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Public Service Commission

October 28, 2002

VIA ELECTRONIC FILING

The Honorable Magalie R. Salas
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Docket No. RM01-12-000, Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design

Dear Ms. Salas:

Forwarded herewith are comments of the Florida Public Service Commission in the above-mentioned proceeding regarding standard electricity market design.

Should you have questions, please contact Jim Dean, our primary staff person in the matter, at (850) 413-6058.

Sincerely,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

CBM:tf
Enclosure

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination through	)	
Open Access Transmission Service and	)	Docket No. RM01-12-000
Standard Electricity Market Design	)	

EXECUTIVE SUMMARY

The Florida Public Service Commission (FPSC) expresses concerns with the jurisdictional over-reaching of the NOPR. This intrudes on our statutory responsibility to protect retail ratepayers. Our comments reflect two different themes. The first is to express our continued support for the development of robust wholesale markets. The other theme is to express great concern about the over-reaching and inappropriate assertion of FERC jurisdiction into areas of utility regulation which are *solely* the purview of state utility commissions. We continue to believe that the end goal of more competitive wholesale markets can be achieved without the jurisdictional transgressions and preemption engendered by this NOPR. The FPSC expresses the following concerns:

- # The FPSC is concerned that there is no demonstration of economic benefits to occur as a result of the SMD NOPR.
- # The FPSC is concerned that FERC is placing bundled retail transmission service under FERC authority.
- # The FPSC believes that the FERC has exceeded its authority in attempting to regulate Generation Resource Adequacy. (¶ 457 through 542)
- # The FPSC believes that the FERC cannot and should not assert any authority over demand responsive load. (¶ 517)
- # Participant funding needs to be made an explicit part of the SMD without the qualifications currently contained in the proposed NOPR. (¶ 197)
- # Formation of Regional State Advisory Committees is not the optimal mechanism to ensure state input. (¶¶ 551-555)

The framework for market monitoring should be finalized and the market monitor should be functional prior to the implementation of SMD. (¶¶ 429-454)

The elimination of access charges for wheel throughs and wheel outs is not cost justified. (¶¶ 170, 179-188)

The FERC should recognize regional differences and existing state authority over load shedding and curtailment procedures. (¶¶ 158-159)

We specifically ask for the following:

- Prior to implementing new rules, the FERC should demonstrate economic benefits to occur as a result of the SMD NOPR.

- Proposed Rule 35.35 (a) should be changed to read: Applicability. Upon a formal finding by the FERC that a public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce has engaged in undue discrimination unrelated to statutory obligations imposed on it by state law or rule, that public utility must comply with the requirements of this rule by (date to be prescribed by the FERC).

- Proposed Rule 35.37 on generation resource adequacy should be deleted in its entirety.

- All references to the ITP being required to have operational control of demand side resources should be deleted;

- Participant funding needs to be made an explicit part of the SMD without the qualifications currently contained in the proposed NOPR.

- Formation of Regional State Advisory Committees is not the optimal mechanism to ensure state input. Instead, a Federal-State Joint Board is a better approach.

- The framework for market monitoring should be finalized and the market monitor should be functional prior to the implementation of Standard Market Design.

- The elimination of access charges for wheel throughs and wheel outs is not cost justified. Due to the impacts of cost shifting, FERC should conduct a proceeding where a more complete proposal is offered to show why elimination of access charges is cost justified.

- The FERC should recognize regional differences and existing state authority over load shedding and curtailment procedures.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination through	)	
Open Access Transmission Service and	)	Docket No. RM01-12-000
Standard Electricity Market Design	)	

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) offers the following comments in response to FERC's Standard Market Design (SMD) NOPR issued July 31, 2002. Our comments reflect two different themes. The first is to express our continued support for the development of robust wholesale markets. The other theme is to express great concern about the over-reaching and inappropriate assertion of FERC jurisdiction into areas of utility regulation which are *solely* the purview of state utility commissions. We continue to believe that the end goal of more competitive wholesale markets can be achieved without the jurisdictional transgressions and preemption engendered by this NOPR.

