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JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

August 15, 2013

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Docket No. ER13-908-000, Alabama Power Company

Dear Ms. Bose:

Please accept for filing in the above-referenced matter an electronically filed Request for Rehearing of the Florida Public Service Commission of the July 18, 2013, Order on Compliance Filings in the above-captioned docket. Service has been made upon the service list as evidenced by the attached certificate of service.

Thank you for your attention to this matter. The staff contacts on this filing are Benjamin Crawford at (850) 413-6598, Mark Futrell at (850) 413-6692, and Cynthia B. Miller at (850) 413-6082.

Sincerely,

/ s /

Cynthia B. Miller
Senior Attorney

CBM:tf

II. ARGUMENT

The Florida Commission continues to be concerned that the FERC appears to seek an approach to transmission planning and cost allocation which would infringe upon state authority, would impose additional costs on Florida consumers without corresponding benefits, and would establish a duplicative transmission planning structure. The State of Florida retains a vertically integrated, state regulated approach to the electric industry, whereby the Florida Commission holds substantial authority to ensure an adequate and reliable bulk power grid. Florida, including the Gulf Power area, is unique in its exposure to hurricanes.

The states covered in the Southeastern Regional Transmission Planning (SERTP) footprint include Alabama, Georgia, Indiana, Iowa, Kentucky, Mississippi, Missouri, Ohio, Oklahoma, Tennessee and Virginia, as well as Florida. Florida is not directly interconnected with many of the states. As part of Southern Company, Gulf Power Company connects with most of Georgia and Alabama and much of Mississippi, but has very limited ability to transmit or receive power from elsewhere in the SERTP region. Therefore, this increases the concern that Florida ratepayers might be asked to pay costs for projects for which they receive little benefit.

In Order No. 1000, the FERC offered assurances that public utility transmission providers would be allowed flexibility in developing regional transmission planning processes. Despite FERC's assurances, however, the Compliance Order requires that the SERTP region conform to a narrow framework that fails to account for the unique characteristics of its electric industry. Order No. 1000 was replete with statements that the FERC would allow for regional differences and that the FERC would not interfere with state jurisdictional authority or state integrated resource planning processes.¹ These commitments have not been fulfilled in the Compliance

¹ Order No. 1000 at Paragraphs 61, 154, 156, 604, 624, 754.

Order. The Florida Commission seeks rehearing on three issues where the FERC erred in the Compliance Order.

1. The FERC erred by exceeding the requirements of FERC Order No. 1000 and its authority under the Federal Power Act and by infringing on Florida's role in transmission planning.

In paragraph 59 of the Compliance Order, FERC states that it is not sufficient for a transmission planning region to merely “roll-up” local transmission plans without analyzing whether the region’s transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution. The Compliance Order requires the Parties to develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meets the region’s transmission needs. The regional transmission plan reflected in the filing of the SERTP utilities represents “bottom-up” planning, wherein a regional plan is developed by analyzing and consolidating the plans of individual utilities, with extensive coordination between the utilities, as well as any proposed transmission resource by a third party. This approach was contemplated, and apparently endorsed, in Order No. 1000. The requirement to establish a “top-down” plan appears to exceed the requirements of Order No. 1000 and FERC’s authority under the Federal Power Act, and infringes on Florida’s transmission planning process.

FERC Order No. 1000 Requirements

FERC Order No. 1000 allowed for a “bottom-up” individual utility transmission plan approach. Paragraph 158 of Order No. 1000 expressly states: “[W]e note that a public utility transmission provider’s regional transmission planning process may utilize a “top down” approach, a “bottom up” approach or some other approach so long as the public utility transmission provider complies with the requirements of this Final Rule.” Paragraph 321 of

Order No. 1000 also contemplated the “roll up” of transmission plans. Thus, the requirement in paragraph 59 of the Compliance Order for a top-down plan appears to be contrary to Order No. 1000, which recognized that “bottom-up” planning is acceptable. Also, it appears inconsistent with FERC Order No. 1000 at Paragraph 156, which stated it would not interfere with states’ integrated resource planning.

Florida Commission’s Authority Over the Transmission Grid

The requirement in paragraph 59 of the Compliance Order for a “top-down” regional plan also infringes on the Florida Commission’s express statutory authority over the transmission grid. Pursuant to Section 366.04(2)(c), Florida Statutes, the Florida Commission has the authority to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes. Section 366.04(5), Florida Statutes, grants the Florida Commission jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to ensure an adequate and reliable source of energy for operational and emergency purposes in Florida, and to avoid uneconomic duplication of generation, transmission, and distribution facilities. Section 366.05(7), Florida Statutes, authorizes the Florida Commission to require reports from all electric utilities to ensure the development of adequate and reliable energy grids.

The Florida Commission has authority under Section 366.05(8), Florida Statutes, to hold proceedings if there is probable cause to believe that inadequacies exist with the grid. The Florida Commission may require installation or repair of necessary generation or transmission facilities, whereby mutual benefits will accrue to the electric utilities involved. Furthermore, costs associated with infrastructure repairs or additions must be distributed in proportion to the benefits received.

