State of Florida

Public Service Commission

INTERNAL AFFAIRS AGENDA

Tuesday – August 17, 2010
Following Agenda Conference
Room 140 - Betty Easley Conference Center

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1. Approve August 3, 2010 Internal Affairs Meeting Minutes. (Attach. 1)

2. Draft Comments to FERC Regarding its Notice of Proposed Rulemaking on Electric Transmission Planning and Cost Allocation. Approval of Comments is sought. Comments are due August 30, 2010. (Attachment 2)

3. Draft Comments in Response to the Federal Communications Commission Notice of Inquiry Regarding Video Relay Service. Approval of the Draft Comments is Sought. Comments are due August 18, 2010. (Attachment 3)

4. FERC Order on California Feed-in Tariff. (Attachment 4)

5. Other matters, if any

TD/sa

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.

Attachment 1

State of Florida

Public Service Commission

INTERNAL AFFAIRS AGENDA

Tuesday – August 3, 2010
2:40 pm – 3:07 pm
Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT: Commissioner Edgar
Commissioner Skop
Commissioner Graham
Commissioner Brisé

STAFF PARTICIPATING: Devlin, Hill, Kiser, Miller, Fogleman, Futrell, B. Crawford

1. Approve July 13, 2010, Internal Affairs Meeting Minutes.

   The minutes were approved.

   Commissioners participating: Edgar, Skop

2. FPSC Draft Letter to the Florida Congressional delegation regarding the Department of Energy's Yucca Mountain Repository Actions. Approval of letter is sought.

   The draft letter to the Florida Congressional delegation was approved with the clarification that a letter will also be sent to Senator Brown-Waite.

   Commissioners participating: Edgar, Skop, Graham, Brisé

3. FPSC Draft Reply Comments to FCC regarding reform to the federal universal service high-cost program in the context of the National Broadband Plan. Approval of comments is sought. Reply comments are due August 11, 2010.

   The draft reply comments were approved.

   Commissioners participating: Edgar Skop, Graham, Brisé

4. Report on Federal Energy Regulatory Commission activities for June 2010. For informational purposes and discussion.

   Briefing and discussion.

   Commissioners participating: Edgar, Skop, Graham, Brisé

5. Other matters, if any.

   There were no additional matters to be discussed.

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 9, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Mark Futrell, Division of Regulatory Analysis
Benjamin J. Crawford, Division of Regulatory Analysis
Cindy B. Miller, Office of the General Counsel

RE: Re: Draft comments to FERC regarding its notice of proposed rulemaking on electric transmission planning and cost allocation
Critical Information: Please place on the August 17, 2010 Internal Affairs. Approval of comments is sought. Comments are due August 30, 2010.

On June 17, 2010, the Federal Energy Regulatory Commission (FERC) issued a notice of proposed rulemaking (NOPR) on electric transmission planning and cost allocation. It appears FERC's proposals are intended to further facilitate the import of renewables into load centers. Staff is concerned that FERC may seek to expand its authority over transmission planning and establish cost allocation for transmission expansion and upgrades that may negatively impact state authority and Florida's ratepayers. Staff seeks approval to file the attached draft comments (Attachment A) which are due August 30, 2010.

Staff contacted the major investor-owned electric utilities for any comments on the NOPR. Gulf Power Company (Gulf Power) provided written comments while Progress Energy Florida, Inc., and Tampa Electric Company expressed general agreement with Gulf Power's comments. As of the date of this memorandum, Florida Power and Light Company had not submitted comments. Also, LS Power Development, LLC provided written comments on the NOPR. A summary of these comments is included in Attachment B. Staff will provide copies of these comments upon request. Below is a summary of the staff's key areas of concern with FERC's NOPR.

Transmission Planning and Interregional Coordination

It is not clear the extent to which FERC's proposals may impact state jurisdiction or Florida's utilities and ratepayers. FERC recognizes the role of states in transmission planning and regional differences that necessitate varying planning structures. FERC, however, contemplates the establishment of common planning criteria. It also proposes to require each investor-owned utility to file with FERC its process for the evaluation of proposed transmission lines into the transmission plan.

FERC proposes to require each public utility transmission provider through its regional planning process to coordinate with other providers in each of its neighboring transmission planning regions within its interconnection to address transmission planning issues. The NOPR requires certain elements to be included.

Cost Allocation

Utilities would be required to develop regional and interregional cost allocation methodologies for transmission additions. These methodologies would be based on the principle that the beneficiaries of transmission would bear the costs commensurate with the benefits they receive. Again, it is unclear the extent to which FERC's proposals may impact Florida. FERC appears to allow regions the flexibility to develop cost allocation methodologies. However, in assigning costs of transmission additions, FERC appears to broaden its definition of beneficiaries. This may have the effect of requiring ratepayers to pay for transmission, even if they are not a customer of the utility incurring the cost.

Merchant Transmission

Entities sponsoring merchant transmission could recover costs through a cost allocation methodology developed by transmission owning utilities. These entities would also retain the right to construct transmission even if another alternative is selected through subsequent the planning processes. While FERC states that it does not seek to change or preempt state law, this proposal would frustrate a utility's obligation to plan and serve the requirements of end-use customers.