1. The issuance of the SMD NOPR raises two impediments to additional progress in implementing regional transmission organizations. First, the massive scope of this NOPR and the need to respond to it is taking extensive resources from both state commissions and stakeholders. Unfortunately, these resources tend to be the same ones involved in implementing the regional RTOs. Thus, time and talent are dedicated to responding to new FERC initiatives before earlier initiatives are fully operational. Second, we are greatly concerned that the resolution of jurisdictional disputes created by this NOPR may, in fact, delay the timely start up of regional transmission organizations. The FPSC and the Florida utilities have made great progress in moving forward with GridFlorida as envisioned and defined under Order 2000. FERC's new jurisdictional

intrusions into areas of responsibility that are clearly state jurisdictional, give pause as to whether such progress can be sustained.

2. We should note that some of our comments reflect frustration with the lack of clarity in the NOPR rather than specific recommendations, since many aspects of the NOPR are, at best, very general in nature, and in some cases, seem to have been "tossed" out for comments with little deliberation on how they will be implemented or work in practice.

Part I - Background to Florida's Comments

3. The FPSC has supported the policy directions required by the FERC in its recent RTO orders. While we certainly had jurisdictional concerns with Order 888 and Order 888-A, we did not dispute the end state objectives contained therein. We agree that robust, competitive wholesale markets are beneficial to customers throughout the electric industry. We concurred with FERC for only asserting its jurisdiction over the "unbundled" aspect of transmission access that occurred either through voluntary actions on the part of utilities or through the mandate of retail access by state authorities. We also accepted the veracity of FERC's assertion in Order 2000 that participation by jurisdictional utilities in RTOs would be voluntary. Both of these orders were predicated on the generic finding of discriminatory treatment of wholesale transmission customers by incumbent utility systems.

4. Based on these two precedential conditions – voluntary participation in RTOs and FERC's recognition of appropriate state/federal jurisdictional boundaries – the FPSC has been instrumental in promoting the development of a peninsular Florida regional transmission organization. In Order No. PSC-01-2489-FOF-EI (issued December 20, 2001), the FPSC gave

initial approval for peninsular Florida utilities to participate in a Florida regional transmission organization (GridFlorida), and in our Final Order, we determined:

> As a policy matter, we support the formation of an RTO to facilitate the development of a competitive wholesale energy market in Florida. In the long-term, the efficiencies and benefits identified through our evidentiary hearing should put a downward pressure on transmission and wholesale generation rates, and, in turn, on retail rates. Accordingly, our decision in this Order is supportive of FERC's clear policy favoring RTO development. Given our responsibilities to regulate retail aspects of transmission, FERC's responsibilities to regulate wholesale aspects of transmission, and GridFlorida's effects on both, we believe that our decision contributes to the collaborative process necessary to ensure development of an RTO that satisfies both Federal and State policy concerns. We intend to work cooperatively with both FERC and the GridFlorida Companies towards this end.

This order approving the formation of GridFlorida was not based on a finding of the existence of discriminatory practices in providing transmission services.

5. With the issuance of the FPSC Order No. PSC-02-1199-PAA-EI in Docket No. 020233-EI on September 3, 2002, we gave final approval to most issues associated with governance, structure, operations, and planning of GridFlorida. Because the applicants submitted a market design proposal that dramatically differed from the one originally filed with the FPSC and tentatively approved by this Commission, we plan to conduct a hearing to take testimony on this remaining component of GridFlorida.[1] We note that the Applicants proposed market design has many of the features specified in FERC's SMD NOPR, including locational marginal pricing, day ahead energy markets, ancillary service markets, and the elimination of pancaked rates.

[1]On October 3, 2002, the Public Counsel filed an appeal at the Florida Supreme Court of the September 3 FPSC Order. The filing of the notice resulted in an automatic stay of the Order, *Citizens of the State of Florida v. Lila Jaber*. Thus, pending disposition of the appeal, the expedited hearing will now be delayed.

6. The point of this short historical recitation is to illustrate both the progress we are making and the general concurrent, regulatory direction that the FPSC and the FERC have been taking. However, we are concerned that this positive, regulatory partnership may be harmed by the FERC's adoption of some components of the current SMD NOPR. We begin by highlighting the requirements in the NOPR which we believe exceed FERC's authority and jeopardize the progress that has been made. Our underlying reason for concern with preemption is that it precludes our statutory obligations to protect retail ratepayers.

Part 2 - Comments

The FPSC is concerned that there is no demonstration of economic benefits to occur as a result of the SMD NOPR.

Specific FPSC recommendation: We again ask the FERC to undertake a proper and well designed evaluation of the economic benefits that are likely to accrue with the issuance of this NOPR prior to its final adoption.

