

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, and Linda Breathitt.

GridFlorida LLC  
Florida Power & Light Co.  
Florida Power Corporation  
Tampa Electric Co.

Docket Nos. RT01-67-000  
and RT01-67-001

ORDER PROVISIONALLY GRANTING RTO STATUS

(Issued March 28, 2001)

On October 16, 2000, as supplemented on December 15, 2000, pursuant to sections 203 and 205 of the Federal Power Act (FPA) and Order No. 2000,<sup>1</sup> Florida Power & Light Company (FP&L), Florida Power Corporation (Florida Power Corp.), and Tampa Electric Company (TECO) (collectively Applicants) submitted their Order No. 2000 compliance filing requesting the authorization to create GridFlorida LLC (GridFlorida), a for-profit Regional Transmission Organization (RTO). For the reasons discussed below, the Commission finds that the Applicants' compliance filing, modified as discussed in this order, complies with the minimum RTO characteristics and functions described in Order No. 2000, accepts the Participating Owners Management Agreement, the Limited Liability Company Operating Agreement, RTO Formation Plan, Open Access Transmission Tariff and Market Monitoring Tariff and provisionally grants RTO status to GridFlorida. The Commission directs Applicants to file, within 60 days from the date of this order, a compliance filing reflecting the revisions required in this order.

---

<sup>1</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review pending sub nom., Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir).

## I. Background

In their initial Order No. 2000 compliance filing (Initial Filing), filed October 16, 2000, Applicants proposed the formation of GridFlorida to act as a for-profit RTO for the Florida Regional Coordinating Council (FRCC) region. GridFlorida supplemented its filing on December 15, 2000 (Supplemental Filing). GridFlorida will provide transmission service and related ancillary services under its Open Access Transmission Tariff (OATT). GridFlorida will own and/or operate transmission lines of 69 kV or more.

In response to Applicants' request in their October 16 filing for an expedited ruling on certain limited issues, the Commission on January 10, 2001, issued an order on certain independence and governance aspects of its proposal, namely the board selection process; criteria for qualification of directors and officers; and restrictions on financial holdings of directors and employees and other independence criteria applicable to directors and employees.<sup>2</sup> The Commission accepted these aspects of Applicants' filing, and indicated that remaining issues would be addressed in a subsequent order.

## II. Discussion

### A. Procedural Matters

Notice of Applicants' December 15, 2000 filing was published in the Federal Register, 65 Fed. Reg. 82,998 (2000), with comments, protests, and interventions due on or before January 5, 2001. The due date was subsequently extended to January 30, 2001. New intervenors and parties commenting on the Supplemental Filing are listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>3</sup> the timely, unopposed motion to intervene of Competitive Power Ventures serves to make it a party to this proceeding.

On February 16, 2001, Applicants filed a response to the comments and protests (Answer). An answer to protests is not permitted under 18 C.F.R. § 385.213(a)(2) of the Commission's regulations unless otherwise ordered by the decisional authority. However, we will accept Applicants' Answer because it helps clarify the issues under consideration in this proceeding. On March 5, 2001, various intervenors filed responses to Applicants' Answer. We will reject this set of filings.

---

<sup>2</sup> GridFlorida LLC, 94 FERC ¶ 61,020 (2001) (GridFlorida).

<sup>3</sup> 18 C.F.R. § 385.214 (2000).

In its protest to the Supplemental Filing, the Florida Public Service Commission (Florida Commission) requests that a technical conference be convened in Tallahassee, Florida, in which the Florida Commission and this Commission may work together on a Memorandum of Understanding on their roles in overseeing an RTO in Florida. On March 7, 2001, and March 13, 2001, Applicants and the Florida Municipal Power Agency, respectively, filed letters stating that they support the Florida Commission's proposal for a meeting in Tallahassee between Commissioners from this Commission and the Florida Commission. There are practical problems in attempting to arrange such meetings with all interested state commissions concerning the various RTOs that have been proposed, and we believe that the collaborative process we have established for processing Applicants' RTO filings is working reasonably well and should be completed. Accordingly, we will not adopt the Florida Commission's proposal for a technical conference to develop a memorandum of understanding.

