6</sup>

The FMG members see no practical value (and increased burdens and complexities) in addressing the same issues, at the same time, in two parallel and interrelated proceedings. Instead, the Commission should defer the hearing at this time pending FERC's completion of the SMD rulemaking. This approach is consistent with the recommendation advanced by the FMG in their July 12, 2002, supplemental post-workshop comments.<sup>7</sup> Once a final SMD is available, this Commission will have a model against which it can analyze GridFlorida's market design proposals. Indeed, GridFlorida will ultimately be required to justify any deviations from the SMD that is adopted by FERC, so deferring a hearing until after a final SMD is available will enable the Commission to develop a more sustainable record for any SMD variations that are adopted.

**B. The Commission Erred in Accepting, as a Final Order, the Proposed Bright-Line, 69 kV Standard for Determining which Facilities a Participating Owner must turn over to the Operational Control of the RTO.**

For largely the same reason that the Commission should defer a hearing on market design issues at this time, the Commission should also reconsider its decision in the September 3<sup>rd</sup> order to accept GridFlorida's proposed bright-line, 69 kV standard for determining which facilities a participating owner must turn over to the RTO for operational purposes.

The FMG objected to the bright-line test in their comments on GridFlorida's March 20, 2002 compliance filing, through their counsel's oral remarks at the May 29, 2002, workshop held

---

<sup>6</sup> Initial comments are due by November 15, 2002, with reply comments due by December 20, 2002. Technical conferences are scheduled for October 2 and 3, 2002, and December 11, 2002. FERC has also reserved a week in January 2003 to hold additional technical conferences that may be deemed necessary.

<sup>7</sup> See FMG Supplemental Post-Workshop Comments at pp. 2-4.

in this proceeding, and in post-workshop comments.<sup>8</sup> The Commission has yet to address the FMG's substantive comments on this issue, principally, that the standard may inappropriately require participating owners to relinquish control of facilities with a nominal voltage rating of 69 kV or above, but that nonetheless perform a local distribution function. Instead, the September 3<sup>rd</sup> order accepted the bright-line standard on the sole basis that it was found to comply with the December 20<sup>th</sup> order, did not violate federal law, and in any event was a matter for determination by the FERC.<sup>9</sup> The December 20<sup>th</sup> order was similarly brief, finding that the proposed bright-line standard was not contested, and that there was "no evidence in the record suggesting that the demarcation point should be something other than 69 kV."<sup>10</sup> The September 3<sup>rd</sup> and December 20<sup>th</sup> orders devote a total of three (3) pages to this issue, none of which address the fundamental issue of whether it is appropriate for the RTO to assume operational control of facilities that distribute power locally where the owner of the such facilities desires to retain that control.

FERC's proposed SMD – which embodies FERC's current thinking – does not reflect a bright-line test. Instead, it proposes to retain the seven-factor test adopted by Order No. 888 for demarcating transmission and distribution facilities on a functional basis (*i.e.* whether a facility performs a transmission or distribution function, and not merely the facility's nominal voltage rating).<sup>11</sup> The NOPR requests comments on several issues, including whether regional

---

<sup>8</sup> See FMG Pre-Workshop Comments at pp. 16-19 (May 8, 2002); FMG Post-Workshop Comments at pp. 6-8 (June 21, 2002); Transcript of May 29, 2002 Workshop at pp. 105-107.

<sup>9</sup> September 3<sup>rd</sup> order at pp. 37-39. Significantly, the FMG members were not even parties to the prudence review that produced the December 20<sup>th</sup> order.

<sup>10</sup> December 20<sup>th</sup> order at p. 17.

<sup>11</sup> See SMD NOPR, slip op. at pp. 201-202 (PP 367-368).

variations on this issue should be accommodated and whether a bright-line test should be used "either in addition to or in lieu of the seven factor test[.]"<sup>12</sup>

In short, the bright-line standard approved by the September 3<sup>rd</sup> order is at odds with the approach taken by FERC's proposed SMD, is not mandated by anything FERC has done in the GridFlorida RTO proceeding in Docket No. RT01-67-000, and the record supporting the Commission's acceptance of the bright-line standard is virtually non-existent. The Commission has simply not considered this issue fully, not analyzed the impact of a bright-line standard on Florida retail consumers, and not developed an adequate record to sustain its decision in any future FERC proceeding applying the SMD to GridFlorida. The 69 kV or above facilities that utilities may seek to keep out of the RTO have not even been identified as of yet.