Conclusion

It is not clear what FERC's role will be in approving, implementing, and enforcing regional transmission plans, and cost allocation methodologies. The requirement to develop and file these documents, in and of itself, does not necessarily raise a serious concern. One could reasonably assume, however, that FERC does not intend to stop there, but to adjudicate and possibly modify these plans, procedures, and methodologies based on some yet to be defined criteria. Finally, FERC's proposals may have more relevance to regions of the country with organized transmission markets administered by a Regional Transmission Organization or Independent System Operator.

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) appreciates the opportunity to comment on this rulemaking. In general, the FPSC commends the Federal Energy Regulatory Commission (FERC) for recognizing state jurisdiction in transmission planning, regional differences that have resulted in varying transmission planning structures, and traditional cost allocation principles that recognize that the cost causer should pay infrastructure additions. However, we are concerned that FERC may be introducing revisions to transmission planning and cost allocation principles that could conflict with and therefore preempt state jurisdiction resulting in ratepayers funding transmission without direct benefits. The NOPR introduces revisions that may be more relevant in areas of the country administered by Regional Transmission Organizations or Independent System Operators. FERC should consider whether rules applicable to deregulated states with these transmission structures should be established, separate and apart from rules for states that retain authority over traditional vertically integrated utilities. Our concerns are in the following areas:

1. Transmission planning and interregional coordination – The 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 transmission plan would infringe upon state jurisdiction of the planning process. Also, the requirement for utilities to develop a regional transmission plan and to file with FERC interregional transmission planning agreements would infringe upon state authority to ensure adequate planning and operation of the grid.

2. Cost allocation - Movement away from the principle that the cost causer pays for infrastructure additions raises questions whether ratepayers would be required to pay for unclear benefits.

3. Merchant transmission – Efforts to incentivize merchant transmission should recognize state laws whereby vertically integrated utilities retain the obligation to serve end-use customers. Entities seeking to construct merchant transmission should be fairly evaluated in a transparent planning process. However, these entities should not receive advantages which could hamper the planning process and result in increased cost to retail ratepayers.

Background

The FPSC has authority under Florida Statutes to ensure that inadequacies in the grid are addressed with costs spread to all affected utilities on a pro rata basis of the benefits received. This authority extends to investor owned electric utilities, municipalities and cooperatives. The Florida Reliability Coordinating Council (FRCC) acts to facilitate transmission planning in the state. Its membership is open to those entities doing business in Florida including all utilities, independent power producers, and transmission providers. FRCC also coordinates interregional planning with the Southeastern Reliability Coordinating Council. The FPSC closely monitors transmission planning activities to ensure areas of concern are identified and adequately addressed on a timely basis.

During the past decade, the FPSC examined the establishment of the GridFlorida Regional Transmission Organization (RTO). The FPSC determined that it was not prudent to continue the development of GridFlorida because the costs of establishing the RTO would outweigh any benefits.[1] However, the FPSC found that Florida would benefit by making modifications to the market structure where efficiencies may be gained in a cost-effective manner. The FRCC transmission planning process resulted from the effort to evaluate such

[1] Order No. PSC-06-0388-FOF-EI, issued May 9, 2006, Docket No. 020233-EI, In re: Review of GridFlorida Regional Transmission (RTO) Proposal.

modifications. The objective of the transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning process within the FRCC Region, and provide a better transmission expansion plan from a statewide perspective. This process utilizes the reliability standards and criteria established by the North American Electric Reliability Council (NERC) and the FRCC, and the specific design, operating and planning criteria used by Peninsular Florida transmission owners. This enhanced process was approved by the FRCC Board of Directors in the first quarter of 2005.

The FRCC transmission planning process begins with the consolidation of the long-term transmission plans of all of the transmission owners in the FRCC Region. This includes plans for all transmission facilities 69 kV and above. Detailed evaluation and analysis of these independently developed plans is conducted by the FRCC. This process provides the basis for possible recommended changes to individual system plans that, if implemented, would result in a better overall transmission expansion plan for the FRCC Region. This planning process is intended to meet the existing and future needs of all firm users of the transmission system (e.g., utility generation, network generation, network loads, merchant generation, independent power producers, and load serving entities) requiring Network Integration Transmission Service, firm Point-to-Point Transmission Service, and Generator Interconnection Service.

The FRCC transmission planning process provides for the transparent evaluation of merchant transmission projects. Section 186.801, Florida Statutes, requires the major generating electric utilities to conduct and submit to the FPSC 10-year site plans. These plans include forecasts of load and the resources needed to maintain reliability, including generation and transmission additions. As discussed above, the FRCC relies on the 10-year site plans in its transmission planning process. Entities not required to submit a 10-year site plan to the FPSC

must submit a plan to the FRCC for consideration in its transmission planning process. This includes entities seeking to construct merchant transmission. The existing process thus provides for the review of both utility and non-utility infrastructure additions.

