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September 25, 2002

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**VIA HAND DELIVERY**

Re: Docket No. 020233-EI

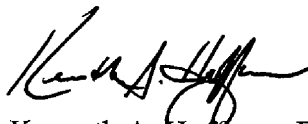
Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company, Florida Power Corporation and Tampa Electric Company (the "GridFlorida Companies") are an original and fifteen copies of the following documents:

1. the GridFlorida Companies' Response to Office of Public Counsel's Motion for Stay of Proceedings and Motion for Reconsideration of Order No. PSC-02-1199-PAA-EI;
2. the GridFlorida Companies' Response to Motions for Reconsideration of Reedy Creek Improvement Trust and Lakeland Electric, Kissimmee Utility Authority, Gainesville Regional Utilities, and The City of Tallahassee, Florida; and
3. a disk in Word Perfect 6.0 containing a copy of the documents.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman, Esq.

KAH/rl

Enclosures

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 020233-EI

Dated: September 25, 2002

**GRIDFLORIDA COMPANIES' RESPONSE TO  
OFFICE OF PUBLIC COUNSEL'S MOTION  
FOR STAY OF PROCEEDINGS AND MOTION  
FOR RECONSIDERATION OF ORDER NO. PSC-02-1199-PAA-EI**

Florida Power and Light Company, Florida Power Corporation and Tampa Electric Company (collectively the "GridFlorida Companies"), by and through their undersigned counsel, and pursuant to Rules 25-22.060(1)(b) and 28-106.204(1), Florida Administrative Code, hereby file their Response to the Office of Public Counsel's ("OPC") Motion for Stay of Proceedings and Motion for Reconsideration of Order No. PSC-02-1199-PAA-EI issued September 3, 2002 (the "September 3 Order"), and state as follows:

**I. OPC's Motion for Stay of Proceedings**

1. OPC requests a stay of further proceedings in this docket until such time as the GridFlorida Companies submit a modified compliance filing which recognizes the Commission's "continuing jurisdiction over the total cost of transmission service to retail customers."<sup>1</sup> The GridFlorida Companies take no position on OPC's request for a stay. However, the GridFlorida Companies emphasize that they are without power or authority to ultimately confer jurisdiction on the Commission which is not set forth in Chapter 366, Florida Statutes.<sup>2</sup> As a matter of law, a filing

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<sup>1</sup>OPC Motion, at ¶¶ 3, 5, citing the September 3 Order, at 63.

<sup>2</sup>The Commission, as an administrative agency enacted by the legislature, derives its powers, duties and authority solely from the legislature. City of Cape Coral v. GAC Utilities, Inc., 1281 So.2d 493, 495-496 (Fla. 1973).

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by the GridFlorida Companies cannot expand or diminish any jurisdiction the Commission may ultimately be determined to have over the total cost of transmission service to retail customers.

2. In New York v. Federal Energy Regulatory Commission, 122 S. Ct. 1012 (2001), the Supreme Court concluded that if the Federal Energy Regulatory Commission (“FERC”) were to investigate and conclude that there was undue discrimination in the retail electricity market under Section 206 of the Federal Power Act,<sup>3</sup> then FERC would be authorized to assert jurisdiction over bundled retail transmission. More recently, the FERC has proposed to exercise that jurisdiction over all users of the interstate transmission grid, including wholesale and unbundled retail transmission customers, and bundled retail customers. See Remedying Undue Discrimination Through Open Access Transmission Service and Standard Market Design, Notice of Proposed Rulemaking issued in FERC Docket No. RMO1-12-000 (July 31, 2002), at ¶ 15.

3. Accordingly, FERC may eventually decide to exercise jurisdiction over the GridFlorida Companies’ bundled retailed transmission service. At the same time, the GridFlorida Companies are mindful of the Commission’s desire to retain such jurisdiction as it may be viewed to continue to hold over the total cost of transmission service to retail customers. However these jurisdictional issues are ultimately sorted out - - by the Florida Legislature, the Commission, Congress, FERC and/or the courts - - one thing is clear, the GridFlorida Companies cannot unilaterally expand or diminish the Commission’s statutory jurisdiction.

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<sup>3</sup>See 16 U.S.C. § 824(e)(a).

## II. OPC's Motion for Reconsideration

4. The purpose of a motion for reconsideration is to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 162 (Fla. 1<sup>st</sup> DCA 1981). A motion for reconsideration is not an appropriate vehicle to reargue matters that have already been considered by the Commission. Sherwood v. State, 111 So.2d 96 (Fla. 3<sup>rd</sup> DCA 1959) citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1<sup>st</sup> DCA 1958). Nor should a motion for reconsideration be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, 294 So.2d at 317.

5. OPC's Motion attempts to reargue matters that were raised and resolved in the initial GridFlorida proceeding resulting in the issuance of Order No. PSC-01-2489-FOF-EI on December 20, 2001 (the "December 20 Order"). The Motion also inappropriately revisits arguments raised by OPC in comments filed in the instant proceeding that were not relied upon by the Commission as a basis for its findings in the September 3 Order.