7. The FPSC has a generalized concern that the expansive and experimental nature of the SMD components are being imposed without any evidence of associated economic benefits. As a threshold demonstration, FERC should provide an empirically sound cost-benefit analysis. While this is a necessary step to move forward with SMD, it will not remedy the other jurisdictional issues discussed in these comments. FERC is imposing a standardized market design on a national level that is relatively untested in the US domestic utility markets. Despite the claims of FERC staff in at least two regional meetings that locational marginal pricing (LMP) works in New Zealand and therefore is appropriate for all utilities and regions in the United States, the FERC should certainly

appreciate state concerns that such revolutionary changes to wholesale energy transactions imposed by the SMD NOPR create at best a massive, involuntary experiment being imposed on retail customers without proper controls, exit strategies, or any evaluation criteria for measuring its consequences. Commissioner Breathitt's comments in her concurring opinion are right on the mark —LMP paired with ancillary markets have not been tested outside the tight power pools of the Northeast.

8. FERC's headlong charge to impose a single, national SMD is especially troublesome given the complete failure of the FERC to provide any defensible economic justifications for the end state market the FERC seeks to create. Our comments along with almost every other respondent's comments in RM01-12-000 to the ICF report entitled *Economic Assessment of RTO Policy* pointed out the complete failure of this study to demonstrate any credible, economic efficiencies to be gained from such an overhaul of the existing wholesale market. We recognize that such economic efficiencies may be possible, but we take little comfort in the justifications provided by the FERC that such efficiencies will accrue to Florida ratepayers. Many other states expressed similar skepticism in their comments on the ICF study.[2]

9. We also question the need for the mandatary imposition of this entirely new, untested market design given the current political and economic environment in which the electric industry finds itself. The picture of the impending deregulation of the utility industry painted in Order 888 and Order 2000, and carried forth by the FERC in the appellate review process, is simply not being

[2] We note that a number of southern states under the auspices of SEARUC have contracted a detailed benefit cost study for their region. Results of this work could be of great value to the FERC when it re-examines regional impacts of the SMD NOPR.

realized. We point out that Arizona has just repealed its generation divestiture requirements, California has suspended the right of retail choice, and Montana, New Mexico, Oklahoma, Arkansas, and West Virginia have delayed the introduction of retail choice. Moreover, the chaos and uncertainty created by the California experience, the financial implosion of the merchant generation industry, and the resulting diminishment of credit have fundamentally altered the prospects for rapid development of the wholesale power industry. Implicitly, this NOPR recognizes the failure of many aspects of retail choice and the lack of maturation of wholesale markets by imposing ever more prescriptive requirements with respect to market design and practices. What was once a concept to allow different models to develop based on appropriate regional differences is now one of a single, FERC conceptualized market model. Our concern is that such oversight is not limited to that portion of service over which FERC has and should assert authority, that is unbundled transmission service, but now extends to areas such as generation reserve requirements, bundled retail transmission service, and the imposition of the various independent transmission provider (ITP) mandated controls over the operations of load serving entities demand side programs.

The FPSC is concerned that FERC is placing bundled retail transmission service under FERC authority.

Specific FPSC Recommendation: Rule 35.35 (a) should be changed to read: Applicability: Upon a formal finding by the FERC that a public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce has engaged in undue discrimination unrelated to statutory obligations

imposed on it by state law or rule, that public utility must comply with the requirement of this rule by (date to be prescribed by the FERC).

10. The FPSC is concerned about the preemption of state authority that results from the adoption of this rule. This is a bold intrusion of federal authority into states that continue to have bundled, retail service. Our responsibility is to protect the retail ratepayer and provide recourse for the retail ratepayer. The Florida legislature has set this out in statutes, and it is their decision to do so. In both Order 888 and Order 2000 the FERC acknowledged that many states, including Florida, have not elected to implement retail choice. Based on this fact, the FERC made a clear distinction between transmission service provided as "bundled" versus "unbundled." In its filing with the U.S. District Court of Appeals, the FERC acknowledged a legal distinction between these two types of services and stated that, while it probably had jurisdiction over both types of transmission service, Order 888 was directed toward remedying undue discrimination over wholesale transmission service. It chose at that time not to assert authority over retail, bundled transmission service.