Section 366.055(1), Florida Statutes, requires the Florida Commission to ensure that energy reserves of all utilities in the Florida grid are available at all times to maintain grid reliability and integrity. Pursuant to Section 366.055(3), Florida Statutes, the Florida Commission has the authority to require an electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, in order to ensure the efficient and reliable operation of Florida's energy grid. The requirement for a "top-down" regional plan hampers the Florida Commission's ability to evaluate the sufficiency of each individual utility's plan for transmission.

Florida's Transmission Planning and Siting Process

Section 186.801, Florida Statutes, establishes a ten-year site plan process in Florida. These ten-year site plans, which address integrated resource planning, are submitted by utilities in the state. The statute sets out a "bottom-up" process for each utility in Florida to submit to the Florida Commission a plan for approval. In the ten-year site plan, each electric utility, including Gulf Power, must submit to the Florida Commission its estimated power-generating needs and the general location of its proposed power plant sites, including needed transmission additions, over the next ten years. These plans address reliability, economic and public policy considerations. The Florida Commission then must deem each plan as "suitable" or "unsuitable" and may suggest alternatives to the plan. Then, when a transmission line siting application is filed pursuant to the Florida Transmission Line Siting Act (TLSA) in Chapter 403, Florida Statutes, this plan will be considered in determining the need for the line. When the Florida Commission receives a petition for determination of need for a transmission line, pursuant to Section 403.537, Florida Statutes, substantially affected parties may challenge the project. The Florida Commission then approves or denies that project.

Order No. 1000 also stated that FERC will not intrude on state authority over transmission siting. However, as stated above, the Compliance Order appears to be inconsistent with Order No. 1000. By undermining Florida ten-year site plan process, there is also a potential impact on Florida's siting authority.

By foreclosing a primary use of the "roll-up" of local transmission plans without additional steps, the FERC Compliance Order appears to impede the ability of the companies and the Commission to comply with the requirements of Florida law. The FERC's decision appears to result in duplicative transmission planning processes which adds costs to consumers in Florida.

The Florida Commission's oversight of transmission planning in Florida serves to protect ratepayers in Gulf's territory and to ensure that local planning regions are not unfairly or unreasonably burdened by transmission plans that result in allocated costs to ratepayers for which they receive little benefit. In addition, the Florida Commission has the state authority to address reliability issues in the Gulf territory to protect customers.

FERC's Jurisdiction Under the Federal Power Act

Pursuant to Section 201(a) of the Federal Power Act (FPA), the FERC's regulation of interstate transmission and wholesale power sales is limited to only those matters which are not subject to regulation by the states.² The Courts have emphasized this limited authority.³ Section 215 of the FPA, 16 U.S.C. Sec. 824o, grants the FERC jurisdiction to approve and enforce compliance with bulk transmission reliability standards. However, nothing in Section 215 of the FPA preempts the authority of the Florida Commission to take action to ensure the safety, adequacy, or reliability of electric service within our state, as long as such action is not

² The FERC is provided limited backstop authority under the 2005 Energy Policy Act to site transmission when a National Interest Electric Transmission Corridor is established. No such corridor has been established in Florida.

³ *Conn. Light & Power v. FPC*, 324 U.S. 515, 529-530 (1945).

inconsistent with any bulk power reliability standard. Section 217 of the FPA allows FERC to “facilitate” planning, not to direct it.⁴ As illustrated above, Florida has well-established processes and state authority that are being disregarded.

2. The FERC erred by creating an overarching framework that pushes the utilities to form an inefficient Regional Transmission Organization (RTO)-like structure, without authority or sufficient justification to do so.

While some states have ceded some authority to the FERC due to the creation of RTOs/ISOs, the Florida Commission has retained this authority. Florida remains a state with vertically integrated utilities, and no part of the state is a member of an RTO or ISO.⁵ Florida law provides the Florida Commission with express authority to make decisions with respect to determining the need for a transmission project and for the recovery of costs through retail rates.

The Compliance Order holds the SERTP filers to a standard that moves the companies toward an RTO-type structure and goes far beyond that present in Order No. 1000. The Compliance Order invents an obligation on transmission providers to actively develop transmission projects beyond those proffered by qualified transmission providers. Order No. 1000 contained no such mandate, as now required by paragraph 61 of the Compliance Order. Paragraph 328 of Order No. 1000 only established a mandate for regions to evaluate proposals that may either be superior to existing plans, or may provide economic or public-policy benefits beyond existing plans.

Thus, the Filing Parties are required to conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission needs. They must file the process

⁴In *Homer v. Environmental Protection Agency*, 696 F. 3d 7 (D.C. Cir. 2012), this Court vacated a federal agency rule and remanded it to the agency for, among other concerns, not staying within the confines of the statute.

