

ORIGINAL



**Florida Power**

A Progress Energy Company

**JAMES A. MCGEE**  
ASSOCIATE GENERAL COUNSEL

September 24, 2002

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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FPSC

Re: Docket No. 020233-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Florida Power Corporation's Petition on Proposed Agency Action and Request for Hearing.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/scc  
Enclosure

cc: Parties of record

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5
- CTR \_\_\_\_\_
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 020233-EI

Submitted for filing:  
September 24, 2002

**FLORIDA POWER CORPORATION'S PETITION ON  
PROPOSED AGENCY ACTION AND REQUEST FOR HEARING**

Florida Power Corporation (Florida Power or the Company), pursuant to Rules 25-22.029 and 28-106.201, Fla. Admin. Code, hereby files this Petition on Proposed Agency Action and Request for Hearing in accordance with Section 1220.57(2), Fla. Stats., with respect to Order No. PSC-02-1199-PAA-EI (the PAA Order), issued by the Florida Public Service Commission (the Commission) on September 3, 2002 in the above-captioned docket and, in support hereof, states as follows:

**Introduction**

1. Petitioner, Florida Power, is a public utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes. Florida Power's General Offices are located at 100 Central Avenue, St. Petersburg, Florida, 33701.

2. All notices, pleadings and other communications required to be served on petitioner should be directed to:

James A. McGee, Esquire  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Facsimile: (727) 820-5519  
Email: james.mcgee@pgnmail.com AND jmcgee@tampabay.rr.com

For express deliveries by private courier, please use the above address for Florida Power's General Offices.

DOCUMENT NUMBER 020233-EI

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## Background

3. On December 20, 2001, the Commission issued Order No. PSC-01-2489-FOF-EI (the December 20 Order) following a hearing in Docket Nos. 000824-EI, 001148-EI, and 010577-EI to determine the prudence of the formation and participation in a proposed GridFlorida Regional Transmission Organization (RTO) filed with the Federal Energy Regulatory Commission (FERC) on December 15, 2000 by Florida Power, Florida Power & Light Company, and Tampa Electric Company (the Applicants). The December 20 Order required the Applicants to file a modified GridFlorida proposal that complied with the findings of that order. The Applicants filed the modified GridFlorida proposal on March 20, 2002 (the compliance filing).

4. Proceedings were then conducted in this docket to determine whether the Applicants' compliance filing did, in fact, comply with the Commission's December 20 Order. At its August 20, 2002 Agenda Conference, the Commission considered a number of compliance issues identified in Staff's recommendation. In general, a Commission ruling that the subject matter of an issue either was or was not in compliance with the December 20 Order was to be considered final agency action, while a ruling that the subject matter of an issue was not only in noncompliance but also required the Applicants to file revised language not contained in the original GridFlorida filing was to be considered proposed agency action.

5. An exception to this distinction between final and proposed agency action concerned Issue 3Ba, regarding a change made in the compliance filing to the demarcation date between existing and new transmission service contracts (sometimes called the Attachment T cutoff date and referred to in this motion as the Contract Date). Staff recommended that the Commission deny this change through

final agency action because Staff believed the change was not necessary to comply with the December 20 Order and no additional language was required by the denial. However, after a lengthy discussion regarding the effect of re-establishing the Contract Date as originally proposed, including the effect on another demarcation date between existing and new transmission facilities (the Facilities Date),<sup>1</sup> the Commission found that sufficient uncertainty existed on this issue to warrant changing the nature of its decision from final agency action to proposed agency action. This change was intended to provide the Commission an opportunity, upon protest, to hear the positions of the parties on the appropriate treatment of the Contract Date, including any need for a corresponding treatment of the Facilities Date, thereby allowing the Commission to resolve the existing uncertainty and reach a fully informed decision. By this Petition, Florida Power requests such an opportunity to address the Commission.

