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Via Federal Express

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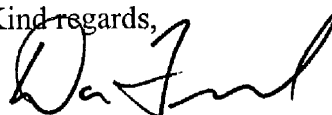
Re: *In re: Review of GridFlorida Regional Transmission Organization (RTO)
Proposal, Docket No. 020233-EI*

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of the Motion for Reconsideration of Reedy Creek Improvement District in the above-referenced proceeding. Also enclosed is a 3.5" diskette containing an electronic copy of this filing. Two additional copies of this filing labeled "stamp-and-return" also are enclosed; please stamp the date and time on those copies and return them to us in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Kind regards,



Daniel E. Frank
Attorney for
Reedy Creek Improvement District

Enclosures

DOCUMENT # 020233-EI

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of GridFlorida Regional Transmission Organization (RTO) Proposal)))	Docket No. 020233-EI Filed September 18, 2002
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**Motion for Reconsideration of
Reedy Creek Improvement District**

Pursuant to Rule 25-22.060 of the Florida Administrative Code, Reedy Creek Improvement District (“RCID”) respectfully moves for reconsideration of the Commission’s September 3, 2002 order in the above-captioned proceeding.¹ In the September 3 Order, the Commission found that the GridFlorida Applicants’ proposed changes to the Participating Owners Management Agreement (“POMA”) with respect to the “demarcation point for transmission facilities” were consistent with the Commission’s December 20, 2001 order² requiring the adoption of an independent system operator (“ISO”) structure for the GridFlorida regional transmission organization (“RTO”). However, the Commission has overlooked evidence and law that such changes were not required by the December 20 Order and are inconsistent with federal law. For the reasons set forth herein, the Commission should grant reconsideration of the September 3 Order and require the GridFlorida Applicants to restore certain language to the POMA.

I. Grounds for Reconsideration

The Commission failed to take into account the Federal Energy Regulatory Commission’s (“FERC”) approach to determining whether facilities are “transmission” or “local distribution.” That approach is a “functional” one, rather than a “bright line,” mechanistic approach based solely on the nominal voltage rating of the facility in question. While the

¹ Order No. PSC-02-1199-PAA-EI (“September 3 Order”).

² Order No. PSC-01-2489-FOF-EI (“December 20 Order”).

GridFlorida Applicants' proposal to use a "bright line" test of 69 kV remains pending before FERC, this Commission should not contravene federal law by prematurely adopting a bright-line test that is contrary to FERC's approach.

II. Argument

The Commission erred in approving the changes proposed by the Applicants in their March 20, 2002 compliance filing regarding the demarcation point. Those changes were not required by the December 20 Order and are not consistent with federal law.

Background. In the September 3 Order, the Commission quoted the discussion in the December 20 Order of the demarcation point issue.³ In the December 20 Order, the Commission noted the Applicants' explanation that (i) facilities of a rating of 69 kV and above "historically" had been considered to be transmission facilities in Florida, (ii) stakeholders generally expressed the need for open access to "all 69kV and above transmission facilities in Florida," (iii) classification of radial facilities as distribution would make access "more complicated than it needs to be," and (iv) different demarcation points for each utility could result in "subsidies across utilities."⁴ The Commission approved the Applicants' proposal in the December 20 Order, but ordered no changes to the POMA or other documentation on this issue.

In their March 20 compliance filing, the Applicants nonetheless modified the definition of "Controlled Facilities" in the POMA, purportedly to comply with the Commission's requirement that the Applicants propose an ISO structure. However, those modifications went far beyond simply deleting the "Transco" provisions in that definition (*e.g.*, deleting the

³ September 3 Order at p. 40.

⁴ December 20 Order at p. 18 (quoted in September 3 Order at p. 40).

provision under which GridFlorida could own transmission facilities). They also deleted any reference to “transmission” in the definition.⁵ As a result of this new definition, *any* facility in Florida rated at 69 kV or higher, regardless of actual function, is deemed to be subject to the RTO’s control.

In the September 3 Order, the Commission “consider[ed]” the Florida Municipal Group’s (“FMG”) comments at the May 29, 2002 Workshop, in particular FMG’s “preference for the opportunity to demonstrate that some 69kV facilities are local distribution.” The Commission quoted FMG’s remarks regarding the status of the 69-kV issue at FERC, *i.e.*, that FERC “has never really spoken to that” and that it is “on rehearing before” FERC. From these remarks, the Commission concluded that “there is no reason to believe that our ruling in [the December 20 Order] is inconsistent with federal law” because “it is uncontested that the FERC has not directly addressed the question of 69kV as a bright line demarcation.”⁶

Finally, the Commission concluded that “[r]etaining the 69kV demarcation point as a ‘bright line’ clearly complies with our December 20 Order, and the changes to the POMA are consistent with the Order’s requirement to adopt an ISO structure.”⁷

Federal Law. The Commission’s September 3 Order ignores, and is indeed contrary to, FERC’s long-standing approach to determining whether particular facilities are “transmission” or “local distribution.” FERC has addressed this issue, and its approach has been and is a functional one. *See, e.g.*, Order No. 888, FERC Stats. & Regs., ¶ 31,036, at 31,980-81 (1996). Thus, if a particular facility serves a transmission function, then it is properly classified as

⁵ *See* Section 2.5 of the POMA, quoted at p. 41 of the September 3 Order.