#### B. RTO Characteristics

##### RTO Characteristic No. 1: Independence

##### The RTO must be independent of market participants.

Applicants' Initial Filing is described in detail in GridFlorida. Briefly, GridFlorida will be set up as a limited liability company to own and operate transmission facilities divested to it by transmission owners (Divesting Owners) in exchange for a non-voting membership interest. GridFlorida will also operate transmission facilities of other transmission owners (Participating Owners) that transfer operational control to GridFlorida pursuant to a Participating Owners Management Agreement (POMA). FP&L and TECO have each filed a notice of intent to divest ownership of their 69 kV and above transmission facilities to GridFlorida. As of this time, Florida Power Corp. plans to retain ownership of its transmission facilities but transfer operational control of its 69 kV and above transmission facilities to GridFlorida pursuant to the POMA. GF Inc. (GF Inc) is to be established as the managing and controlling member of GridFlorida and eventually also to be a publicly-held corporation. GF Inc will issue voting Class A stock to the public. Divesting Owners are able to exchange their membership interest in GridFlorida for non-voting Class B stock issued by GF Inc. The proposal provides that a Board Selection Committee composed of representatives of several stakeholder groups will select, from a pool of qualified candidates chosen by a national executive search firm, eight initial directors to serve on the Board of Directors (Board) of GF Inc. In turn, the chosen directors pick a chief executive officer for GF Inc. Subsequent directors are to be

chosen by holders of Class A stock. Market participants,<sup>4</sup> except for financial institutions that may be market participants, are not permitted to own voting Class A stock. The proposal also includes qualifications for directors of GF Inc and restrictions and codes of conduct to be followed by officers, directors and employees of GF Inc and GridFlorida. The GridFlorida proposal further provides for an Advisory Committee consisting of representatives from six stakeholder groups that will address matters of concern with GF Inc and GridFlorida.

In GridFlorida, we approved the Board selection process, proposed director and officer professional qualifications and proposed restrictions and code of conduct to be applied to officers, employees and directors of GridFlorida and GF Inc. We specifically did not rule on any other aspect of the governance and independence described in the Initial Filing.

Applicants' Supplemental Filing revises several aspects of their initial proposal relating to independence and governance. Among the changes, a financial institution which may be a market participant may continue to own, without limitation, any amount of Class A stock in GF Inc, but cannot cast votes in excess of five percent of the outstanding voting securities and the class of market participants to which such financial institutions belong may not cast more than 15 percent of the outstanding voting securities. Applicants also propose to establish an interim LLC, which they will manage, for performing developmental work they believe is necessary if GridFlorida is to begin operations by December 15, 2001. In addition, the date at which GridFlorida would no longer be obligated to enter into agreements to acquire the transmission facilities of transmission owners is potentially advanced to as early as six months after GridFlorida commences operations, rather than the two year period proposed in the Initial Filing. Supplemental Filing at 9-16.

Our analysis of the issues raised in comments regarding independence on both the Initial Filing and the Supplemental Filing follows.

1. Interim LLC

a. Applicants' Proposal

Applicants estimate that the Board of Directors of GF Inc will not be selected and the Chief Executive Officer appointed until the third quarter of 2001. They assert that

---

<sup>4</sup>The definition of market participant is the same as in Order No. 2000.

developmental work must begin before the Board is selected if GridFlorida is to commence operations by December 15, 2001. Thus, Applicants propose to form GridFlorida soon and anticipate that interim financing for GridFlorida will be provided in the forms of loans guaranteed by Applicants. Applicants also propose to oversee transitional management of GridFlorida in the period between the interim LLC's formation and the selection of the independent Board. Supplemental Filing at 13-14. In performing interim developmental work, Applicants commit to the following principles:

(1) most of the developmental work will consist of entering into leases for office space, setting up employee benefit plans, putting accounting systems into place and the like;

(2) to the extent GridFlorida enters into any agreements to acquire jurisdictional facilities, it will file such agreements with the Commission for its review and approval prior to making the acquisition;

(3) consultants may be hired to provide advice about how to acquire software and other systems implementing market design, but no significant sums will be spent or committed until the proposed market design has been approved by the Commission; and

(4) Applicants will give the stakeholders' Advisory Committee advance notice of, and consult with the Advisory Committee prior to, decisions regarding any intent to enter into commitments to spend significant sums, or to acquire software and other systems implementing market design or other jurisdictional service. Id. at 15.