The standard for defining transmission facilities subject to RTO control is squarely before FERC as part of its SMD rulemaking, and the FMG members urge the Commission to let that proceeding take its course before purporting to resolve this issue for GridFlorida. Thus, the FMG request that the Commission reverse the September 3<sup>rd</sup> order to the extent that it accepted the bright-line, 69 kV standard as a final order and defer resolution of this issue until after FERC has adopted an SMD. Alternatively, if the Commission elects to proceed to hearing on market design issues, the FMG members request that the bright-line, 69 kV issue be reserved for hearing as well, and that they be permitted to file testimony on the issue. Otherwise, no meaningful opportunity to do so before this Commission will have been provided with the result being that the FMG members' rights to procedural due process before this Commission will have been abridged.

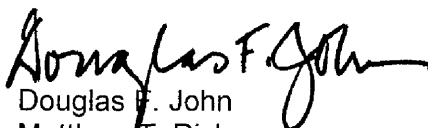
---

<sup>12</sup> See SMD NOPR, slip op. at p. 204 (P 369) (emphasis added).

## CONCLUSION

WHEREFORE, the FMG moves for reconsideration of the September 3<sup>rd</sup> order and requests that the Commission (i) defer the hearing on market design issues, and (ii) reverse its acceptance of the bright-line, 69 kV standard.

Respectfully submitted,



Douglas F. John  
Matthew T. Rick  
JOHN & HENGERER  
1200 17<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 429-8801

Counsel for the Florida Municipal Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion of Lakeland Electric, Kissimmee Utility Authority, Gainesville Regional Utilities, and the City of Tallahassee, Florida, has been furnished by U.S. Mail to the following this 18<sup>th</sup> day of September, 2002.

<p>Robert V. Elias, Esq. William Cochran Keating, Esq. Division of Legal Services Florida Public Service Com. 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850</p> <p>Mark Sundback, Esq. Kenneth Wiseman, Esq. Andrews &amp; Kurth Law Firm 1701 Pennsylvania Ave., N.W. Suite 300 Washington, DC 20006</p> <p>Lee L. Willis, Esq. James D. Beasley, Esq. Ausley &amp; McMullen Law Firm 227 South Calhoun Street Tallahassee, Florida 32301</p> <p>Myron Rollins Black &amp; Veatch Post Office Box 8405 Kansas City, MO 64114</p> <p>CPV Atlantic, Ltd 145 NW Central Park Plaza, Suite 101 Port Saint Lucie, FL 34986</p> <p>Calpine Corporation Thomas W. Kaslow The Pilot House, 2<sup>nd</sup> Floor Lewis Wharf Boston, MA 02110</p> <p>John W. McWhirter, Jr., Esq. Attorney for FIPUG McWhirter Reeves 400 North Tampa Street, Suite 2450 Tampa, Florida 33601-3350</p>	<p>Jennifer May-Brust, Esq. Colonial Pipeline Company 945 East Paces Ferry Road Atlanta, GA 30326</p> <p>G. Garfield R. Knickerbocker/S. Myers Day, Berry Law Firm CityPlace I Hartford, CT 06103-3499</p> <p>Duke Energy North America Lee E. Barrett 5400 Westheimer Court Houston, TX 77056-5310</p> <p>David L. Cruthirds, Esq. Attorney for Dynegy, Inc. 1000 Louisiana Street, Suite 5800 Houston, TX 77002-5050</p> <p>Michelle Hershel Florida Electric Cooperatives Association, Inc. 2916 Apalachee Parkway Tallahassee, FL 32301</p> <p>Richard Zambo, Esq. FICA 598 SW Hidden River Ave. Palm City, FL 34990</p> <p>Peter Antonacci, Esq. Gordon H. Harris, Esq. Tracy A. Marshall, Esq. Gray, Harris &amp; Robinson, P.A. 301 S. Bronough St., Ste. 600 Tallahassee, FL 32302-3189</p>
---	---



<p>Frederick M. Bryant  FMPA  2061-2 Delta Way  Tallahassee, FL 32303</p> <p>Robert C. Williams, P.E.  FMPA  8553 Commodity Circle  Orlando, FL 32819-9002</p> <p>William G. Walker III  Florida Power &amp; Light Company  215 South Monroe Street,  Suite 810  Tallahassee, FL 32301-1859</p> <p>R. Wade Litchfield, Esq.  Office of General Counsel  Florida Power &amp; Light Co.  700 Universe Boulevard  Juno Beach, FL 33408-0420</p> <p>Paul Lewis, Jr.  Florida Power Corporation  106 East College Avenue,  Suite 800  Tallahassee, FL 32301-7740</p> <p>Thomas J. Maida  N. Wes Strickland  Foley &amp; Lardner Law Firm  106 E. College Avenue,  Suite 900  Tallahassee, FL 32301</p> <p>Thomas A. Cloud, Esq.  W. Christopher Browder, Esq.  Gray, Harris &amp; Robinson, P.A.  Post Office Box 3068  Orlando, Florida 32802-3068</p>	<p>Bruce May, Esq.  Holland &amp; Knight Law Firm  Bank of America  315 South Calhoun Street  Tallahassee, FL 32302-0810</p> <p>Homer O. Bryant  3740 Ocean Beach Boulevard  Unit 704  Cocoa Beach, FL 32931</p> <p>David Owen, Esq.  Assistant County Attorney  Lee County, Florida  Post Office Box 398  Ft. Myers, FL 33902</p> <p>Joseph A. McGlothlin, Esq.  Vicki Gordon Kaufman, Esq.  McWhirter Reeves  117 S. Gadsden Street  Tallahassee, Florida 32301</p> <p>Michael B. Twomey, Esq.  Post Office Box 5256  Tallahassee, FL 32314-5256</p> <p>Mirant Americas Development, Inc.  Beth Bradley  1155 Perimeter Center West  Atlanta, GA 30338-5416</p> <p>Jon C. Moyle, Esq.  Cathy M. Sellers, Esq.  The Perkins House  118 North Gadsden Street  Tallahassee, FL 32301</p> <p>Mr. Lee Schmudde  Walt Disney World Co.  1375 Lake Buena Drive  Fourth Floor North  Lake Buena Vista, FL 32830</p>
--	---

