

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday – August 09, 2011
Immediately following Commission Conference
Room 140 - Betty Easley Conference Center

1. Approve July 27, 2011, Internal Affairs Meeting Minutes.
2. Briefing on FERC Order 1000 Regarding Transmission Planning and Cost Allocation, and Request for Guidance regarding a Request for Rehearing.
3. Update of Executive Director Search
4. Other matters.

CH/sc

**OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.**



State of Florida
Public Service Commission
INTERNAL AFFAIRS MINUTES

Wednesday, July 27, 2011

9:34 am - 10:30 am

Room 140 - Betty Easley Conference Center

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

STAFF PARTICIPATING: Hill, Helton, Miller, Pennington, Futrell, Trapp, Maddox

1. Approve June 29, 2011, Internal Affairs Meeting Minutes

The minutes were approved.

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

2. Discussion of PSC Related Legislation for 2011 Session

Ms. Pennington briefed the Commissioners on key legislative changes affecting the agency. The Commissioners were advised that Legislative Committee meetings will begin in September and the 2012 session will begin on January 10, 2012.

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

3. Draft Energy Bedrock Principles

Mr. Futrell reviewed the Bedrock Principles with the Commissioners. After some discussion, this item was deferred to a later Internal Affairs meeting for further review.

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

4. Update of Executive Director Search

Mr. Maddox updated the Commissioners on the status of the Executive Director search. A list of 21 potential candidates was provided to the Commissioners at the first of the week. After some discussion, it was decided to further reduce the list of 21 candidates. Commissioners are to provide a list of applicants they are interested in interviewing to Mr. Maddox. Potential interview dates were discussed.

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

5. Other matters.

The Chairman brought up a recent Public Records Request, noting the requested response times. The Commissioners discussed the PRR process and asked that staff review our current process and, working with Commissioner Brisé, determine if any changes need to be made or additional information provided at the time of a request.

Commissioner Brown let the Commissioners know that she had visited the Emergency Operations Center. She was very impressed and encouraged the other Commissioners to visit as well.

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

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: August 2, 2011

TO: Charles H. Hill, Deputy Executive Director

FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM S.M.C. RCJ*
Benjamin Crawford, Government Analyst, Regulatory Analysis Division *RC*
Mark Futrell, Public Utilities Supervisor, Regulatory Analysis Division *MF*

RE: FERC Order 1000 in Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities *WMT*

Critical Information: Please place on August 9, 2011, Internal Affairs. Commission approval regarding a Request for Rehearing and Clarification is sought. Such Rehearing Request is due August 22, 2011

On July 21, the Federal Energy Regulatory Commission (FERC) issued its 600-page Order 1000 on Transmission Planning and Cost Allocation. A summary of the Order is attached as Attachment A. Any party wishing to challenge FERC's order in Court must first seek rehearing before the FERC within 30 days of the issuance of the Order. Staff believes there are still concerns in the Order. Staff therefore recommends the FPSC seek rehearing and clarification in order to ensure the Florida Public Service Commission (FPSC or Commission) has the opportunity to challenge the Order in court, should the FPSC choose to do so in the future. Staff seeks Commission approval regarding filing of the attached Request for Rehearing and Clarification, which is due August 22, 2011 (Attachment B).

The FPSC had previously filed comments and reply comments in this proceeding. While the FERC responded to some of the concerns in the proposed rulemaking, some of them remain.

The comments of the FPSC raised a number of points including the following:

1. *Transmission planning and interregional coordination.* The FERC establishment of common planning criteria and the requirement that each public utility file with FERC its process for the evaluation of proposed transmission lines into the plan raises state jurisdictional issues. Also, that infringement on state authority is raised by the requirement relating to interregional transmission planning agreements.

2. *Cost allocation.* Movement away from the principle that the direct cost causer pays for infrastructure additions raises questions about ratepayers being required to pay for unclear benefits. The "benefits" eligible for cost allocation must be quantifiable and based on existing state or Federal law. Cost allocation should not be based on hypothetical benefits or hypothetical legislation.

3. *Merchant transmission.* Efforts to incentivize merchant transmission should recognize state laws whereby vertically integrated utilities have the obligation to serve end-use customers.