b. Intervenor Comments

Several intervenors protest Applicants' attempt to establish and run an interim LLC in advance of the selection of the independent Board of GF Inc (the managing member of GridFlorida). Enron Power Marketing, Inc. (Enron) argues that the restrictions proposed by Applicants to apply to their interim decision-making are not sufficient to prevent them from tailoring rules and procedures to their advantage. It sees no reason why Applicants should not be directed to proceed expeditiously with the selection of a search firm so that the Board can be seated by the beginning of the second quarter. Calpine Eastern (Calpine), Florida Municipal Power Agency (FMPA) and Seminole Electric Cooperative, Inc. (Seminole) contend that the interim LLC would be devoid of independence and that some far-ranging decisions made in this period would be difficult to reverse after the independent Board assumes control of GF Inc. Of the four general guidelines listed by Applicants for performing interim development work, Calpine asserts only that required

for entering into leases for office space and furniture and equipment is appropriate and that all other activities should wait until the Board is selected.

FMPA suggests that operation of GridFlorida be delayed rather than risk compromising its independence, as inertia and constraints of time and resources tend to make temporary decisions permanent. It notes that even Applicants recognize much significant technical analytical work remains to be done, such as identifying flowgates, determining allocation of physical transmission rights (PTR) and negotiating many details of their installed capacity and energy (ICE) market proposal. FMPA also argues that giving Applicants approval to undertake the task of translating broad market-design concepts into functioning software would create opportunities for them to hardwire systems that will prefer their generation interests. FMPA further asserts that acquisition of jurisdictional facilities in the interim period is likely to be an exercise in self-dealing and undue discrimination. FMPA views Applicants' proposal as similar to the situation in PJM (citing Atlantic City Electric Co., 77 FERC ¶ 61,148 at 61,575), where the Commission prevented a single class of market participants from choosing the initial members of an independent board because of concern that they would promote directors favorable to their interests.

If the Commission chooses to approve the formation of an interim LLC, both FMPA and Seminole argue that any developmental work done before the Board is selected should be overseen by a balanced stakeholder body. They suggest that management of an interim LLC could be delegated to the 13 member Advisory Committee, whose consent, not mere consultation, should be necessary for any decisions.

c. Discussion

The Commission is sensitive to the need to expedite the formation of GridFlorida to allow it to commence operations as soon as possible. However, we are also sensitive to concerns raised about the independence of an interim LLC managed by Applicants and encourage that the independent Board be seated quickly. Therefore, the Commission will approve the formation of an interim LLC to be managed by Applicants prior to the date that the independent Board of Directors of GF Inc takes control of GridFlorida, subject to modification of the procedures proposed by Applicants, as discussed herein. Given these procedures and the importance we place on expeditious formation of RTOs, we believe that the process can be advanced without unduly compromising the independence criterion of Order No. 2000.

Leasing office space, establishing employee benefit plans, putting accounting systems into place and other basic infrastructure tasks referred to in the first principle

clearly do not pose independence concerns. Regarding the acquisition of transmission facilities referred to in the second principle, any agreements for such acquisitions that are entered into before the independent Board is selected will be carefully scrutinized. Such agreements require our authorization under section 203 of the FPA and must meet the public interest standard embodied therein.

The concerns raised about the developmental work referred to in the third and fourth principles are more problematic, as they primarily involve steps necessary for implementing market design, which intervenors have alleged raise opportunities for Applicants to favor their own interests. Applicants have committed not to bind GridFlorida to software and other necessary systems until Commission approval is granted for market design. Applicants have also agreed to consult with the Advisory Committee before entering into commitments to acquire software and other systems implementing market design.

The Commission regards the acquisition of software and other systems implementing market design as significant to the future operation of the RTO and will require that any acquisition of software or other systems implementing market design not be undertaken until the independent Board has been seated and given its approval. We note that, as subsequently discussed in this order, we are not approving Applicants' proposed market design and are, instead, requiring that Applicants more fully support their proposed market design.

The Commission notes that the developmental work to be conducted under the fourth principle appears to allow for "significant" amounts of money to be spent for items other than those related to implementing market design or other jurisdictional service. Applicants have not identified at this time what other kinds of expenditures are contemplated under the fourth principle. Until the Advisory Committee has been formed, there should be no expenditure under this principle. When the Advisory Committee receives notice of Applicants' intent to enter into commitments to spend significant sums, it may raise any concerns by filing a complaint with the Commission. Furthermore, under section 205 of the FPA, all of GridFlorida's expenditures will be subject to our review and approval in determining whether GridFlorida's rates are just and reasonable.