Areas of Concern

1. Transmission planning and interregional coordination

State authority over transmission plans and the ability of regions to develop planning processes and decisions should not be usurped by FERC. While the NOPR recognizes that transmission providers would retain planning responsibility and would not direct investments found to be needed in a plan, the FPSC is concerned that FERC may be seeking additional authority to regulate transmission planning. These concerns are manifested in statements in the NOPR where FERC would require the establishment of planning criteria. Also, FERC would require each public utility to submit to FERC the process used to evaluate whether to include a proposed transmission line into the transmission plan. Finally, FERC would require the development of a regional transmission plan and that regions enter into interregional planning agreements that would be submitted to FERC. The FPSC is concerned that these proposals would have the effect of ceding authority to FERC to directly regulate transmission planning.

As stated above, the FPSC has authority to ensure that Florida's electric utilities adequately plan and operate the grid.[2] The FRCC has established transmission planning processes that are open and transparent to both utility and non-utility stakeholders. These processes ensure that Florida's electric grid is adequate and reliable, and that transmission additions are needed to maintain reliability and are cost-effective to ratepayers. The FRCC also

[2] Section 366.04(5), F.S., states: "The Commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities."

coordinates with the Southeastern Reliability Coordinating Council to address any interregional planning concerns. In summary, FERC should continue to defer to states that have authority over transmission planning, and the adequacy and operation of the transmission grid.

2. Cost allocation

The cost of transmission should be assigned to those who benefit from it, using a "cost causer pays" allocation model. The costs for new transmission facilities not needed for bulk system reliability should be borne by the entity requesting it. The FPSC commends FERC for affording regions flexibility to establish cost allocation methodologies and for recognizing the need to allocate transmission costs commensurate with the benefits from such costs.

The FPSC is concerned, however, that FERC may seek to nullify the cost causation principle by proposing to allocate transmission costs to customers of utilities that do not incur the costs. The NOPR would require public utilities to develop cost allocation methodologies through which beneficiaries would be allocated costs for transmission facilities commensurate with the benefits received. It is unclear how these benefits would be determined and allocated. Also, if a cost allocation methodology cannot be achieved within a region, FERC states it would have authority to establish a methodology based upon record evidence. This appears to contravene state authority.

FERC should continue to recognize the cost causer principle which ensures costs are allocated directly to those who benefit. Any attempt to modify this principle through the introduction of an unclear proposal based on a potentially broad definition of benefits, introduces risk of significant transfer of risks to retail ratepayers.

3. Merchant Transmission

Florida's vertically integrated electric utilities operate under a statutorily mandated obligation to serve customers.[3] These utilities must plan and operate their respective systems to ensure customers receive adequate, reliable service in a cost-effective manner. While FERC states that it does not propose to change or seek to preempt any state law, the FPSC is concerned that proposals in the NOPR relating to merchant transmission may challenge the ability of utilities to meet the obligation to serve. Specifically, FERC appears to propose that the right of first refusal on transmission access for incumbent transmission owners be removed and opened to non-regulated merchant transmission providers. These parties, however, are not under the statutory obligation to serve. Therefore adequate performance assurances must be given to ensure merchant transmission projects identified through the FRCC transmission process will be constructed. Failure to bring such projects as planned, could negatively impact the reliability of Florida's bulk transmission system and cost to customers.

The FPSC is also concerned that FERC's proposal may circumvent FPSC authority over the establishment of rates for transmission infrastructure that serve retail load. The NOPR appears to allow entities seeking to construct merchant transmission to recover project cost from Florida ratepayers through a FERC-approved cost allocation process. Merchant transmission projects identified for review in a regional plan would be entitled to cost recovery. The rates for merchant transmission projects would appear to be regulated by FERC and not by the FPSC.

4. Conclusion

FERC should carefully consider the impact its decisions in this rulemaking could have upon states with jurisdiction over vertically integrated utilities. Despite statements to the

[3] Section 366.03, Florida Statutes.

contrary, it appears that FERC's efforts would undermine the FPSC's jurisdiction over the adequacy and reliability of Florida's bulk transmission system. Also, this could lead to increased cost to retail ratepayers, and uncertainties and delays in existing open and transparent transmission planning processes.

SUMMARY OF COMMENTS RECEIVED AT THE FPSC

Gulf Power Company

- The NOPR is ambiguous and contradictory, complicating efforts to evaluate the potential impacts upon FPSC regulation of bundled service. The NOPR contains supportive statements regarding protections of state prerogatives while at the same time containing proposals that would likely encroach on traditional state authority.

- The NOPR's proposals would seem likely to allow FERC to directly regulate transmission planning. (Mentions FPSC's May 26, 2010, letter to Florida's Congressional delegation which states: The FPSC does not support giving the FERC authority to order modifications to transmission plants that have been approved at the state, regional, and interregional levels.)

- The NOPR discusses the formulation of "planning criteria" and would require each public utility to file with FERC its process uses for evaluating whether to include a proposed line into the transmission plan. (NOPR, pp. 70, 91)

- The NOPR requires public utilities to develop a regional transmission plan and to enter into interregional transmission planning agreements that would have to be filed with FERC. (NOPR, pp. 51, 114) The proposals appear to allow FERC to directly regulate transmission planning, for the first time, having FERC regulate: the planning criteria that are used to develop transmission plans; the evaluative means by which the transmission projects are selected for inclusion in a transmission plan; and the interregional planning that would occur under the FERC-required transmission planning agreements.

