

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday, June 19, 2012
Immediately following Commission Conference
Betty Easley Conference Center, Room 140

1. Approve May 9, 2012, Internal Affairs Meeting Minutes. (Attachment 1)
2. Briefing on FERC Order 1000-A Regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities. Guidance is sought. (Attachment 2)
3. Reorganization of the Commission's Divisions. Approval is sought. (Attachment 3)
4. Executive Director's Report. (No Attachment)
5. Other Matters.

BB/css

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6463.



State of Florida
Public Service Commission
INTERNAL AFFAIRS MINUTES
Wednesday, May 9, 2012
9:30 am – 10:04 am
Betty Easley Conference Center, Room 140

COMMISSIONERS PRESENT: Chairman Brisé
 Commissioner Edgar
 Commissioner Graham
 Commissioner Balbis
 Commissioner Brown

STAFF PARTICIPATING: Baez, Hill, Kiser, Cibula, Page, Pennington, Futrell

OTHERS PARTICIPATING: Schef Wright – Monroe County

1. Approve March 27, 2012, Internal Affairs Meeting Minutes.

The minutes were approved.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

2. *Amicus Curiae* Participation in *Alicia Roemmele-Putney, et al. v. Robert D. Reynolds, et al.*, Third DCA Case No. 3D12-333.

After some discussion, staff was directed to file the *Amicus Curiae* document in Florida Third District Court of Appeal.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

3. Legislative Update.

Ms. Pennington informed the Commissioners that there were no Legislative matters of interest to report.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

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Internal Affairs Meeting
May 9, 2012

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4. Executive Director's Report.

Mr. Baez briefed the Commissioners on strategies related to a provision in the Energy bill that directs the Commission to do a study on the effectiveness of FEECA.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

5. Other Matters.

a) The Chairman announced that Commissioner Brown will chair the Water Study Committee.

b) The Chairman asked, and the Commissioners' agreed, that the Commission formalize a process to review and identify Smart Meter issues.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

State of Florida



Public Service Commission

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

DATE: June 11, 2012
TO: Braulio L. Baez, Executive Director
FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM*
Benjamin Crawford, Government Analyst, Regulatory Analysis Division *BC*
Mark Futrell, Public Utilities Supervisor, Regulatory Analysis Division *MF*
RE: Briefing on FERC Order No. 1000-A Regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities *YMN*

Critical Information: Please place on June 19, 2012, Internal Affairs. Guidance is sought regarding possible action. The deadline for filing an appeal of the Orders is July 16, 2012.

On May 17, 2012, the Federal Energy Regulatory Commission (FERC) issued FERC Order No. 1000-A, which denied rehearing requests made regarding FERC Order No. 1000 and clarified a few areas of concern. FERC Order No. 1000, issued on July 21, 2011, had adopted new regional and interregional processes nationwide for transmission planning and cost allocation. The Florida Public Service Commission (FPSC) had been among dozens of states, utilities, and other stakeholders requesting that FERC rehear and clarify its Order. In its request for rehearing and clarification of FERC Order No. 1000, the FPSC raised three issues:

- (1) FERC infringed on state jurisdiction in the transmission planning sections;
- (2) FERC infringed on state jurisdiction in the cost allocation sections; and
- (3) FERC should address the lack of clarity in FERC Order No. 1000, should define "benefits," and clarify that benefits must be quantifiable pursuant to existing state and federal law.

In the 593-page Order No. 1000-A, FERC denied rehearing and chose not to clarify the ambiguities. FERC argued that, regardless of the effects of its cost allocation order, it did not infringe on state jurisdiction because the states still retained jurisdiction over retail rates. Additionally, FERC elected not to clarify the definition of benefits or to require benefits to be based on existing state or federal law. Instead, FERC stated that each region should define benefits based on whatever parameters it deems appropriate.

Commission guidance is sought as to whether the FPSC wishes to take further action. If the Commission wishes to take additional action, the options include: (1) appeal the Order Nos. 1000 and 1000-A, (2) intervene in another party's appeal, or (3) move to file as *amicus curiae*.¹

The FERC-state jurisdictional divide is addressed in these Orders. The FERC continues to set itself up as a national arbiter of what have historically been, at least in part, state jurisdictional matters. The Orders also will entail more active state commission involvement in FERC compliance proceedings.