4. *The FPSC emphasized the importance of “bottom-up” planning, which begins at more of a local utility level than an interconnection-wide strategy.*

5. *The existing planning processes in Florida and the Southeastern region are working well.*

In our review of the order, staff identified the following improvement to the initial proposed rule:

1. *Some flexibility is allowed rather than a strict one-size-fits-all.* In Par. 157, the FERC agrees with commenters that public utility transmission providers should have flexibility in determining the most appropriate manner to enhance existing regional transmission planning processes to comply with the Final Rule. As a result, FERC does not prescribe the exact manner in which the providers must fulfill the requirements of complying with the transmission planning principles. FERC allows transmission providers to craft, in consultation with stakeholders, requirements that work for their transmission planning region. FERC does not impose rules that would detail planning cycles, impose stakeholder procedures, establish timelines for evaluating regional transmission projects or establish additional planning criteria. Also, FERC notes that “bottom-up” or “top down” planning is allowed.

2. *FERC allows the current geographic scope of regions to remain.* In a recent presentation by FERC staff, this was emphasized. This is important to Florida since we have the unique one-state region, the Florida Reliability Coordinating Council (FRCC). In Par. 159, the FERC clarifies that a transmission planning region is “one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate in for purposes of regional transmission planning and development of a single regional transmission plan.”

3. *FERC acknowledges State Commission authority.* In several places in the Order, FERC notes the state commission authority and FERC’s intent not to infringe on that authority. Also, the FERC Order notes in several places the FPSC comments. In Par. 402, FERC emphasizes “that the interregional transmission coordination requirements are not intended to infringe on state authority. We acknowledge the vital role that state agencies play in transmission planning and their authority to site transmission facilities.” FERC encourages state agencies to be involved in the development and implementation of the interregional transmission coordination procedures.

Possible Issues to Raise in a Request for Rehearing:

A draft Request for Rehearing and Clarification is attached. The Request is not due until August 22, and we ask for permission to add case law and statutory citations. (Attachment B.)

1. *Continued infringement on state authority.* While the FERC says in numerous places in the Order that it has no intent to infringe on state authority, the preemption is inherent in the actions of a national and interregional scope. State commissions are being placed in the role of mere stakeholders rather than the statutorily-authorized deliberative bodies that make final decisions. The two areas of primary concern are on the transmission planning requirements and the interregional coordination requirements.

2. *FERC's role as determiner in the event of failure to reach agreements on cost allocation.* In Par. 607, the FERC states that in the event of a failure to reach an agreement on a cost allocation method or methods, the FERC will use the record in the relevant compliance filing proceeding as a basis to develop a cost allocation method that meets its proposed requirements. We are concerned about their use of this "backstop authority" to force a region to pay for nebulous benefits for ratepayers. This could incent a party that thinks FERC will find in their favor to hold out and refuse to reach agreement. Also, in Par. 625, FERC states that if overly narrow or overly broad interpretations arise, then FERC will decide what meaning to give the term. The FERC seems to be opening a door to assert and insert more Federal jurisdiction.

3. *Lack of Clarity in the Process.* Ambiguities remain in the rulemaking. "Benefits" is left open-ended to be defined later. The FERC notes, at Par. 620, the FPSC's concerns that the definition of "benefits" could be interpreted too broadly, particularly with respect to transmission projects driven by public policy goals. While this flexibility in the Final Order could work in favor of ratepayers, it is nebulous and leaves open litigation later. The concern is that ratepayers will be asked to pay for infrastructure investments that have only a hypothetical benefit. Instead, the benefits for cost allocation should be quantifiable, based on existing policies in state or Federal law. This appears to present a due process issue.

Conclusion

In staff's opinion, some improvements were made in the Final Order, however issues remain. We recommend that the FPSC seek rehearing and clarification on the above three issues.

SUMMARY OF FERC ORDER 1000

FERC Order 1000

In its Final Order, FERC states that the reforms are intended to improve transmission planning processes and cost allocation mechanisms. The reforms address the “potential opportunity for free ridership inherent in transmission services, given the nature of power flows over an interconnected system.” FERC also states that there is a growing body of evidence that “significant expansion of the transmission grid will be required under any future electric industry scenario.”

Those participants generally in support of FERC’s approach in the Notice of Proposed Rulemaking include competitive transmission providers, Next Era, and a few state commissions. That approach has been largely carried over in the Final Order. Comments expressing concern have included Southern Companies, many state commissions, and several ad hoc groups consisting of investor-owned utilities.