⁵ When issuing Order No. 888 FERC recognized the difference between vertically integrated utilities that offer bundled retail sales and utilities that offer unbundled retail transmission service. *New York v. FERC*, 535 U.S.1 (2002)

they will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods. This requirement, which was not present in Order No. 1000, costs money and adds an overlay to the existing analyses, without sufficient justification.⁶

These requirements also appear to conflict with FERC Order No. 2000 on Regional Transmission Organizations, issued December 20, 1999. There, FERC acknowledged, at page 166, it should pursue a voluntary approach to participation in RTOs. Now, however, the FERC is trying to do indirectly what it may not do directly.⁷

FERC's challenge to Florida's statutory-based transmission planning construct raises the specter of an RTO-like framework in order to meet FERC's expectation. The duplicative Federal process appears inefficient. This inefficiency itself appears contrary to Florida law that requires the efficient operation of the Florida energy grid, pursuant to Section 366.055(3), Florida Statutes.

FERC's directives also diverge from the Florida Commission's own experience. On May 9, 2006, the Florida Commission issued Order No. PSC-06-0388-F0F-EI, *In re: Review of Grid Florida Regional Transmission Organization (RTO) Proposal*, 2006 Fla. LEXIS 243 (2006), in which the Commission declined to create an RTO in Florida. That order stated that "continued development of GridFlorida does not appear to be cost-effective, and that it would not be prudent or in the public interest to continue the development of GridFlorida." *Id.* at *32.

From 2001 to 2006, the Florida Commission extensively studied this issue in response to FERC Order No. 2000. Following numerous workshops, technical conferences, and related hearings, the Florida Utilities involved in the GridFlorida proposal, which are the same FERC-

⁶ *Motor Vehicle Mfrs. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43-44 (1983) (finding it arbitrary and capricious for an agency not to "articulate a satisfactory explanation for its action").

⁷ *Towns of Concord, Norwood, and Wellesley, Mass. V. FERC*, 955 F. 2d 67, 71 n. 2 (D.C. Cir. 1992).

jurisdictional utilities that make up the FRCC region, hired ICF Consulting to conduct an analysis of the costs and benefits of an RTO in Florida. ICF Consulting characterized the prospects of such a structure as “bleak,” finding that one proposal would have costs exceed benefits by more than \$700 million dollars over the first 13 years of operation, while a “more advanced” proposal would have costs exceed benefits by \$285 million over the same period.

After the release of that study, the Florida Commission accepted the withdrawal of the GridFlorida proposal, finding that it did not appear to be in the best interests of the people of the State of Florida. The Florida Commission is greatly concerned that the requirements of the Compliance Order, many of which reach much further than Orders No. 1000 or 1000-A, will result in the confirmation of the concerns expressed by FERC Commissioner Clark in his dissenting opinion. As a result of the imposition of a duplicative RTO-like structure, Florida ratepayers may be asked to incur additional wholesale costs without commensurate benefits from such a structure and state commissions are further relegated to mere stakeholders.

This experience regarding an RTO gives the Florida Commission concern about the imposition of such a structure, whether it is in the FRCC region or the SERTP region. Thus, we ask the FERC to temper the imposition of its overarching Order No. 1000 framework on the SERTP region.

3. The FERC erred by violating its Order No. 1000 directive which committed to regional flexibility.

The requirements of the Compliance order are at odds with what the FERC claimed it would do in Order No. 1000, which is to grant flexibility to regions, as stated in paragraphs 61, 604, 624 and 745 of Order No. 1000.

Commissioner Clark stated in his dissent that he does not see how the FERC can reconcile the Compliance Order with the statement in Order No. 1000-A, at Paragraph 267, that

“various regions of the country differ significantly in resources, industry organization, market design, and other ways so that a one-size-fits-all approach to regional planning would not be appropriate.” As he noted, “the SERTP Sponsors’ region is unique as it pertains to transmission planning – and the Commission’s boilerplate response fails to accommodate the unique characteristics of this non-market, non-RTO region.” The Florida Commission agrees. The Compliance Order clearly fails to recognize that many of the SERTP Sponsors, such as Gulf Power in Florida, remain vertically integrated.

In addition, there are remarkably similar provisions in the SERTP Compliance Order and the Florida Reliability Coordinating Council Compliance Order. This boilerplate or cookie-cutter approach appears to contradict the Order No. 1000 assurances of regional flexibility. Rejection of regional flexibility does not reflect reasoned decision making.⁸

III. CONCLUSION

Wherefore, the Florida Commission respectfully urges the FERC to grant rehearing on the issues identified above, and honor state statutory authority over transmission planning, siting, and reliability.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
850 / 413-6201
cmiller@psc.state.fl.us

DATED: August 15, 2013

⁸ *Wisconsin Valley Improvement Co. v. FERC* 236 F. 3d 738 (D.C. Cir. 2001).

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

Alabama Power Company

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Docket No. ER13-908-000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Florida Public Service Commission's Request for Rehearing of Order on Compliance Filings will be served today upon each person listed on the official service maintained by the Secretary of the Commission for the above captioned proceedings.

/ s /

Cynthia B. Miller, Esquire
Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

DATED: August 15 , 2013