Mr. Paul J. Chymiy  
NUI Energy, Inc.  
550 Route 202-206  
Bedminister, NJ 07921-0760

Jack Shreve  
John Roger Howe  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, #812  
Tallahassee, FL 32399-1400

Melissa Lavinson  
PG&E National Energy Group  
Company  
7500 Old Georgetown Road  
Bethesda, MD 20814

Michael Briggs  
Reliant Energy Power  
Generation, Inc.  
801 Pennsylvania Ave.  
Suite 620  
Washington, DC 20004

Timothy Woodbury  
Seminole Electric Cooperative, Inc.  
16313 North Dale Mabry Hwy.  
Tampa, FL 33688-2000

Sofia Solernou  
401 South MacArthur Avenue  
Panama City, FL 32401

Linda Quick  
South Florida Hospital  
and Healthcare  
6363 Taft Street  
Hollywood, FL 33024

John T. Butler, P.A.  
Steel Hector & Davis, LLP  
200 South Biscayne Boulevard  
Suite 4000  
Miami, Florida 33131-2398

Steven H. McElhaney  
2448 Tommy's Turn  
Oviedo, FL 32766

Ms. Angela Llewellyn  
Tampa Electric Company  
Post Office Box 111  
Tampa, Florida 33601

Dawson Glover, III  
Town of Sewall's Point  
One South Sewall's Point Road  
Sewall's Point, FL 34996

Harry W. Long, Jr., Esq.  
Tampa Electric Company  
Post Office Box 111  
Tampa, Florida 33601

James A. McGee, Esq.  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, FL 33733-4042

James P. Fama, Esq.  
LeBoeuf, Lamb, Greene &  
MacRae, LLP  
1875 Connecticut Ave., N.W.  
Suite 1200  
Washington, DC 20009

Matthew M. Childs, Esq.  
Steel Hector & Davis  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301

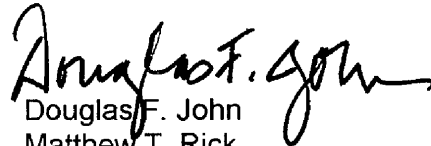
Kenneth Hoffman  
Rutledge Law Firm  
215 S. Monroe Street  
Tallahassee, Florida 32302

Mr. Edward Kee  
PA Management Group  
1750 Pennsylvania Ave., NW  
Suite 1000  
Washington, DC 20006-4506

Mr. Ron Seel  
RS Sales, Inc.  
1449 Court Street  
Clearwater, FL 33756

<p>Mr. John Attaway Publix Super Markets, Inc. P.O. Box 32105 Lakeland, FL 33802-2018</p> <p>Marchris Robinson Manager, State Government Affairs Enron Corporation 1400 Smith Street Houston, Texas 77002-7361</p> <p>Florida Retail Federation 100 E. Jefferson Street Tallahassee, FL 32301</p> <p>Mr. Russell S. Kent Sutherland Asbill &amp; Brennan 2282 Killearn Center Blvd. Tallahassee, FL 32308</p>	<p>Bill Bryant, Jr., Esq. Natalie Futch, Esq. Katz, Kutter 106 E. College Ave. 12<sup>th</sup> Floor Tallahassee, FL 32301</p> <p>Gary L Sasso/James M. Walls Carlton, Fields Law Firm Post Office Box 2861 St. Petersburg, FL 33731</p> <p>Daniel Frank Sutherland Asbill &amp; Brennan 1275 Pennsylvania Ave. NW Washington, DC 20004-2415</p>
---	--

Respectfully submitted,



Douglas F. John  
Matthew T. Rick  
JOHN & HENGERER  
1200 17th Street, N.W.  
Suite 600  
Washington, D.C. 20036-3013

Counsel for the Florida Municipal Group