The need for additional transmission is being driven in large part by the changes in generation mix, such as increasing reliance on large-scale integration of renewable energy, according to FERC. FERC disagrees with commenters who assert FERC is relying on unsubstantiated allegations of discriminatory conduct.

The Final Order requires each public utility transmission provider must participate in a regional transmission planning process that produces a regional transmission plan. Transmission needs driven by public policy requirements must be included in local and regional transmission planning processes. FERC notes that some commenters, such as Southern Companies, question the need for the reform on a nationwide basis.

North Carolina Agencies argue that transmission planning must be initiated at the local and regional levels subject to state-level authority and based on the needs of customers who bear the burdens and benefits of the decisions resulting from the planning process. However, FERC responds that in the absence of the reforms, FERC is concerned that public utility transmission providers may not adequately assess the benefits of alternative transmission solutions that may meet regional needs more efficiently or cost-effectively. FERC says, “we do not intend for our reforms to preclude the ability of states to actively plan at the local level.” (§84)

FERC notes that some commenters, such as the Ad Hoc Coalition of Southeastern Utilities, assert that FERC lacks jurisdiction to make the transmission planning reforms. (§89) Some commenters, such as the Florida PSC and the Alabama PSC, note that states have authority with respect to integrated resource planning. Some, such as Southern, argue the FERC lacks statutory authority to consider broad public policy. Also, Southern states that because the proposed rule did not identify what it would take to satisfy the public policy requirement, the proposal would violate the Due Process Clause’s “Fair Notice” requirement. (§95)

In paragraph 106, FERC acknowledges there is longstanding state authority over certain matters relevant to transmission planning and expansion, such as siting, permitting, and construction. “However, nothing in this Final Rule involves an exercise of siting, permitting, and construction authority.”

In paragraph 130, the FERC noted that the FPSC cautioned against adopting a definition of “region” that does not recognize Florida as a distinct region. Some commenters, such as the National Association of Regulatory Utility Commissioners, sought assurance that the needs of states and the primary role of states in transmission siting should be considered in transmission planning.

The Final Rule requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan. The FERC, at ¶149, declines to specify a particular set of analyses that must be performed by the transmission providers in order to provide some flexibility. The FERC, at ¶156, disagrees with concerns that the Integrated Resource Planning would be affected. This Final Rule “in no way involves an exercise of authority” over matters traditionally reserved to the states, including integrated resource planning, siting, permitting, or construction.

FERC agrees with commenters about flexibility in determining the most appropriate manner to enhance transmission planning (¶157). Also, FERC notes that transmission providers may use a “top down” or “bottom up” approach. FERC clarifies that, for this rule, a transmission planning region is “one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate in for purposes of regional transmission planning and development of a single regional transmission plan.” (¶160) Merchants are not required to participate (¶163). However, merchants must provide adequate data to allow transmission providers to assess potential reliability and operational impacts.

As to consideration of transmission needs driven by public policy requirements, the FERC clarifies (¶212) that nothing in the Final Rule is intended to alter the role of states.

On interregional transmission, the FERC finds that its approach is necessary (¶368). NARUC urges that the state commission role must be respected (¶390). The framework is somewhat altered. In ¶402, FERC says that there is no intent to infringe on state authority. State agencies are encouraged to be involved. In ¶415, each transmission provider is required to coordinate with providers in each of its neighboring transmission planning regions within its interconnection to implement the requirements. FERC requires the development of a formal procedure to evaluate interregional transmission facilities located in neighboring regions (¶435).

A number of commenters expressed concern with the FERC’s proposal to impose generic regional and interregional cost allocation requirements. However, FERC finds them necessary in light of changes in the industry. FERC notes that state resource policies, such as renewable portfolio standards, have contributed to rapid growth of regional resources that are frequently remote from load centers and thus contribute to a need for more transmission.

There was much comment regarding the cost causation issue (¶¶ 523-529). FERC claims that those who receive no benefit must not be allocated the costs (¶544). However, the definition of benefit is left wide-open. Thus, we cannot discern whether they concurred with the FPSC comments about requiring a quantifiable benefit in order for cost allocation to be made.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

In the Matter of:)
)
Transmission Planning and Cost Allocation) **Docket No. RM10-23**
by Transmission Owning)
and Operating Utilities)

**FLORIDA PUBLIC SERVICE COMMISSION
REQUEST FOR REHEARING AND CLARIFICATION OF ORDER NO. 1000**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission’s (FERC) Rules of Practice and Procedure, the Florida Public Service Commission (Florida Commission) hereby requests rehearing regarding the FERC’s infringement on state jurisdiction in the area of transmission planning and in the interregional planning area. The Florida Commission also requests clarification on a number of ambiguities in the Order.