⁶ September 3 Order at p. 42.

⁷ *Id.*

“transmission”; in contrast, if a facility serves only local distribution purposes, then it properly should be classified as “local distribution,” not “transmission.” In distinguishing between “transmission” and “local distribution” facilities, the technical characteristics of the facilities also may be considered, but voltage level is but only one factor in that analysis. FERC never has relied simply and solely upon the capacity rating of a facility to determine if it is transmission or local distribution.

Quite the contrary. For example, FERC has disclaimed jurisdiction over a local distribution system that included 115-kV and 230-kV lines because the utility did not provide any transmission or wholesale services on its system.⁸ FERC cautioned the utility that if in the future it provided transmission services on its system, it would become a FERC-jurisdictional public utility. In short, it was the use to which the utility put its local distribution system that was dispositive, not the nominal voltage ratings of the lines.

More recently, in its July 31, 2002 Notice of Proposed Rulemaking on Standard Electricity Market Design (FERC Docket No. RM01-12-000) (“SMD NOPR”), FERC confirmed its preference for the use of a functional approach. In the SMD NOPR, FERC proposed using its seven-factor test first adopted in Order No. 888 “to determine the local distribution component of an unbundled retail sale.”⁹ The test “focuses on the presumption that, if a facility is transmission, it belongs under the control of the Independent Transmission Provider.”¹⁰ FERC’s “determination of which facilities are transmission is fluid and dependent on actual use of the

⁸ *Flathead Electric Cooperative, Inc.*, 87 FERC ¶ 61,254 (1999).

⁹ SMD NOPR at ¶ 367.

¹⁰ *Id.*

facilities.”¹¹ Thus, the seven-factor test includes a voltage-based component, but by and large it inquires about the use to which the facility is put: (i) proximity of the facility to retail customers; (ii) whether the facility is primarily radial in nature; (iii) whether power flows into the system rather than out; (iv) whether power that enters the system is reconsigned or transported to some other market; (v) whether the power is consumed in a comparatively restricted geographical area; (vi) whether the meters are based at the interface to measure flows into the system; and (vii) the voltage level of the facility.¹²

In the SMD NOPR, FERC also requested comment on “whether, either in addition to or in lieu of the seven factor test, [FERC] should use a bright line voltage test (e.g., 69 kV) to determine which facilities are placed under the control of the Independent Transmission Provider,” and, if so, “whether [FERC] should allow regional variation.”¹³ While FERC has requested comments on the use of a 69-kV bright-line test, the existing case law and FERC policies point toward use of a functional approach.¹⁴

The Applicants’ representatives have acknowledged, on the record, FERC’s approach. For example, at the October 3-5, 2001 hearing before the Commission in Docket Nos. 000824-

¹¹ *Id.* at ¶ 368.

¹² Order No. 888, Appendix G, at 31,981. In Order No. 888, FERC rejected using solely a 69-kV test: “While it would be preferable to draw an absolutely ‘bright line’ (e.g., based on technical characteristics such as voltage), [FERC] does not believe this is required by the case law and, importantly, would not be a workable approach in all cases because of the variety of circumstances that may arise and because utilities themselves classify facilities differently (e.g., one utility may classify a 69 kV facility as transmission; another may classify it as distribution).” *Id.*

¹³ SMD NOPR at ¶ 369.

¹⁴ See, e.g., *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 100 FERC ¶ 61,201 (Aug. 21, 2002) (setting for hearing the issue of whether the facilities at issue are transmission facilities).

EI, *et al.*, the Applicants agreed that FERC has adopted a multi-factor “functional” test rather than a simple 69-kV test of whether specific facilities are to be classified as transmission or local distribution.¹⁵ The Applicants’ witnesses acknowledged that voltage level is only one factor in FERC’s test, although in their pre-filed testimony they presented various reasons for their use of 69 kV as a demarcation point and why trying to draw finer distinctions would be inappropriate for their systems.¹⁶ Mr. Naeve testified at the October 3-5, 2001 hearing that voltage level is but only one factor that FERC considers and that FERC uses a functional approach to facility classification.¹⁷ The Commission’s September 3 Order overlooks this evidence. There also is no evidence in the record to support the claim that different demarcation points would complicate the provision of transmission service under an RTO. Thus, the Commission can decide that the three IOUs’ transfer to the RTO of operational control of their transmission facilities of 69 kV and above is appropriate without upsetting FERC’s test for other utilities.