Thus far, there have been three appeals of these two Orders. The Coalition for Fair Transmission Policy (which includes Southern)², the South Carolina Public Service Authority (not a state commission), and the Sacramento Municipal Utilities Department have filed appeals. It is early in the process for most state commissions as the deadline is not until July 16, 2012.

Order No. 1000 itself was a major order addressing transmission planning and cost allocation by transmission owning and operating public utilities. Both Orders establish a new paradigm for addressing regional transmission. Transmission stakeholders are placed in the role of developing plans to comply with FERC's new requirements. Then, FERC would approve, modify, or reject the compliance plans. State commissions are allowed to participate in the process only as stakeholders, and the compliance plans ultimately go to FERC for review.

The filing of an appeal does not toll the time for utilities to comply with the Orders. Utilities must meet the October 11, 2012, compliance filing date. Thus, the utilities are moving forward in discussions with stakeholders to create regional transmission plans and regional cost allocation filings.

The FPSC's Request for Rehearing

As enumerated above, the FPSC request for rehearing of the first Order raised three issues. First, the FERC is infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios. Florida law provides the FPSC with authority over transmission planning, siting, and cost recovery. FERC Order 1000 relegates State Commissions to mere stakeholders. This is contrary to the role set out by Florida law.

Second, the FPSC sought rehearing because FERC is infringing on state jurisdiction in the cost allocations sections for regional and interregional scenarios. Florida law provides the FPSC with authority to allocate costs of transmission additions. Florida remains a state with vertically integrated utilities, and no part of the state is a member of a Regional Transmission Organization. Florida law provides the FPSC with authority to allocate costs of transmission additions in proportion to benefits received. The concern is that the Federal government will determine cost allocations that may affect Florida retail ratepayers.

¹ Another option would be sending a letter to Florida's Congressional delegation. The FPSC has already stated its position in two sets of comments to FERC and in a request for rehearing, but has not sent a letter to the delegation.

² Progress Energy was part of the coalition at the comment stage, but is not a part of the appeal.

Third, the FPSC raised the issue that FERC did not clearly define “benefits” in the Order so that states and stakeholders may know the impact of the Order. The FPSC opined that this ambiguity violates the Due Process Clause’s “fair notice” requirement, which mandates that a Federal agency has to make clear to the affected parties the scope of their legal obligations. Also, the FERC should clarify that “benefits” must be quantifiable and based on the public policy requirements of applicable state and Federal law.

FERC Rehearing Order No. 1000-A

Order No. 1000-A affirms FERC’s determinations in Order No. 1000 that each public utility transmission provider must participate in a regional transmission planning process that produces a regional transmission plan.³ The local and regional planning processes must provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations. There must be improved coordination between neighboring transmission planning regions for new interregional facilities.

The Order affirms that each public utility transmission provider is required to participate in a regional transmission planning process that has a regional cost allocation method for new transmission facilities selected in a regional plan for cost allocation, and an interregional cost allocation method for costs for transmission facilities located in two neighboring regions.

In general, much of FERC Order No. 1000-A seems designed to ease concerns regarding FERC Order No. 1000. FERC asserts that regions cannot unilaterally assign costs to other regions. It also allows the current reliability regions to form the basis for regions under the new transmission planning process. Regions will be allowed to define benefits how they see fit, subject to FERC review. Every region will have considerable flexibility regarding how it operates. FERC also assures stakeholders that if they believe current processes meet the requirements of FERC Order No. 1000, those transmission planners can submit those plans to FERC.

The Order No. 1000-A also, however, raises several concerns. FERC retains authority to review and reject a transmission plan or cost allocation plan. State regulatory authorities only have a role in the planning process if the transmission stakeholders agree. While FERC will not allow regions to unilaterally assign costs, its overriding role over interregional planning, as well as its refusal to use a common definition of benefits, still allows for the possibility that project costs from one region will be assigned to another region if FERC sides with the assigning region’s definition of “benefits.”