11. In fact, the legal basis for asserting jurisdiction over bundled retail service in this order rests almost entirely on various "hypothetical examples" of practices described in Appendix C of the NOPR. FERC alleges that since such hypothetical results could occur, then discrimination is occurring. The following statement in the NOPR at ¶36 is the principal legal basis for the expansive reach of this NOPR and the attendant jurisdictional transgressions:

> The specific reasons for requiring reform are many. Market participants have identified, through formal complaints, hotline calls, public conferences, and pleadings, the difficulties they have experienced in gaining equal access to the transmission grid to compete with vertically integrated utilities to serve load. Much of this problem is directly attributable to the remaining ability of vertically integrated

> utilities (and the existence of sufficient incentives) to exercise some degree of transmission market power in order to protect their own generation market share.

12. Moreover, the FERC states at ¶36 that its anonymous "hotline" call in, complaint line is also part of its evidentiary record of discrimination. Neither the FPSC nor the utilities can determine if any such complaints have been reported to this anonymous number, however, we can state that since the issuance of Order 888, the utilities in Florida have not had a single formal complaint filed with the FERC with respect to allegations of undue discrimination under Section 206 of the FPA.[3]

13. No specific instances of Florida utilities engaging in discriminatory practices is offered. Taken in conjunction with its pleadings in the appeal of Order 888 and Order 2000, the FERC practically asserts that the very existence of a vertically, integrated utility is prima facie evidence of undue discrimination. To wit, Order 2000 states:

> However, we cannot ignore the fact that the vertically integrated structure reflected in the industry today was created to support the business objective of a franchised monopoly service provider that owned and operated generation, transmission and distribution facilities *primarily to serve requirements customers at wholesale and retail in a non-competitive environment* (emphasis added).

14. This is exactly what Florida and many other states have decided is best for their citizens! While we are moving toward greater wholesale competition, the Florida legislature has not undertaken any legislative steps to open up Florida to retail choice. Morever, to date, the Florida legislature elected not to implement recommendations of the blue ribbon 2020 Study Commission

[3] Note, we acknowledge there have been disputes on what are the parameters for assigning costs with respect to interconnections for merchant power plant developers seeking to interconnect to the transmission grid. The FPSC has intervened in a number of these cases and the disputes often involve administrative determinations of the appropriate cost assignment categories. Disputes like these do not represent examples of preventing open access to transmission resources.

to initiate steps to permit the separation of existing generation into affiliates for the purpose of furthering wholesale competition in Florida. Yet, the very existence of state regulated vertical utilities has led the FERC to impose overly intrusive and jurisdictionally questionable requirements that retail transmission facilities and services be mandatorily transferred to an ITP. When viewed in conjunction with other FERC NOPRs including business practices and Standards of Conduct for Transmission Providers (RM01-12-000), it is clear that FERC's goal is to completely sever and remove the transmission service obligations of integrated, bundled utilities from the distribution and generation responsibilities to serve retail customers.

15. With respect to the examples of practices that could constitute undue discrimination, we are not naive enough to believe that such practices have not and do not occur. However, a generic indictment of an entire industry in the absence of a finding of specific wrongdoing seems patently unfair and a violation of any reasonable due process procedures. Take for example, the transmission loading relief (TLR) situation. In Appendix C, the FERC generates an "example" where TLR's could be used to advantage an incumbent utility. However, a study performed for the Southeastern Association of Utility Commissioners found that for the SERC region there were no TLRs of firm transmission service for 1998 and 1999; there was one TLR event for firm load in 2000.[4] With respect to the Florida Reliability Coordinating Council (FRCC) region, there have been no TLRs of firm transmission service from 1998 to date.[5] Here again, the legal basis for this NOPR infers

[4] Southeastern Infrastructure Assessment. May 8, 2002. Prepared for the Southeastern Association of Regulatory Commissioners. Also, call to the FRCC on September 9, 2002 to update 2002 information.

[5] Personal communication from Mr. Ken Wiley, Florida Reliability Coordinating Council, September 6, 2002. We note there were some TLRs for nonfirm transmission requests for 1998 and 1999, but there has been no TLRs for nonfirm since then.

guilt from the possibility of such actions—not based on any evidentiary record that any single Florida utility has engaged in such discriminatory behavior.