2. Methods and Timing of Participation in GridFlorida

a. Applicants' Proposal

The GridFlorida LLC Operating Agreement (OA) provides for GridFlorida to acquire transmission facilities in existence or under construction as of December 15, 2001, at net book value in exchange for granting a membership interest in GridFlorida.

The holders of membership interests can convert their interests to non-voting Class B stock in GF Inc. The final date (put date) at which GridFlorida is obligated to enter into agreements to acquire transmission facilities is to be determined by GridFlorida, but may be as early as six months after GridFlorida commences operations. OA, sections 1, 2.12 and 3.4. Applicants state that they continue to explore the advisability and impact of allowing transmission owners to transfer their transmission assets to GridFlorida during the initial put period for cash, in lieu of a membership interest. Supplemental Filing at 12, note 5. Transmission owners may also contractually transfer operational control of their facilities, while retaining ownership, through the POMA. OA, section 2.12.

b. Intervenor Comments

FMPA and Seminole fault Applicants for failing to offer the cash purchase option and for limiting the period of GridFlorida's purchase obligation to as little as six months after GridFlorida begins operating. According to FMPA, the cash purchase option would resolve concerns about "private use" restrictions associated with transfer of ownership and control of facilities financed with tax-exempt debt by allowing such debt to be retired contemporaneously with the disposition of transmission facilities. The Florida Municipal Group (FMG)<sup>5</sup> and FMPA claim that the cash purchase option would likewise overcome the Florida constitution prohibition of ownership by a governmental entity in a corporation.<sup>6</sup> FMPA also contends that the option of subsequently selling Class B stock reflecting relatively small ownership shares for municipalities is likely to incur relatively high placement costs and also does not meet timeliness requirements for retiring the debt. FMPA asserts that the total net book value of municipal facilities for which cash treatment may be requested would not be likely to raise concerns about GridFlorida's financing of such cash purchases. It believes that any such concerns could be overcome by procedures which would not threaten GridFlorida's cash flow or GF Inc's initial public offering (IPO) prospects.

FMPA also views the POMA as discouraging municipal participation. It argues that a revision in section 7.7.3 of the POMA between the Initial Filing and the Supplemental Filing can be read to require transmission owners to turn over all aspects of

---

<sup>5</sup>Members of the Florida Municipal Group are Lakeland Electric, City of Tallahassee (Tallahassee), Kissimmee Utility Authority and Gainesville Regional Utilities.

<sup>6</sup>FMPA states that while the Florida Limited Liability Company Act appears to permit governmental membership in a limited liability company, no case law has specifically addressed this question.

operational control, even when it results in a conflict with the bond indenture requirement. FMPA urges that the POMA be revised to make clear that Participating Owners are not required to turn over control of facilities in a manner that would be reasonably be expected to conflict with either Internal Revenue Code provisions or the tax exempt status of bonds used to finance the facilities.

Both FMPA and Seminole further urge that the period in which GridFlorida is required to acquire transmission facilities be substantially extended. FMPA claims that pending tax legislation before Congress would allow governmentally-owned facilities to be used to provide transmission service under a FERC-approved RTO agreement without being considered to constitute private use. It recommends that the final put date for GridFlorida to be required to accept facilities be extended until nine months after the later of the enactment date or effective date of any Internal Revenue Code amendment implementing such legislation. Seminole contends that the both the cash purchase and granting of membership interest options should be available for at least five years in order for GridFlorida to achieve proper scope.

c. Discussion

In Order No. 2000, the Commission noted that public power entities confront hurdles to their participation associated with IRS "private use" or other restrictions on the transfer of control or control of facilities financed by tax-exempt bonds. We encouraged parties during the collaborative process of forming an RTO to explore possible solutions to the impediments to public power participation. We stated that we would examine submitted proposals on a RTO-by-RTO basis, but noted that the methods of participation must be consistent with minimum functions and characteristics set forth in the RTO rule. Order No. 2000 at 31,196-97 and 31,201.