I. SPECIFICATION OF ERROR

- 1. The FERC erred by infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios.**
- 2. The FERC erred by stating that it would be the determiner in the event of a failure to reach an agreement on a cost allocation method.**
- 3. The FERC should clarify some of the ambiguities and lack of clarity that remain in Order 1000. FERC should clarify that benefits must be quantifiable based on existing policies in State and Federal law. In Par. 620, the FERC leaves open the definition of**

benefits for later proceedings. Also, the FERC argues in Par. 625 that it can step in if benefits are defined too narrowly or too broadly but fails to define what constitutes too narrow or too broad.

II. DISCUSSION

A. The FERC erred by infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios.

The Florida Commission respects some of the improvements made in FERC Order 1000 from the earlier proposed rule. However, concerns remain that the FERC is infringing on state jurisdiction. State Commissions may not be placed in the role of mere stakeholders in a regional and interregional process which would contravene the role provided in state statutes as determiner of issues.

The FERC should provide a rehearing on this issue. Section 201(a) of the Federal Power Act (FPA) explicitly provides that the FERC's regulation of interstate transmission and wholesale sales of power extends only to those matters which are not subject to regulation by the states. While Section 215 of the FPA, 16 U.S.C. Sec. 824o, grants the FERC jurisdiction to approve and enforce compliance with transmission reliability standards, nothing in Section 215 preempts any authority of States to take action to ensure the safety, adequacy, or reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

With the exception of the FERC's limited backstop authority, transmission planning and expansion fall strictly within the purview of state regulatory authorities. FERC Order 1000 does not adequately take into account the FERC's lack of authority nor the long-standing authority of

the States. Contrary to the FERC Order 1000's assumptions, transmission planning must be initiated at the local and regional level subject to State-level authority and based on the needs of the customers who bear the burden and benefits of the decisions resulting from the planning process. Transmission solutions offered as alternatives to locally planned solutions must be considered as part of the relevant State planning processes, and those who advocate such alternatives must be required to participate in such planning processes. The regional planning processes in Order 1000 will have no direct responsibility or accountability to the State legislatures and regulatory authorities that have responsibility for implementing energy and environmental policy within their States. The FPA gives no authority to the FERC to determine what resources should be used by load-serving entities, regardless of whether those resources are needed to meet public policy requirements.

B. The FERC erred by stating that it would be the determiner in the event of a failure to reach an agreement on a cost allocation method.

In Par. 607, the FERC stated that if there cannot be agreement reached on a cost allocation method, the FERC will use the record in the proceeding to reach a determination. While this may sound like a fair solution, it is the "camel's nose under the tent" in terms of the Federal agency inserting itself in state jurisdictional matters. FERC does not have authority to force a region to pay for nebulous benefits for ratepayers.

C. The FERC should clarify some of the ambiguities and lack of clarity in the Order 1000.

In Order 1000, ambiguities remain. This would violate the Due Process Clause "fair notice" requirement, in that an agency has to make clear to the regulated entity what its legal obligations are. *Trinity Broadcasting of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) In Par. 620, the FERC leaves open the definition of benefits for later proceedings for later

proceedings.. Also, the FERC argues in Par. 625 that it can step in if benefits are defined too narrowly or too broadly but fails to define what constitutes too narrow or too broad. Also, the FERC does not explicitly state what State and Federal policies will be considered in the cost allocation arena.. FERC should clarify that benefits must be quantifiable and based on existing policies in State and Federal law. .

III. CONCLUSION

Wherefore, the Florida Commission respectfully urges the FERC to grant rehearing on the first two issues and clarify the last issue.