March 20 Compliance Filing. The Commission’s December 20 Order never directed the Applicants to delete the reference to “transmission” from the definition of “Controlled Facilities” in the POMA. Nowhere in the December 20 Order does the Commission indicate that it intended to treat as “transmission” local distribution facilities that happen to be rated at 69 kV. Thus, the Commission erred in describing the changes proposed in the March 20 compliance

¹⁵ See Hearing Transcript at pp. 159-60, 188-90 (Witness Naeve) (explanation of factors considered by FERC in determining jurisdiction over transmission versus local distribution).

¹⁶ See Joint Panel Testimony (Pre-Filed) at pp. 20-22; Hearing Transcript at pp. 335-37.

¹⁷ See Hearing Transcript at pp. 159-60, 188-90 (Mr. Naeve) (explanation of factors considered by FERC in determining jurisdiction over transmission versus local distribution).

filing as being a “response to our requirement that GridFlorida establish a transmission facilities demarcation at 69kV.”¹⁸

While RCID urges that the 69-kV demarcation point be replaced by a functional approach, at a bare minimum the POMA’s definition of “Controlled Facilities” should be restored to its previous version so that it at least includes a reference to “transmission.” Each local utility system should have the right to determine and demonstrate which, if any, of its facilities are “transmission” and which are “local distribution.” Chairman Jaber suggested this approach at the May 29, 2002 Workshop,¹⁹ and RCID views it as a good starting point.

RCID recognizes the concern of the Commission (and of the Applicants) regarding the potential for subsidies and “gamesmanship” that could result from using something other than a bright-line test such as the 69-kV demarcation point. However, RCID points out that using a 69-kV bright-line test for *all* facilities will deem some local distribution facilities to be transmission, and will itself result in the subsidization of local distribution customers by the RTO and its wholesale customers and the improper assignment of costs. The solution is not to run roughshod over utilities with facilities designed and used for local distribution that may happen to be at a higher voltage.

RCID does not oppose the Applicants’ use of a 69-kV rule of thumb for determining which of their own transmission facilities should be subject to GridFlorida’s operational control, so long as that rule of thumb is not deemed by anyone to replace FERC’s “functional” test for other utilities that may participate in an RTO. A 69-kV threshold may be appropriate as an

¹⁸ September 3 Order at p. 41.

¹⁹ Workshop Transcript at p. 227 (Chairman Jaber).

initial screen in evaluating the characteristic of a facility, but non-jurisdictional entities should not be precluded from demonstrating that a particular facility is “local distribution” based on the function that the facility serves. There is no lawful or rational basis for requiring non-jurisdictional, governmental entities to transfer to a regional transmission organization control over facilities that perform predominantly a local distribution function, regardless of the size of those facilities.

Status of 69-kV Issue at FERC. In the September 3 Order, the Commission quotes the FMG representative’s discussion at the May 29 Workshop of the status of the 69-kV issue at FERC in the pending GridFlorida docket (FERC Docket No. RT01-67). The FMG representative explained in his introductory remarks that FERC has not addressed the issue in that proceeding and that requests for rehearing with respect to the issue remain pending before FERC. In fact, he stated that “there is no record supporting” the Applicants’ bright-line test at FERC or elsewhere.²⁰ The Commission concludes from these remarks, however, that “[g]iven that it is uncontested that the FERC has not yet directly addressed the question of 69kV as a bright line demarcation, we conclude that there is no reason to believe that our ruling in [the December 20 Order] is inconsistent with federal law.”²¹ The Commission’s overly broad conclusion does not follow logically from the FMG representative’s remarks.

By focusing on the FMG representative’s remarks regarding the status of the 69-kV issue in the GridFlorida proceeding at FERC, the Commission overlooks the evidence and law with respect to FERC’s position on the demarcation between “transmission” and “local distribution.” As explained above, FERC has addressed this issue by using a functional approach to facility

²⁰ *Id.* at pp. 106-07.

²¹ September 3 Order at p. 42.

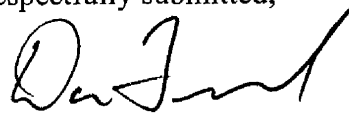
classification. In addition, the evidence presented at the October 3-5 hearing (including by the Applicants' witnesses) indicates that FERC uses a functional approach to facility classification. Simply because the 69-kV issue is pending on rehearing at FERC in Docket No. RT01-67 does not render FERC's approach moot or irrelevant. The Commission should at a minimum recognize that the bright-line approach is inconsistent with FERC's present approach to facility classification. Until FERC changes its policies, the Commission's September 3 Order is inconsistent with federal law and should be modified accordingly.

III. Conclusion

Consistent with federal law, Florida utilities should have the option of demonstrating that any particular facility serves a distribution function rather than a transmission function, regardless of nominal voltage level. Nothing in the December 20 Order required the Applicants to delete from the POMA the reference to "transmission." The POMA should be revised accordingly.

Wherefore, Reedy Creek Improvement District respectfully requests that the Commission grant its motion for reconsideration and take such action as requested herein.

Respectfully submitted,



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September 17, 2002

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

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