Applicants argue persuasively that allowing GridFlorida to limit the period of its obligation for purchasing transmission facilities is important to initiating a successful IPO for GF Inc stock. According to Applicants, an IPO cannot be conducted successfully until GridFlorida's asset base and membership structure is known. The earlier GridFlorida's obligation to acquire transmission facilities ends, the sooner the IPO requirements would be met and the more flexibility GF Inc will have in deciding when to enter financial markets. As Applicants further point out, notice of divestiture of transmission facilities, not the actual sale, must occur within six months after GridFlorida begins operation. Answer at 28-32.

The Commission will not rule at this time on the methods of participation for public power entities in GridFlorida that have been proposed by Applicants. However,

the Commission is sensitive to concerns regarding loss of tax-exempt status and private use restrictions raised by public power entities that the methods proposed for participation may not permit them to participate in GridFlorida. We recognize that Applicants and intervenors have engaged in a long, collaborative process already, but we believe the parties need to more fully explore all of the possible options that are available. Therefore, we direct them to continue negotiating on this issue to seek ways to provide somewhat more flexibility for participation while also allowing GridFlorida to move forward, on a timely basis, consistent with GridFlorida's business model. The parties should report their progress to the Commission within 60 days of this order.

### 3. Advisory Committee

#### a. Applicants' Proposal

Applicants propose that a stakeholders' Advisory Committee be established to advise the Board. The Advisory Committee would consist of up to 13 members, including (1) three representatives of investor-owned utilities that are, or as of September 1, 2000 were, owners of transmission facilities in the markets served by GridFlorida, (2) two representatives of electric utilities that provide electricity at retail, (3) two representatives of generation and transmission cooperatives and municipal joint action agencies, (4) two representatives of entities that own or are developing generation facilities whose output will be delivered over facilities owned or controlled by GridFlorida, (5) two representatives of power marketers and brokers and (6) two representatives of governmental or non-profit organizations that are not utilities, represent end-use consumers' economic or environmental interests and are located within the region where GridFlorida provides transmission service. In this last group, one of the representatives is to come from the Florida Office of Public Counsel, unless that entity declines to serve on the Advisory Committee. To join as a member of any stakeholder group, a market participant must pay an initial fee of \$10,000 to the Advisory Committee and an annual fee of \$5,000. The Advisory Committee may review and amend the level of fees by majority vote. RTO Formation Plan, sections 4.2 and 4.3.

The Advisory Committee may make recommendations at any time to the Board and senior management, confer with senior management at least once a quarter and make presentations to the Board at regularly scheduled meetings on matters which a majority of the members of the Advisory Committee believe merit the Board's attention. Applicants propose that these types of dealings with the Board and management be conducted by a single representative of the Advisory Committee. The rights and responsibilities of the Advisory Committee cannot be amended without prior written consent of the Commission. RTO Formation Plan, section 4.1; FMPA Supplemental Comments, Exhibit

3. In response to comments, Applicants are amenable to permitting the Advisory Committee the same rights as the Membership Committee, including the right to comment on the operating budget to be prepared for GridFlorida by GF Inc. OA, sections 7.4 and 8. Applicants also agree to amend section 1.1, Attachment P of the OATT to allow the Advisory Committee to serve as the stakeholder committee that will review the operation of markets and recommend changes to market design. Answer at 20 and 23.

b. Intervenor Comments

Intervenors are dissatisfied with the Advisory Committee structure and role in the governance of GridFlorida in several respects. Dynegy, Inc. (Dynegy) and other intervenors believe that the Advisory Committee will be dominated by transmission owners, which could occupy up to seven seats on the 13 member Advisory Committee. Duke Energy North America (Duke ENA), Calpine and FMPA criticize the limits and method proposed for the Advisory Committee's access to the Board, including the requirement to interact with the Board and management through a single representative. They urge that either minority views of the Advisory Committee be allowed to be presented or that one representative of each stakeholder group have access to the Board. Orlando and Duke ENA argue that the Board should be required to follow the advice of the Advisory Committee or explain in writing its reasons for failing to do so. Electric Power Supply Association (EPSA), Duke ENA and Calpine believe that GridFlorida or GF Inc should not have the right to amend the Advisory Committee's rights and responsibilities without the consent of a majority of the Advisory Committee. FMPA and Orlando Utilities Commission (Orlando) also object to the fee structure and request that each stakeholder group pay the same costs per vote, with each stakeholder group allocating those costs among its members. Jacksonville Electric Authority (JEA) expresses concern that it does not fit into any of the stakeholder groups that make up the Advisory Committee and therefore will be precluded from participation.