- The NOPR's proposal to force merchant transmission planning into the planning process would, absent FERC clarification to the contrary, likely undermine state jurisdiction and increase costs.

- The NOPR proposes to require each public utility to develop the "qualification criteria" to determine an entity's eligibility to sponsor transmission lines so that "non-incumbent" transmission developers can construct and own transmission lines in the public utility's service territory. And merchant transmission developers would be allowed to recover their costs through a newly required transmission provider's cost allocation process that must be developed. (NOPR, pp. 90-96) However, the NOPR also states that the proposed rule "does not address, propose to change, or seek to preempt any state or local laws or regulations."

- The proposal would undermine a public utility's ability to comply with its duty to serve, as required by Florida law, Sec. 366.03. The NOPR's non-incumbent proposals would undermine a public utility's ability to construct and own transmission lines in an incumbent's service territory should its project be selected through the FERC-regulated project evaluation process. The utility would no longer have the right to construct, own and operate the transmission lines necessary to render such service.

- There is the potential for merchants to fail to complete a project.

- The proposals will add uncertainty and delays into the planning process and raise questions as to whether there will be sufficient transmission capacity.

- It is unclear whether a merchant transmission developer would have the condemnation authority necessary to complete a transmission project.

- The NOPR's proposals seem rife for the potential for disputes and litigation.

- Clarification could be sought that the NOPR's non-incumbent proposals will not apply in Florida, due to their preemptive effect on Florida law.

- The NOPR's cost allocation proposal would allow third parties to recover their costs from a utility's customers and appear to reject the "requester pay" approach.

- The positive aspect is that the NOPR appears to afford flexibility to the regions in developing there methodologies, and the NOPR embraces that costs should be allocated commensurate with benefits receives.

- Contrary to the FPSC's position on cost allocation, the NOPR appears to largely nullify cost causation in favor of an overly broad determination of benefits. This is contrary to the FPSC's letter to the Congressional delegation.

- The NOPR allows third parties to recover their costs from a utility's customers.

- The impacts are unclear of the NOPR's requirements that "public policy" should be considered in the transmission planning proposal. Such a requirement could result in "second guessing" of state-regulated IRP/RFP decisions on the regional level and might result in customers in one state bearing at least some of the costs of transmission facilities built to satisfy a separate state's legal requirements, such as a state RPS requirement.

- The net effect - - the NOPR would likely undermine the effective transmission planning in Florida and the Southeast and hinder transmission construction.

Progress Energy Florida, Inc.

- Agrees with Gulf Power comments above.

Tampa Electric Company

- Is in general agreement with Gulf Power comments above.

LS Power Development, LLC
(managed 20,000 MW of generation in the U. S., Interested in transmission development to support renewables)

- LS Power states they are most interested in the issue of removing the right of first refusal "that provides an incumbent utility with an undue advantage over non-incumbent transmission project developers."

- FERC action is needed to eliminate harmful barriers to entry and to expand the scope and inclusiveness of transmission planning to ensure increased deployment of renewable energy and to ensure consumers get the most beneficial and cost effective alternative for identified transmission needs.

- Refers to the Public Utility Commission of Texas finding the only approach to ensure barriers of entry are eliminated is for all potential transmission providers to operate on a level playing field.

- Transmission policies must follow three principles:

(1) no preferences of any kind to incumbent transmission owners, including the rights of first refusal and approach to rate recovery.

(2) project developers must have adequate certainty as to timing and level of cost recovery, be technology neutral, and allocated costs in an objective manner.

(3) transmission planning must: be open to participation by all stakeholders including non-incumbent transmission companies; ensure that planning criteria address unique qualities of transmission for renewable resources; allow for new transmission projects to be awarded to any qualified entity.

- The most fundamental problems in transmission policies are: (1) the preferences given to incumbent transmission owners to construct and own transmission, and (2) parochial transmission planning that provides little or no opportunity for competitive solutions.

- LS Power has submitted transmission projects to PJM Interconnection, the Midwest Independent System Operator, the Southwest Power Pool, and the California Independent System Operator. "However, LS Power cannot prudently advance development of these projects until the existing barriers to entry-specifically the rights of first refusal and inability to obtain cost recovery – are eliminated."

- The most glaring impediment to independent transmission development is discriminatory treatment accorded to independently developed projects in the RTO/ISO planning process and the right of first refusal accorded for member transmission owners to construct upgrades identified in that process.

- Describes concerns in the Midwest ISO process, the PJM process, the Southwest Power Pool process, and the NYISO Planning Rules.

- It is not just or reasonable for transmission planners to allow an incumbent transmission owner to take a project conceived and sponsored by one entity and assign the rights to that project to another entity simply because the other entity owns existing transmission.

- Competition for transmission is in the public interest.

- The FERC should standardize transmission to transmission interconnection.

- The FERC should clarify the ability to obtain recovery of development costs.