16. We will reiterate our position that in bundled states with a statutory obligation to serve retail load, this native load (along with contracted full requirement customers, network customers and appropriate long-term firm contract customers) should, in some cases, have preferential treatment to the transmission system that was built to serve that load. FERC has clearly decided to ignore the historical and contemporary utility industry as it exists in Florida and in the majority of other states today. Most transmission was built to connect retail regulated generators with incumbent, franchised load areas and to serve network requirement customers. Even transmission that was interconnected to other franchised utilities was constructed first and foremost to serve native load reliably and economically. It was not designed as an open access transmission system to facilitate wholesale transactions between all points in the system. This is not an argument to allow "undue" discrimination on the part of vertically integrated utilities, but a recognition of appropriate levels of priority access to the existing grid with respect to obligations to serve, system reliability, and allocation of system resources. These are essential and vital areas of state jurisdiction and are essential elements for the provision of bundled, retail electric service.

The FPSC believes that the FERC has exceeded its authority in attempting to regulate Generation Resource Adequacy. (¶ 457 through 542)

Specific FPSC Recommendation: Section 35.37 of this rule should be deleted in its entirety.

17. Section 201(b)(1) of the Federal Power Act gives the FERC authority over transmission facilities and wholesale sales, but specifically excludes authority over "facilities used for the generation of electric energy or over facilities used in local distribution . . . ." However, in this NOPR the FERC attempts to extend its authority to generation resource adequacy by requiring the Independent Transmission Provider (ITP) to (i) perform an electric demand forecast for the last year of the planning horizon and (ii) apportion the regional resource adequacy requirement for the last year of the planning horizon among the load-serving entities in its area on the basis of the ratio of their loads (35.37). This requirement goes on to require the load-serving entity to submit a plan to the ITP and gives the ITP some ill-defined authority to make sure the LSE is in compliance with the plan.

18. This is a major intrusion into specific generation and reliability standards that are not FERC jurisdictional. The FERC attempts to do by proxy what it cannot do itself; that is, require the ITP to perform regulatory functions without the specific delegation of authority and with the improper assumption of authority exclusively reserved to the states. Nor does FERC's claim that this is a minimum safety net and well below traditional reserve margin levels impart to this standard any legal authority (¶490). We do not challenge that ITP's with the appropriate grants of authority from state legislatures, state commissions, regional state oversight, or even through accepted reliability council standards and practices can set generation reserve requirements, we simply point out that the Federal Power Act does not grant FERC such authority.

19. We support FERC's goal to ensure adequate generation resources are available in the wholesale market and we recognize multi-state ITPs add a complexity to properly establishing such

standards. However, state commissions in states with integrated utility planning and requirements that adequate planning reserves be maintained by vertically integrated utilities have long been performing this function. In retail access states, these same commissions or their legal proxy such as reliability councils can set reserve requirements for the load-serving entities that participate in regional power pools or ITPs. There is simply no need nor authority for FERC to venture into this area.

20. Nor is the lack of jurisdiction remedied by the proposal in the NOPR that Regional State Advisory Committees (RSACs) be established to assist the ITP in determining the proper level of generation reserves. Once again, FERC cannot do by the RSAC proxy what they cannot do under the Federal Power Act. We do not question that RSACs could legally impose generation reserve requirements given the particular grant of authority in each participating state – FERC simply cannot require the RSACs to order ITPs to impose such standards.

21. Florida has extensive jurisdiction under Florida statutes to require generation reserves, ensure adequate capacity, and to order construction of necessary infrastructure if it deems necessary. Currently, our investor owned utilities have agreed to maintain a 20 percent reserve margin due to the extremely weather-sensitive peaks that occur here. There is simply no need for this NOPR under the guise of transmission discrimination to be setting reserve requirements on state regulated, load-serving entities. This will encroach on our ability to protect retail ratepayers.

The FPSC believes that the FERC cannot and should not assert any authority over demand responsive load. (¶ 517)

Specific FPSC Recommendation: All references to the ITP being required to have operational control of demand side resources should be deleted.

22. Paragraph 517 of the NOPR gives considerable authority to the ITP to decide what is the appropriate treatment of demand responsive load. The FPSC again believes that the Federal Power Act does not convey any authority to the FERC to determine how such resources shall be used in determining generation adequacy, how such resources shall be used in determining operational reliability, and what is the appropriate treatment of such resources in the operation of either day ahead or real time markets. Moreover, the actual dispatch of such resources by the ITP can only be done with the consent of the incumbent utility and by inference with the oversight and approval of the state commission.