6. OPC seeks reconsideration of the Commission's determination in the December 20 Order that the GridFlorida Companies be authorized to recover the prudently incurred costs of formation and operation of GridFlorida.<sup>4</sup> In support of its position, OPC argues that such costs cannot be viewed to be prudent on the basis that the Florida Supreme Court's decision in Tampa

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<sup>4</sup>December 20 Order, at 10-11.

Electric Co. v. Garcia, 767 So.2d 428 (Fla. 2000) will impede the development of a competitive wholesale market.<sup>5</sup> OPC's speculation concerning the extent of wholesale competition in Florida that currently exists or that may exist in the future fails to meet the legal standard for reconsideration.

7. OPC also challenges the Commission's conclusion that the recovery of incremental transmission costs was raised and resolved in the December 20 Order and that OPC's attempt to relitigate this issue "represent[s] an untimely challenge to our December 20 Order."<sup>6</sup> OPC's attempt to relitigate this issue should be rejected.<sup>7</sup> In the December 20 Order, the Commission required the GridFlorida Companies to modify the GridFlorida filing to change the structure of GridFlorida from a Transco to an independent system operator ("ISO"). OPC had the right to seek reconsideration, file an appeal, or both, to challenge the Commission's determination that the costs of formation and operation of GridFlorida were prudent in view of the required changed to an ISO structure. OPC failed to exercise those remedies and is barred from seeking reconsideration of the Commission's finding on this issue in the instant docket.

8. Next, OPC questions whether the establishment of "GridFlorida as an ISO is a good idea...."<sup>8</sup> OPC points to alleged deficiencies in the record in the initial GridFlorida proceeding that purport to undermine the finding in the December 20 Order that the formation of GridFlorida was

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<sup>5</sup>OPC Motion for Reconsideration, at ¶¶ 6, 9.

<sup>6</sup>OPC Motion for Reconsideration, at ¶ 7, citing the September 3 Order, at 70.

<sup>7</sup>See December 20 Order, at 24 ("... this Commission will not relitigate the issues addressed in this Order.").

<sup>8</sup>OPC Motion for Reconsideration, at ¶ 10.

prudent.<sup>9</sup> For example, OPC maintains that in the initial GridFlorida proceedings, the GridFlorida Companies failed to address the issue of whether the Commission would retain its ratemaking jurisdiction over transmission assets. To the contrary, the GridFlorida Companies presented testimony that the Commission's traditional jurisdiction over transmission assets would be altered by the transfer of ownership or operation of such assets to GridFlorida.<sup>10</sup> OPC's related arguments fail to provide a basis for reconsideration of the September 3 Order. OPC had the opportunity to raise these arguments on reconsideration or appeal of the December 7 Order and may not relitigate these issues through a Motion for Reconsideration in this docket.

9. In its Motion, OPC argues that the pivotal issue arising from the September 3 Order is what it terms a "disconnect" between the Commission's desire to retain its statutory jurisdiction and components of the GridFlorida ISO proposal which OPC maintains will diminish Commission jurisdiction.<sup>11</sup> OPC's concerns regarding the Commission's transmission planning jurisdiction and priority for retail customers in the event of curtailments, while understandable, do not support reconsideration of the September 3 Order. The GridFlorida Companies have no power to unilaterally change the Commission's statutory Grid Bill jurisdiction under Chapter 366, Florida Statutes.

10. Finally, OPC reasserts an argument raised in its Post-Workshop Comments that the Commission may lose jurisdiction over the GridFlorida ISO on the basis that the GridFlorida ISO will not be an investor-owned electric utility pursuant to Section 366.02(2), Florida Statutes. As

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<sup>9</sup>OPC Motion for Reconsideration, at ¶ 9.

<sup>10</sup>See transcript from final hearing in Docket Nos. 000824-EI, et. al., at 142-143.

<sup>11</sup>OPC Motion for Reconsideration, at ¶10.

noted above, the GridFlorida Companies have no power to unilaterally change the Commission's statutory Grid Bill jurisdiction under Chapter 366, Florida Statutes.

WHEREFORE, for the foregoing reasons, the GridFlorida Companies respectfully request that the Commission deny OPC's Motion for Reconsideration.

Respectfully submitted,

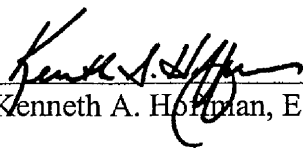
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By:   
Kenneth A. Hoffman, Esq.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of GridFlorida Companies' Response to Office of Public Counsel's Motion for Stay of Proceedings and Motion for Reconsideration of Order No. PSC-02-1199-PAA-EI has been furnished by Electronic Mail, this 25th day of September, 2002, to the following:

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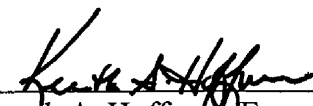
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