- The FERC should establish clear rules for separation of transmission planning from transmission development.

- The FERC should establish specific planning requirements for development of transmission to address economic constraints and integration of renewable generation resources.

- The FERC should establish a transmission provider selection process for the right to construct transmission.

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 9, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Richard A. Moses, Chief of Service Quality, Division of Service, Safety & Consumer Assistance
Cindy B. Miller, Senior Attorney, Office of the General Counsel

RE: Draft Comments in Response to the Federal Communications Commission Notice of Inquiry regarding Video Relay Service
CRITICAL INFORMATION: Please place on the August 17, 2010 Internal Affairs. Comments are due August 18, 2010. **COMMISSION APPROVAL OF COMMENTS IS SOUGHT.**

Chapter 427, Florida Statutes, established the Telecommunications Access System Act of 1991 (TASA). Pursuant to TASA, the Commission is responsible for establishing, implementing, promoting, and overseeing the administration of a statewide telecommunications access system to provide access to telecommunications relay services by people who are hearing or speech impaired and those who communicate with them. According to the Florida Coordinating Council for the Deaf and Hard of Hearing's 2009 Report to the Governor, Legislature, and Supreme Court of the State of Florida, nearly three million Floridians, or approximately one sixth of all Florida's citizens, are affected by hearing loss.

On June 28, 2010, the Federal Communications Commission (FCC) released a Notice of Inquiry (FCC 10-111) regarding Video Relay Service (VRS). VRS[1] allows persons with hearing or speech disabilities to use American Sign Language over the Internet to communicate in near real time. In this Notice, the FCC seeks comment to make the VRS program work better for those who could benefit from it and those who pay into it.

Among other issues, the FCC is seeking comments on whether states should be required to pay the intrastate costs of VRS. At this time, Florida does not pay for any VRS costs. All VRS costs are paid out of the interstate Telecommunications Relay Service Fund. If the FCC requires states to absorb the intrastate costs of VRS, the costs for the Florida Relay program may increase by an estimated $32 million per year. A Florida statutory $0.25 cap on the amount of

[1] VRS replaces the TTY-to-TTY link between Telecommunications relay service user and a communications assistant (CA) with a video-to-video link, allowing the person who uses American Sign Language (ASL) to communicate with another individual through a CA who can communicate in sign language. The CA interprets the call by voicing what the ASL user signs to the hearing individual, and signing back the hearing individual's responses.

the Telecommunications Relay Service (TRS) surcharge on local exchange company access lines may have to be increased, and if competitive bidding of VRS contracts is required, the Florida statute providing for a single provider of TRS service in Florida may have to be changed. Comments are due August 18, 2010. **COMMISSION APPROVAL OF COMMENTS IS SOUGHT.**

The Draft Comments encourage the FCC to consider the following:

1. VRS goes well beyond the functional equivalent of telecommunication services required by Title IV of the Americans with Disabilities Act (ADA) and should not be a mandated service of TRS;

2. If VRS becomes a mandated service of TRS, it should continue to be funded through the Interstate TRS Fund;

3. If state funding of intrastate VRS is mandated, it should not occur until the FCC resolves the fraudulent use of VRS;

4. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of VRS;

5. If a decision is made to require states to assume intrastate VRS costs, the FCC must allow time for states to make legislative changes; and,

6. Mandating VRS as part of the TRS program may eliminate competition for these services in Florida since, by statute, Florida can have only one relay service provider.

RJC
Attachment
cc: Charles Hill

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	CC Docket No. 10-51
Structure and Practices of the Video Relay Service Program	)	
	)	

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

<u>FLORIDA PUBLIC SERVICE COMMISSION</u>

CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

August 18, 2010

INTRODUCTION AND SUMMARY

The Florida Public Service Commission (FPSC) submits these comments in response to the Notice of Inquiry[2] (NOI) released on June 28, 2010. In this NOI, the Federal Communications Commission (FCC) seeks comment on thoughts and proposals for making the Video Relay Service (VRS) program work better for those who could benefit from it and those who pay into it. As delineated in paragraph 70 of the NOI, the FCC has thus far treated all VRS calls as interstate calls paid for by the Interstate Telecommunications Relay Services (TRS) Fund. Among other issues, the FCC seeks comment on whether states should now be required to compensate the intrastate portion of VRS funding. These comments, which supplement the FPSC's October 27, 2006 comments,[3] address VRS issues brought forth in the NOI.

Estimated Impact of Going Beyond the "Functional Equivalent" Requirement

The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is ***functionally equivalent*** to the ability of an individual who does not have a hearing impairment or speech impairment to communicate ***using voice communication services*** by wire or radio.[4] Although VRS may be a beneficial service to the deaf and hard-of-hearing community, it goes well beyond the ***functional equivalent*** requirement of conventional voice telephone services required by Title IV of the Americans with Disabilities Act (ADA).