Paragraph 66 of FERC Order No. 1000-A states:

We also disagree with Southern Companies and others that assert that there is not an issue to be remedied in their respective regions. As we note above, if public utility transmission providers believe that they already satisfy the

³ Staff has prepared a detailed summary of Order No. 1000-A, which is available upon request.

minimum requirements in Order No. 1000, they may seek to demonstrate this in their compliance filings.

This paragraph highlights the contradictions about states retaining jurisdiction. FERC's overall arbiter/review role undercuts many of the assurances in Order No. 1000-A regarding autonomy.

The FERC says it is critical for it to act now because there is a need for significant new investment in new transmission facilities in order to meet reliability needs and integrate new sources of generation. It will not wait for systemic problems to undermine transmission planning before action is taken. FERC disagreed with assertions that it relied on unsubstantiated allegations of discriminatory conduct. The FERC cites extensive case law for its belief that it has legal authority to take these actions.

On cost allocation, the FERC cites case law to support its view and also points numerous times to the paradigm in which the stakeholders initially work out the cost allocation and then FERC reviews it. FERC seems to believe that this approach cures any policy, practical, or legal issues.

On interregional issues, FERC states that it will use the record of the proceedings from both regions to reach a decision. Thus, the FERC could find in favor of the assignment of costs to a region. On the one hand, FERC provides assurances that each region can define the benefits of transmission additions, and that one region cannot unilaterally assign costs to another. However, the FERC retains the role to assign costs to a region when a dispute arises.

The FERC dismisses state utility commission concerns that the new process will undermine state statutory requirements and the general role of state public utility commissions. The FERC acknowledges that state commissions are not regular stakeholders. It continues to offer that participation in the stakeholder process is the way for state commissions to influence the outcome. Also, FERC elaborates that state commissions are welcomed to form committees of state commissions to review regional issues. Lastly, FERC notes that state commissions may participate at the FERC in compliance proceedings.

FERC appears to give the transmission stakeholders the ability to define the state commission role, rather than state law. This process may increase the staff resources needed to actively participate in the stakeholder proceedings to help ensure the state commission statutory role is honored.

The legal concerns, as filed in the FPSC's request for rehearing of Order No. 1000, remain the same. The ramifications could be that, if the Orders are not overturned, the FERC will be playing an expanded role. In both Orders, the harm may not appear to be extensive, because many determinations are left for a later time. However, it could be the case that future orders – perhaps under a different FERC – could lead the FPSC to be in less of a position to implement state statutory provisions in Chapters 366 and 403, Florida Statutes. A future FERC may be less inclined to defer to state commissions.