6. On September 18, 2002, Florida Power filed a Motion for Reconsideration of the PAA Order. The motion was filed out of an abundance of caution and in the interest of protecting the Company's testimony supporting this Petition from a challenge to its admissibility based on an argument that the PAA Order constitutes final agency approval of the revised Facilities Date. In the unlikely event such an argument were to be accepted, it would seriously compromise, if not completely preclude, Florida Power's opportunity to present testimony asserting its position that the linkage between the Facilities Date and the Contract Date must be maintained by

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<sup>1</sup> Both the Contract Date and the Facilities Date were set in December 2000 by the original December 15, 2000 GridFlorida filing with FERC, and both dates were revised to January of the year GridFlorida became operational in the March 20, 2002 compliance filing. Although Staff recommended the Contract Date revert back to December 2000, it did not recommend a similar treatment of the Facilities Date.

re-establishing both dates as originally proposed. Accordingly, Florida Power's motion seeks reconsideration of the PAA Order only to the extent it is deemed to constitute final agency approval of the revised Facilities Date on the grounds set forth therein. Given the possibility the motion will become moot if a challenge to the admissibility of the Company's testimony based on this argument is not made, Florida Power suggested that the motion be held in abeyance until the hearing, and that if such a challenge was not forthcoming at that time, the motion would be withdrawn.

### **Disputed Issues of Material Fact**

7. Florida Power does not dispute, and in fact agrees with, the Commission's PAA decision requiring the Contract Date to remain as originally proposed in December 2000. However, Florida Power asserts the Commission erred by not requiring that the Facilities Date also remain in December 2000 as originally proposed in order to maintain the important linkage between these two dates. In this regard, Florida Power sets forth the following disputed issues of material fact:

- (a) Whether a legitimate connection exists between the Contract Date and the Facilities Date which would warrant maintaining the linkage between the two dates in conjunction with the Commission's decision to re-establish the Contract Date in December 2000 as original proposed.
- (b) Whether the Commission's PAA decision to re-establish the Contract Date as original proposed without maintaining its linkage to the Facilities Date would require Florida Power's retail customers to subsidize the costs of Existing Facilities built by the Company to support New Contracts for services that GridFlorida will provide to transmission users on a grid-wide basis.

- (c) Whether the revised Facilities Date contained in the Applicants' March 20, 2002 compliance filing, as well as the revised Contract Date, should be rejected and re-established as originally proposed on the basis that the revision was not required to comply with the December 20 Order and that it was subject to objection by written intervenor comments.

#### **Ultimate Facts Alleged**

- 8. The ultimate facts alleged by Florida Power are as follows:
  - (a) The connection or linkage that exists between the Contract Date and the Facilities Date stems from the need to maintain a consistent treatment of the revenues associated with transmission service contracts and the costs associated with transmission facilities required to support these contracts in order to achieve rate fairness for retail customers.
  - (b) If the linkage between the Contract Date and the Facilities Date were to be broken, as the Commission's PAA decision would do, retail customers of a transmission-owning utility such as Florida Power would face the prospect of being required to pay for the costs of Existing Facilities built by the utility to serve a New Contract, but the utility would be denied the opportunity to use the revenues from the contract as a credit to offset the related facilities costs that its customers must bear.
  - (c) The revised Facilities Date contained in the Applicants' March 20, 2002 compliance filing should be rejected and re-established as originally proposed on the same basis as recommended by Staff and accepted by the Commission for rejecting the revised Contract Date, *i.e.*, that the revision was not required to comply with the December 20 Order and that it was subject to objection by written intervenor comments.

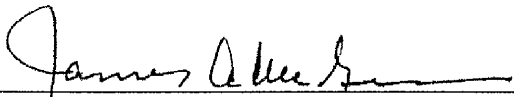
## Florida Power's Substantial Interests

9. Florida Power's substantial interests would be adversely affected by the failure of the Commission's PAA decision to re-establish the Facilities Date as originally proposed, consistent with the re-established Contract Date, by virtue of the fact that the Company and, ultimately, its retail customers would be required to pay for the costs of Existing Facilities built by Florida Power to serve a New Contract, but the Company would be denied the opportunity to receive and credit the revenues from the New Contract as an offset to the related facilities costs that its customers must bear.

WHEREFORE, Florida Power Corporation respectfully requests that the Commission grant this Petition and thereafter allow the Company to present testimony on the disputed issues of material fact and ultimate facts alleged as set forth herein.

Respectfully submitted,

FLORIDA POWER CORPORATION

By 

James A. McGee

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Facsimile: (727) 820-5519

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

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail to the following on this 24th day of September, 2002.

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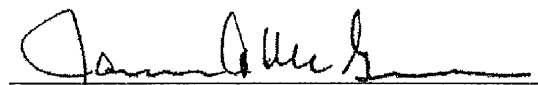
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