[2] CG Docket No. 10-51, In the Matter of Structure and Practices of the Video Relay Service Program, FCC 10-111.
[3] CG Docket No. 03-123, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities.
[4] http://www.fcc.gov/cgb/dro/title4.html

The financial impact of Florida assuming VRS intrastate costs is substantial. The shifting of costs to the states would cause Florida to be responsible for intrastate VRS costs estimated at $32 million annually, causing Florida's present $0.11 per month TRS surcharge to increase by an estimated $0.25 per month to $0.36 per month per access line. Current Florida statutes cap the TRS surcharge at $0.25 per access line.

VRS Relay Fraud

The FCC acknowledges problems with the present VRS program in its NOI, stating that it is "concerned that the program is fraught with inefficiencies (at best) and opportunities for fraud and abuse (at worst)." (¶30) The FCC notes that the VRS program, as currently structured, presents easy opportunities for fraud and abuse and provides an example of the Department of Justice's indictments of 26 individuals for tens of millions of dollars of VRS fraud in 2009. (¶31)

The FPSC is concerned about VRS fraud because if states assume responsibility for funding intrastate VRS, they would also be assuming unnecessary expenses due to fraud. Allegations of abusive practices by VRS providers, such as using VRS to avoid paying for video remote interpreting services,[5] hosting or promoting teleseminars for the express purpose of generating VRS minutes, and paying individuals or organizations to place VRS calls using a particular provider's service is unacceptable. The FPSC agrees that neither the FCC nor the American public can further allow the fraudulent abuse of a program designed to deliver essential telecommunications services to persons with speech or hearing disabilities.

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[5] Video Remote Interpreting is a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are together at the same location. This service uses a video connection to provide access to an interpreter who is at a remote location. As with "in-person" interpreters, VRI services are generally contracted and paid for on a fee-for-service basis.

Using the current VRS compensation rate structure,[6] staff has estimated that the Florida responsibility of VRS costs may be $32 million annually, which could include fraudulent costs. State funding of intrastate VRS calls must not be mandated until the FCC resolves the fraudulent and abusive use of VRS.

VRS Jurisdictional Separation of Costs

The FPSC believes the jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining any jurisdiction and associated funding of VRS calls. Since VRS calls are Internet-based services, the FCC must first decide whether IP-Enabled Services are "telecommunications services" or "information services" before any allocation of intrastate and interstate responsibilities are attempted. Until such time, the FPSC believes VRS should continue to be compensated from the Interstate TRS Fund.

In Docket No. WC 04-36 (IP-Enabled Services), the FCC is currently considering jurisdictional issues related to Internet-based services, including whether these services are "telecommunications services" or "information services" and how to determine whether calls are interstate or intrastate. If IP-Enabled Services are determined to be informational services, then VRS should not be considered functionally equivalent to telecom communication services for relay purposes.

If the Commission determines in its IP Enabled Services docket that IP calls are interstate subject to the exclusive jurisdiction of the FCC, then VRS calls should be recovered solely as interstate calls. However, if the Commission finds that IP calls are subject to mixed jurisdiction,

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[6] $6.2390 for the first 50,000 monthly minutes (Tier I), $6.2335 for monthly minutes between 50,001 and 500,000 (Tier II), and $5.0668 for minutes above 500,000 (Tier III) per completed conversation minute for the July 1, 2010 through June 30, 2011 Fund year.

then the FPSC contends that the same jurisdictional ruling decided in the IP-Enabled Services docket should be applied to VRS.

The FCC has previously interpreted federal authority over jurisdictionally mixed communications to extend to communications involving more than a *de minimis* interstate component.[7] ADSL service qualifies as "interstate" for purposes of Section 201 because more than a trivial amount of ADSL communication is interstate. In practice, the *de minimis* threshold has required only that the interstate component constitute at least 10 percent of the overall call volume. It is reasonable to assume that the VRS interstate component also constitutes at least 10 percent of the overall VRS call volume. The FPSC believes that the FCC must resolve the issues in its IP-Enabled Services proceeding prior to determining the jurisdiction and funding of VRS calls.

Florida Statutes Regarding TRS

Florida's ability to provide TRS under its current state statutes could be adversely impacted if the FCC requires the states to fund the intrastate portion of VRS. Currently, the Florida law has a cap of $0.25 per access line per month on the surcharge for TRS. Section 427.704(4)(a)(1.), Florida Statutes, states:

> [The commission shall] require all local exchange telecommunications companies to impose a monthly surcharge on all local exchange telecommunications company subscribers on an individual access line basis, except that such surcharges shall not be imposed upon more than 25 basic telecommunications access lines per account bill rendered.

Section 427.704(4)(b), Florida Statutes, further states:

[7] FCC, *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, Decision and Order, FCC 89-224, 4 FCC Rcd 5660 (1989).

> [The commission shall] determine the amount of the surcharge based upon the amount of funding necessary to accomplish the purposes of this act and provide the services on an ongoing basis; however, in no case shall the amount exceed 25 cents per line per month.

The current TRS surcharge in Florida is $0.11 per access line which is used to fund the traditional TRS and equipment distribution system. VRS is an expensive service to provide. Should the FCC mandate that states pay for the intrastate portion of VRS, under its current statute, Florida would possibly experience a financial shortfall in relay surcharge revenue which would require a legislative change to the statute. Such a legislative change cannot happen overnight. If a decision is made to require states to assume intrastate VRS costs, the FCC must allow time for states to make legislative changes on TRS surcharges.