Options

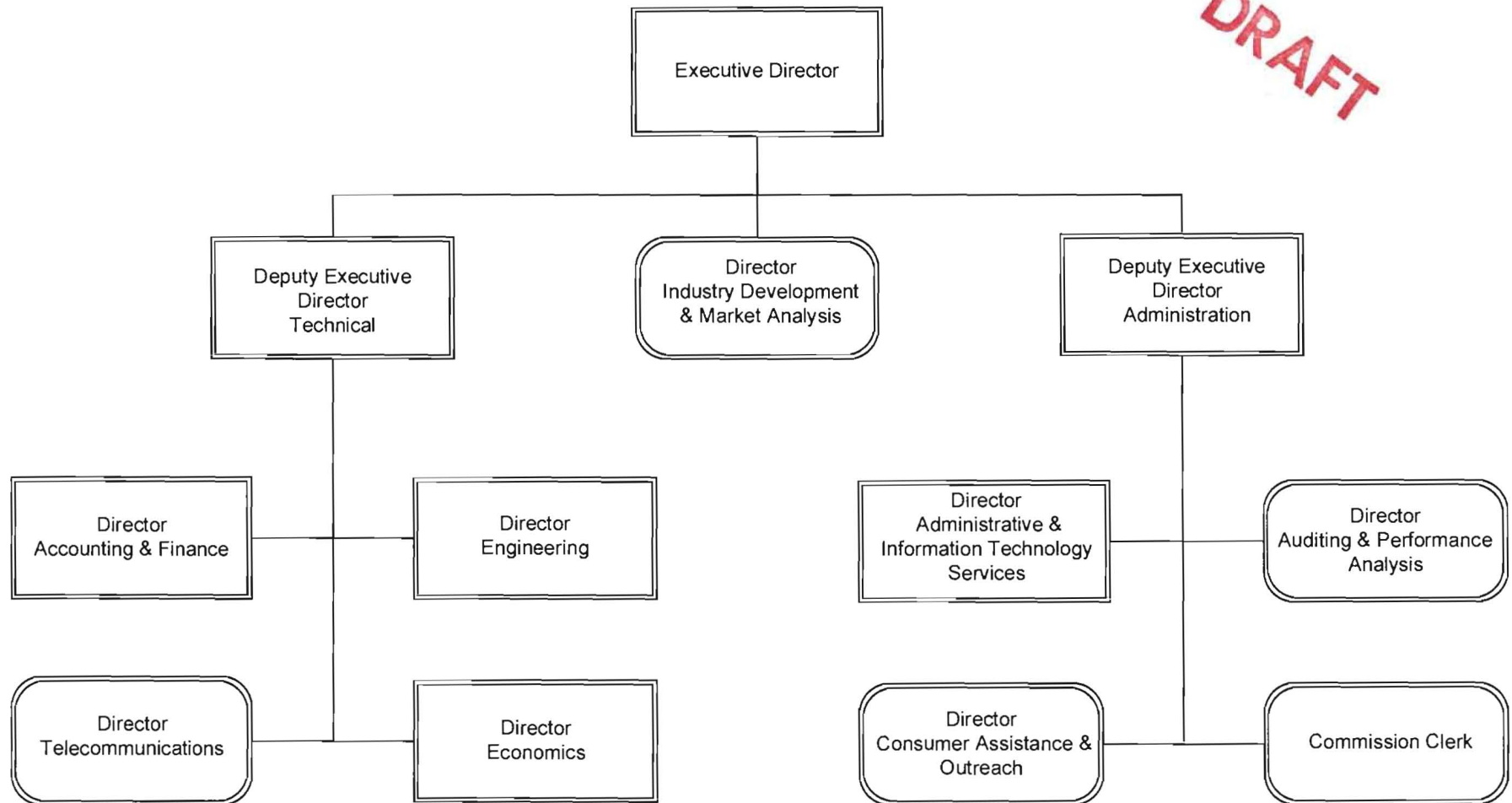
Commission guidance is sought as to whether the FPSC wishes to take further action, if any, concerning Order Nos. 1000 and 1000-A. If the Commission wishes to take additional action, options include:

Option 1. Appeal the orders. The FPSC could file an appeal in the Eleventh Circuit Court of Appeals or the D.C. Circuit Court of Appeals. Other state commissions may be filing appeals. If other state commissions file appeals, the FPSC may join in on a brief with them. Historically, the FPSC has participated in this way in challenges to FERC and Federal Communications Commission orders. There will be some costs associated with the appeal, such as filing fees. It may involve travel for oral argument. The Order was issued May 17, 2012. Thus, an appeal must be filed within 60 days, or by July 16, 2012.

Option 2. Intervene in another party's appeal. The FPSC could intervene in another party's appeal. However, the FPSC would be required to take the issues as that party has identified them.

Option 3. File as amicus curiae. This option would depend on the Court's granting *amicus curiae* status in order for the FPSC to participate. The FPSC would not be considered a party but a "friend of the court." For example, an *amicus* may not file a reply brief or participate in oral argument without the court's permission.

DRAFT



II. Outside Persons Who Wish to Address the Commission at Internal Affairs

***OUTSIDE PERSONS WHO WISH
TO ADDRESS THE COMMISSION AT***

***INTERNAL AFFAIRS
June 19, 2012***

<u>Speaker</u>	<u>Representing</u>	<u>Item #</u>
Andy Tunnell	Gulf Power	2
Jim Beasley	Florida Sponsors	2

III. Supplemental Materials Provided During Internal Affairs

NOTE: The records reflect that there were no supplemental materials provided to the Commission during this Internal Affairs meeting.