c. Discussion

The Commission disagrees that the Advisory Committee's recommendations are likely to be unduly balanced towards reflecting the views of transmission owners. Initially, there is no basis for presuming that all transmission owners will share the same or even similar viewpoints and perspectives, particularly since three of the representatives will come from investor-owned utilities and two will come from joint groups of municipal and cooperative electric systems. Indeed, given that the representatives of the second category consisting of entities that serve at retail will not necessarily be transmission owners, it is possible that transmission owners will not be a

majority of the Advisory Committee. We also rejected a similar contention and approved a similar makeup for the Board Selection Committee in our January 10, 2001 order. GridFlorida, 94 FERC at 61,046. In addition, the Advisory Committee is structured very similarly to advisory committees that have been approved for the proposed Alliance RTO and the existing Midwest ISO. Alliance Companies, et al., 89 FERC ¶ 61,298 at 61,920 (2001) (Alliance I) and Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,149-51 (1998) (Midwest ISO I). Regarding JEA's eligibility for the Advisory Committee, Applicants note that JEA is located in peninsular Florida and will be interconnected with GridFlorida and thus in the markets served by GridFlorida. JEA would qualify to belong to the group of entities which sell electricity at retail.

The Commission will not impose an obligation on the Board to follow the advice or recommendations of the Advisory Committee. Leaving the Board no choice but to follow the advice of the Advisory Committee would effectively transform the non-stakeholder Board, that has already received the Commission's approval, into a stakeholder Board. Also, we are not persuaded to burden the Board with the duty to provide an explanation to the Advisory Committee when it does not adopt the Advisory Committee's recommendations. However, to give the Board a more complete view, if desired by those in the minority on any matter, at least the minority view with the most support should be presented by the minority's chosen representative to the Board. Additionally, the Commission accepts Applicants' clarification of the Advisory Committee's rights and responsibilities, as noted above. Since Applicants have agreed that the rights and responsibilities of the Advisory Committee cannot be changed without the Commission's consent, we find that majority approval by the Advisory Committee is unnecessary when such changes are proposed.

The Commission is satisfied that the proposed fee structure is reasonable. The fee structure parallels that approved in Alliance I, 89 FERC at 61,919 and Midwest ISO I, 84 FERC at 62,148-49. Also, two or more stakeholders are allowed to join together and participate as one entity in their stakeholder group, paying just one initial fee. Further, the Advisory Committee may review and amend the level of fees by majority vote. Section 4.3 of RTO Formation Plan.

#### 4. GridFlorida's Fiduciary Responsibilities

##### a. Applicants' Proposal

GridFlorida is to be a for-profit transmission company that will own certain transmission facilities to be divested by one or more Florida utilities, and will operate other transmission facilities which will not be divested by Florida utilities. As such, it

will have an incentive to increase its asset base and otherwise act to maximize its profits by engaging in the business of electric transmission.<sup>7</sup>

b. Intervenor Comments

Several intervenors contend that the independence of GridFlorida will be compromised by its fiduciary responsibility to maximize the value of its assets for the benefit of GF Inc's stockholders. JEA suggests, for example, that GridFlorida may decide to undertake transmission investments itself even though a Participating Owner might serve as a more efficient vehicle for the investment. Calpine asserts that the concept of a for-profit transco gives rise to perceptions that generation solutions to congestion and growth may not receive equal consideration with transmission solutions. EPSA, Duke ENA, Calpine and FMPA are all of like view that GridFlorida's for-profit incentives will conflict with its objectivity in setting market rules and administering the market. To resolve these inconsistencies, intervenors propose that a separate umbrella non-profit organization, independent of GridFlorida, design and manage markets.

c. Discussion

Initially, as we have indicated in Order No. 2000, the Commission has determined that a variety of organizational forms for RTOs, including for-profit transcos, are acceptable so long as they meet the minimum characteristics and functions. As Applicants point out, we previously rejected arguments which asserted the inability of a for-profit transco to act impartially.<sup>8</sup> In this order, we find that Applicants' proposal meets the independence standard, subject to the modifications ordered herein. We also note that in response to criticisms that GridFlorida would be more inclined to adopt transmission solutions than generation solutions to congestion management, Applicants point out that GridFlorida must consider non-transmission solutions in determining the best alternative. OATT, Attachment N (Planning Protocol), section II.A.8. In addition, the Market Monitor may file a complaint with the Commission if it observes specific violations of market rules or otherwise anticompetitive behavior. Market Monitoring Tariff, section 3.4.5. Finally, to the extent that intervenors' arguments suggest that transcos can never satisfy Order No. 2000's requirements, these arguments are impermissible collateral attacks on Order No. 2000.