Based on current usage of VRS in Florida, transferring VRS intrastate costs to Florida's TRS program could require an additional $32 million per year, causing Florida's TRS surcharge to increase by an estimated $0.25 per month to approximately $0.36 per month, per access line.

The Potential Impact on Competition in Florida

Competition in Florida between providers of VRS may be diminished if the FCC mandates that VRS becomes a required service of TRS in order to meet the FCC state certification requirements. Section 427.704(1), Florida Statutes, in part states:

> [The commission shall] establish, implement, promote, and oversee the administration of a statewide telecommunications access system to provide access to telecommunications relay services by persons who are hearing impaired or speech impaired, or others who communicate with them. The telecommunications access system shall provide for the purchase and distribution of specialized

> telecommunications devices and the establishment of statewide single provider telecommunications relay service system which operates continuously. . . [emphasis added]

Consumers currently have a choice of several providers of VRS in Florida. Should the FCC mandate that VRS become part of TRS, Florida would have only one contracted provider pursuant to its current statute. In Order FCC 00-56[8], the FCC affirmed its belief that competition among TRS providers is preferred, stating:

> We agree with commenters that competitive forces are generally the preferred way to improve service quality and bring new services to customers. Although using a single vendor may not automatically lead to poor service quality, we believe that giving consumers a choice among different TRS providers might well improve the quality of TRS service in different states.

Inclusion of VRS in Florida's TRS contract could possibly eliminate competition for these services in Florida because there would not be a funding mechanism for the intrastate portion of the service for any provider other than the one under contract with the FPSC. To this end, the FPSC urges the FCC not to include VRS as mandatory services of TRS.

Alternatively, should the FCC include VRS as a mandatory service of TRS or order that the states shall fund the intrastate portion of VRS, the FPSC requests that the FCC provide a waiver provision in the rule for states that have statutory conflicts with the proposed rule.

Conclusion

In conclusion, the FPSC urges the FCC to consider the following points:

[8] CC Docket No. 98-67, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, FCC 00-56, Released March 6, 2000.

1. VRS goes well beyond the functional equivalent of telecommunication services required by Title IV of the Americans with Disabilities Act (ADA) and should not be a mandated service of TRS;
2. If VRS becomes a mandated service of TRS, it should continue to be funded through the Interstate TRS Fund;
3. If state funding of intrastate VRS is mandated, it should not occur until the FCC resolves the fraudulent use of VRS;
4. The jurisdictional separation issues in Docket No. WC 04-36 (IP-Enabled Services) must be resolved before determining the jurisdiction and associated funding of VRS;
5. If a decision is made to require states to assume intrastate VRS costs, the FCC must allow time for states to make legislative changes; and,
6. Mandating VRS as part of the TRS program may eliminate competition for these services in Florida since, by statute, Florida can have only one relay service provider.

The FPSC appreciates the opportunity to provide comments in this NOI.

Respectfully submitted,
/ s /
Cindy B. Miller, Senior Attorney
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DATED: August 18, 2010

State of Florida

Public Service Commission

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

DATE:	August 9, 2010
TO:	Timothy J. Devlin, Executive Director
FROM:	Benjamin Crawford, Division of Regulatory Analysis Cindy Miller, Office of the General Counsel
RE:	FERC order on California Feed-In Tariff **Critical Information:** Please place on the August 17, 2010 Internal Affairs – for informational purposes and discussion.

On July 15, 2010, the Federal Energy Regulatory Commission (FERC) issued a declaratory order that California's feed-in tariff for combined heat and power was preempted by the Federal Power Act unless certain conditions are met.[1] The order was issued in response to petitions by the California Public Utilities Commission (CPUC) and three California investor-owned utilities (IOUs). In the order, FERC determined that a state-required feed-in tariff for IOUs was not preempted when the rate established by the CPUC did not exceed avoided cost.

Background

In 1978, the United States Congress enacted the Public Utility Regulatory Policies Act of 1978 (PURPA). PURPA contains regulations in 16 USC Sec. 824a-3, intended to encourage conservation of energy and the efficient use of energy resources by promoting the development of cogeneration and small power producers in the private sector. To do this, PURPA established three basic tenants, requiring electric utilities to: (1) interconnect with, (2) purchase from; and (3) make sales to qualifying cogenerators and small power producers (Qualifying Facilities, or QFs). The capacity and energy purchased from QFs then became part of the electric utility's overall supply needed to serve retail electric customer demand. To further facilitate the implementation of this new national energy policy, Congress empowered states with regulatory agencies, such as the Florida Public Service Commission, to regulate the purchase power contracts between investor-owned electric utilities and QFs. In determining a price to be paid for purchases from QFs, Congress established an avoided cost standard. Avoided cost is the cost to the electric utility of the energy which, but for the purchase from the cogenerator or small power producer, the electric utility would generate or purchase from another source.