23. Florida is unique in that it has one of the highest percentages of interruptible load in the country. Due to our aggressive deployment of residential load control devices and the use of interruptible rate tariffs for commercial and industrial customers, some 2,700 mWs of summer demand and 3,634 mWs of winter demand are used as demand side resources in Florida. These represent 6.7 percent and 8.4 percent of our projected 2002 summer and 2002/2003 winter total demand respectively. These are fully dispatchable resources which are under the control of the utility's dispatch center. All dispatchable load is deployed under rates, terms, and conditions approved by the FPSC such as the duration of the interruption, the frequency, and the time of interruption. The utilization of demand side resources such as these must comply with all the customer tariffs and the operation of such rates, terms, and conditions cannot be legally delegated to the ITP without the consent of the utility that offers the tariffs and the FPSC that approves them.

This does not mean that in some jurisdictions such control may not be ceded or contracted to the ITP by utilities, but the FERC does not have authority to order such arrangements.

Participant funding needs to be made an explicit part of the SMD without the qualifications currently contained in the proposed NOPR. (¶ 197)

24. The SMD NOPR discusses participant funding as a means to fund new transmission construction. However, it is predicated on certain conditions including that transmission planning be conducted by an ITP or similar organization and that any upgrades requested be part of a regional plan. In addition, the NOPR does not specify how participant funding will be implemented.

25. The FPSC generally supports the concept of participant funding because it more correctly aligns new infrastructure costs with those causing the costs (or in the case of interconnection facilities and transmission upgrades those requesting the upgrades). Without greater detail we cannot glean how FERC intends to implement participant funding. However, we believe that since participant funding better matches cost causers with beneficiaries that such a funding approach should be used for current transmission upgrades regardless of whether an RTO exists and whether planning is performed by an independent entity. A good regulatory pricing philosophy is not time dependent or organizationally dependent.

26. Furthermore, we believe that participant funding has a number of key elements that are not articulated in this NOPR. First, we concur that upgrades necessary to maintain an existing level of reliability or to ensure that current transmission capabilities are maintained should be uplifted to all users of the system. However, for incremental improvements beyond these—such as facilities to permit interconnection to the grid, upgrades to provide Network Access Service,

upgrades requested to provide wheeling through or wheeling out requests, or upgrades to reduce congestion cost—the participant requesting the upgrades should be responsible for funding them. In return, all congestion revenue rights associated with these upgrades or, in the case of inter-regional wheeling requests where CRRs do not apply, all incremental transfer capabilities created by these upgrades should accrue to the party funding the upgrade.

Formation of Regional State Advisory Committees is not the optimal mechanism to ensure state input. (¶¶ 551-555)

27. We are sympathetic to the challenges confronting FERC in designing transmission planning processes when multi-state utilities, commissions, and other siting authorities are involved. We admit that determining the need for, timing of, and cost responsibility for regional system improvements under an ITP-type model is a most formidable problem. We endorse FERC's concept that some type of regional state advisory committees should be involved. However, we believe the processes for developing participation mechanisms for states has not been fleshed out and a number of confounding issues must be resolved before a formal mechanism is instituted.

28. We have given extensive thought to various multi-state concepts and are mindful of the legal and administrative complications that are associated with such entities. While we believe that some kind of advisory role may be helpful to ITPs for purposes of coordination and planning, the RSAC cannot be delegated any authority—nor can the ITP assume any authority—that is state jurisdictional with respect to generation and transmission planning without specific state legislative authority. Thus, while FERC can certainly promote and encourage advisory functions between

states, these states cannot be ordered to participate, and more importantly, cannot have a decisional role without specific authority from the states.

29. Multi-state transmission siting offers a good example where MSE or RSACs could play a helpful role and, with the appropriate state delegated authority, could have a decisional role instead of an advisory one. For example, FERC clearly has no authority over the siting process for new transmission facilities, yet in many cases such facilities may involve multiple states in the case of long distance transmission lines. In this case, then some kind of decisional process with the attendant administrative due process safeguards could be helpful.

30. Additionally, the FPSC believes that there is another mechanism for the FERC to benefit from both the detailed knowledge and staff expertise of the states. Section 209 of the Federal Power Act delineates the FERC authority to refer matters to a Joint Board. The Board could act as a bridge between the FERC and States to address and provide joint FERC-state recommendations on major policy issues with multi-state implications. We view the Joint Board concept as a means to address knotty state/federal jurisdictional issues such as standardized market design or multi-state transmission siting and, at the same time, permits the flexilibity of regional diffences to be fully incorporated into the policy results. This method could help eliminate some of the problems with the "one size fits all" approach that characterizes much of the SMD NOPR.