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

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

INTERNAL AFFAIRS

August 9, 2011

<u>Speaker</u>	<u>Representing</u>	<u>Item #</u>
Andy Tunnell	Gulf Power	2
Joe Kelliher	FPL	2

III. Supplemental Materials for Internal Affairs

NOTE: The following material pertains to Item 2 of
this agenda.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of:)
)
Transmission Planning and Cost) Docket No. RM10-23
Allocation by Transmission Owning)
and Operating Utilities)

FLORIDA PUBLIC SERVICE COMMISSION
REQUEST FOR REHEARING AND CLARIFICATION OF ORDER NO.
1000

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3. **The FERC should clarify some of the ambiguities and lack of clarity that remain in Order 1000. FERC should clarify that benefits must be quantifiable based on existing policies in State and Federal law. In Par. 620, the FERC leaves**

open the definition of benefits for later proceedings. Also, the FERC argues in Par. 625 that it can step in if benefits are defined too narrowly or too broadly but fails to define what constitutes too narrow or too broad.

II. DISCUSSION

A. The FERC erred by infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios.

The Florida Commission respects some of the improvements made in FERC Order 1000 from the earlier proposed rule. However, concerns remain that the FERC is infringing on state jurisdiction. State Commissions should ~~may~~ not be placed in the role of mere stakeholders in a regional and interregional process which would contravene the role provided in state statutes as determiner of issues. In Par. 212, the FERC states, “Through this Final Rule, we are requiring public utility transmission providers to provide an opportunity to all stakeholders, including state regulatory authorities, to provide input on the transmission needs they believe are driven by Public Policy requirements.” This stakeholder role is contrary to the state statutory role set out by the Florida law, in Sec. 366.05, Fla. Stats.

The FERC should provide a rehearing on this issue. Section 201(a) of the Federal Power Act (FPA) explicitly provides that the FERC’s regulation of interstate transmission and wholesale sales of power extends only to those matters which are not subject to regulation by the states. While Section 215 of the FPA, 16 U.S.C. Sec. 824o, grants the FERC jurisdiction to approve and enforce compliance with transmission reliability standards, nothing in Section 215 preempts any authority of States to take

action to ensure the safety, adequacy, or reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

With the exception of the FERC's limited backstop authority, transmission planning and expansion fall strictly within the purview of state regulatory authorities. FERC Order 1000 does not adequately take into account the FERC's lack of authority nor the long-standing authority of the States. Contrary to the FERC Order 1000's assumptions, transmission planning must be initiated at the local and regional level subject to State-level authority and based on the needs of the customers who bear the burden and benefits of the decisions resulting from the planning process. Transmission solutions offered as alternatives to locally planned solutions must be considered as part of the relevant State planning processes, and those who advocate such alternatives must be required to participate in such planning processes. The regional planning processes in Order 1000 will have no direct responsibility or accountability to the State legislatures and regulatory authorities that have responsibility for implementing energy and environmental policy within their States. The FPA gives no authority to the FERC to determine a process for what resources should be used by load-serving entities, regardless of whether those resources are needed to meet public policy requirements.

B. The FERC erred by stating that it would be the determiner in the event of a failure to reach an agreement on a cost allocation method.

In Par. 607, the FERC stated that if there cannot be agreement reached on a cost allocation method, the FERC will use the record in the proceeding to reach a determination. While this may sound like a fair solution, it is the incremental encroachment of Federal jurisdiction on~~"camel's nose under the tent" in terms of the Federal agency inserting itself in~~ state jurisdictional matters. FERC does not have

authority to force a region to pay for nebulous benefits for ratepayers. Section 366.05(8), Florida Statutes, authorizes the Florida Commission to address the cost allocation for transmission in proportion to benefits received.

C. The FERC should clarify some of the ambiguities and lack of clarity in the Order 1000.

In Order 1000, ambiguities remain. This would violate the Due Process Clause “fair notice” requirement, in that an agency has to make clear to the regulated entity what its legal obligations are. *Trinity Broadcasting of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) In Par. 620, the FERC leaves open the definition of benefits for later proceedings.~~for later proceedings.~~ Also, the FERC argues in Par. 625 that it can step in if benefits are defined too narrowly or too broadly but fails to define what constitutes too narrow or too broad. ~~Also,~~ The FERC does not explicitly state what State and Federal policies will be considered in the cost allocation arena.. FERC should clarify that benefits must be quantifiable and based on existing policies in State and Federal law.

III. CONCLUSION

Wherefore, the Florida Commission respectfully urges the FERC to grant rehearing on the first two issues and clarify the third last issue.