A feed-in tariff is an economic tool to subsidize the production of a desired form of energy, generally renewable energy. Under a feed-in tariff, a utility must buy power at a determined price from any producer who meets its requirements. This amount, which may exceed a utility's

[1] Order on Petitions for Declaratory Order, *California Public Utilities Commission & Southern California Edison Company & Pacific Gas and Electric Company & San Diego Gas & Electric Company*, 132 FERC ¶ 61,047 (2010).

avoided cost, is intended to pay for the renewable energy and allow the developer to earn a profit. A developer making use of a feed-in tariff will sign a long-term contract guaranteeing a price for the length of the contract. The feed-in tariff model, however, may or may not consider whether a utility has a need for capacity to meet reliability requirements.

Depending on its policy goal, a feed-in tariff might offer a price that is constant over time, a variable price, or a price that declines for developers signing in later years rather than earlier ones. A fixed price is likely to be intended to introduce stability or certainty to an unsteady market. A variable price is best able to react to real-world price signals. Declining feed-in tariffs are frequently intended to help motivate customers to invest in a newer technology that is expected to decline in price.

The proposed California feed-in tariff applied to combined heat and power. California law defines combined heat and power for purposes of the feed-in tariff as, "a system that produces both electricity and thermal energy for heating or cooling from a single fuel input."[2] Combined heat and power, also referred to as waste heat, is sometimes considered a renewable energy source because it makes use of energy that would not otherwise be used. Combined heat and power also generally produces no additional greenhouse gas emissions, and displaces fuel and capacity. Under the California law that the order addresses, the CPUC required utilities to offer standard-offer contracts to generators under 20 Megawatts (MW) that meet environmental requirements. The CPUC established the rate to be paid for the output of combined heat and power systems by California's IOUs.

The California feed-in tariff originated with the "Waste Heat and Carbon Emissions Reduction Act" (California Assembly Bill (AB) 1613) passed by the California Assembly and signed into law in 2007. On December 16, 2009, the CPUC issued its decision implementing the bill, which granted California IOUs until June 21, 2010 to file their tariffs. On May 4, 2010, the CPUC filed a petition with FERC for a declaratory order seeking a finding that California's feed-in tariff did not conflict with PURPA or the FPA. On May 11, 2010, three California electric utilities (Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric) filed a separate petition, asking for a declaratory order finding that the Federal Power Act of 1935 (FPA), which grants FERC authority over wholesale electric sales, preempts the CPUC's authority regarding the feed-in tariff. On July 15, 2010, FERC issued its order addressing both petitions.

Decision

FERC found that California's feed-in tariff was preempted by the FPA. FERC's order, however, found that the feed-in tariff would not be preempted if the following conditions were met: (1) the combined heat and power generators must be QFs according to PURPA; and (2) the CPUC-set rate must not exceed avoided cost. The former of these conditions was not a drastic condition for the California feed-in tariff because, according to the CPUC's petition, most combined heat and power facilities in California would qualify as a QF. The second condition, however, raises

[2] California Public Utility Code § 2840.2 (a).

questions going forward on state-mandated feed-in tariffs for IOUs. Additionally, FERC found that the CPUC's establishment of the rate of the feed-in tariffs constituted a regulation of wholesale prices. Because the FPA grants FERC exclusive jurisdiction over wholesale rates, this finding renders the feed-in tariff preempted by the FPA.

Potential Impact on Florida

The State of Florida does not currently have a feed-in tariff program. Also, no other current State-level renewable energy policy would be affected by FERC's decision. The order indicates that FERC views any state mandated programs that require payments above avoided costs, as preempted by PURPA.

The decision's effect on Gainesville Regional Utility's (GRU) solar feed-in tariff is unclear. In 2009, GRU instituted a feed-in tariff for solar systems. The GRU feed-in tariff offers a fixed price for solar photovoltaic power for the life of the contract, but the earlier the contract goes into effect, the higher the rate paid over the life of the contract. GRU's status as a municipal utility, however, makes FERC's oversight of their activities less certain.

The implications of the FERC order are still unfolding. FERC appears to have clearly established the parameters for a feed-in tariff to keep it from running afoul of PURPA or the FPA: (1) it must involve purchases from QFs, and (2) rates must not exceed avoided cost. The effect that the order will have on existing feed-in tariffs, especially at a municipal level, has not yet been clearly defined.

Despite the limitations that the FERC decision places on state-mandated feed-in tariffs other methods for incenting renewable energy production still appear to be valid. A recent paper by the National Renewable Energy Laboratory outlined three potential options:[3]

- **Renewable Energy Credits (RECs):** States can still create renewable energy standards, wherein a certain percentage of a utility's generation must be from renewable power. States can allow the creation of a REC market to meet this standard, and allow cost recovery for costs associated with the REC market.

- **Public Benefit Fund:** States can also create a system benefit charge and use the money to create a public benefit fund. This fund can be used to provide incentives to renewable energy producers.

- **Tax Incentives:** Governmental entities can grant tax incentives for IOUs. The IOUs can use these tax credits to fund renewable energy production in their service area.

None of these options was addressed directly in the FERC order.

[3] Scott Hempling et al., "Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions," National Renewable Energy Laboratory, January 2010.