31. The Joint Board structure would also allow the FERC to leverage both the resources and knowledge of individual commissions in achieving the goal of seamless, robust, regional markets. Near consensus exists among all the states as to the desirability of such markets. It is unfortunate that the FERC is expending substantial political capital and creating unnecessary delays

so it can impose a single, federal designed market model on all regions of the country despite legitimate differences among those regions.

The FERC framework for market monitoring should be finalized and the market monitor should be functional prior to the implementation of SMD. (¶¶ 429-454)

32. In light of the California experience, we believe that market mitigation and monitoring are needed to establish oversight and confidence in the wholesale market. We need to emphasize, however, that the FERC's philosophies on market design appear to be more fully developed than the methodologies for evaluating and mitigating market power. We would request that the FERC keep market design and market power analysis and mitigation on a parallel path. We strongly believe that new markets should not be implemented prior to FERC putting in place appropriate market monitoring and market power mitigation enforcement.

The elimination of access charges for wheel throughs and wheel outs is not cost justified. (¶¶ 170, 179-188)

33. The elimination of access charges on wheel through transaction leads to cost shifting. To the extent that costs are incurred by the wheeling entity, we believe the transmission customer should know ahead of time what the tariffed charges are and pay those costs directly to the wheeling entity. A patchwork system of credits or other means of compensating the wheeling entity adds unneeded complexity to an already complex market model. Due to the impacts of cost shifting, FERC should conduct a proceeding where a more complete proposal is offered to show why elimination of access charges is cost justified.

The FERC should recognize regional differences and existing state authority over load shedding and curtailment procedures.

34. Currently, load shedding and curtailment procedures are developed for inclusion in individual network operating agreements. The FERC proposes to make these procedures uniform and included in the SMD tariff. FERC also believes that the majority of constraints will be resolved through LMP-based congestion management. This leads FERC to deduce that Transmission Loading Relief events, where operators may curtail transactions over congested points in the system, will be reduced if not eliminated. FERC proposes that if curtailment is required and cannot be resolved through the congestion management system, the ITP should curtail customers whose transactions contribute to the constraint on a pro rata basis. FERC also proposes that to the extent the ITP is not able to schedule all requests for transmission service made through the day-ahead market, customers with CRRs for their requested receipt/delivery points should be scheduled first. Further, the ITP can assess a penalty for failure to curtail if a transmission customer fails to curtail after reasonable notice.

35. The FERC should recognize and allow for incorporation of any regional differences and established practices regarding such procedures. It is yet to be determined that LMP will provide long-term solutions to a constrained path. Curtailing transactions on a pro-rata basis is another example of FERC's broadening of its jurisdiction over bundled retail transmission.

Specific Requests of the Florida Public Service Commission

Wherefore, the FPSC expresses concerns with the jurisdictional over-reaching of the NOPR. This intrudes on our ability to protect retail ratepayers. We specifically ask for the following:

- Prior to implementing new rules, the FERC should demonstrate economic benefits to occur as a result of the SMD NOPR.
- Proposed Rule 35.35 (c)(2)(i) should be changed to read: Applicability. Upon a formal finding by the FERC that a public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce has engaged in undue discrimination unrelated to statutory obligations imposed on it by state law or rule, that public utility must comply with the requirement of this rule by (date to be prescribed by the FERC).
- Proposed Rule 35.37 on generation resource adequacy should be deleted in its entirety.
- All references to the ITP being required to have operational control of demand side resources should be deleted.
- Participant funding needs to be made an explicit part of the SMD without the qualifications currently contained in the proposed NOPR.
- Formation of Regional State Advisory Committees is not the optimal mechanism to ensure state input. Instead, we believe the existing authority for a Federal-State Joint Board is a better approach.
- The framework for market monitoring should be finalized and the market monitor should be functional prior to the implementation of Standard Market Design.
- The elimination of access charges for wheel throughs and wheel outs is not cost justified. Due to the impacts of cost shifting, FERC should conduct a proceeding where a more complete proposal is offered to show why elimination of access charges is cost justified.

- The FERC should recognize regional differences and existing state authority over load shedding and curtailment procedures.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6082

DATED: October 28, 2002

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination through	**)**	Docket No. RM01-12-000
Open Access Transmission Service and	**)**	
Standard Electricity Market Design	**)**	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing supplemental filing of the Florida Public Service Commission will be sent today by U.S. Mail to the service lists in the above listed dockets.

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

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DATED: October 28, 2002