---

<sup>7</sup>Initial Filing at 1-2.

<sup>8</sup>Commonwealth Edison Company, 91 FERC ¶ 61,178 at 61,640 (2000).

## 5. Independence Implications of FRCC's Role in GridFlorida

### a. Applicants' Proposal

The FRCC is called upon or relied upon to provide certain operational standards and information under several provisions of the OATT, consistent with the recognized role which regional reliability organizations may play. For example, Attachment N (Planning Protocol), sections 1.A.1 and 1.B.1 provide that GridFlorida will adopt NERC and FRCC planning standards and criteria for transmission. Sections IV.A.1 and 2 of the Planning Protocol provide that the FRCC shall assess the reliability assessment of GridFlorida and will develop, in coordination with NERC, reliability standards for GridFlorida and ensure compliance with such standards. Attachment O (Operating Protocol), section I.D provides that GridFlorida, acting as Security Coordinator for all transmission facilities within the FRCC, will implement FRCC and NERC Security Coordinator standards, policies and procedures. Section I.D.7 requires GridFlorida to direct actions to institute line loading relief in accordance with NERC and FRCC Transmission Loading Relief policy. Section II.H.1 provides that GridFlorida will determine available transmission capability (ATC) and total transmission capability (TTC) in accordance with FRCC ATC Coordination Procedures and NERC Standards. Section III.D.1 (a) (1) requires that the FRCC determine on a monthly basis whether aggregate reserve margins assure generation adequacy and to follow its own procedures for addressing generation deficiencies.

### b. Intervenor Comments

Seminole and JEA point out that Applicants together account for a majority of FRCC's voting strength and thus determine FRCC's policies. They also contend that FP&L alone effectively has veto power over FRCC decisions. Because the FRCC will have significant roles in the implementation of GridFlorida's operating and planning protocols, Seminole and JEA believe that the Commission must directly confront the governance of the FRCC in assessing whether GridFlorida meets the independence standard. They contend that the Commission would be well within its authority to condition acceptance of the governance section of the GridFlorida filing upon a change in the FRCC governance that satisfies Order No. 2000's independence requirement.

### c. Discussion

The Commission will not at this time comprehensively address issues relating to the role and structure of the FRCC as it relates to GridFlorida. Elsewhere in this order, the Commission has discussed certain aspects of FRCC's relationship to GridFlorida, such

as with regard to the proposed ICE requirements. As noted in Order No. 2000, the participation of a regional coordination council such as FRCC may be of assistance in coordinating inter-regional cooperation, and may therefore be useful in assisting an RTO and its participants in satisfying the Commission's required characteristics and functions. We expect that FRCC's decisions and policies will reflect reliability concerns instead of the commercial interests of individual market participants. Absent evidence to the contrary, we see no reason to question GridFlorida's reliance on, and implementation of, FRCC decisions and policies.<sup>9</sup>

#### 6. Voting Rights of Financial Institutions

Order No. 2000 (at 31,069-072) establishes benchmarks for active ownership interests in RTOs held by market participants. The Commission will allow any market participant to own up to 5 percent, and any class of market participants to own up to 15 percent, of an RTO's outstanding voting securities, without the need for case-by-case review by the Commission. RTO proposals that involve higher active ownership interests are not prohibited, but require justification. Also, all active ownership by market participants must end after five years unless the RTO seeks, and the Commission approves, an extension.

##### a. Applicants' Proposal

Applicants propose to allow investment banks or broker-dealers (financial institutions) which may be market participants to own more than 5 percent of GF Inc's outstanding Class A stock (and to allow the class of market participants to which such financial institutions belong to own more than 15 percent as a class). However, Applicants also propose to limit the voting rights of any financial institution to 5 percent (and the voting strength of the class at 15 percent) of the outstanding voting securities of GF Inc. The shares owned in excess of five percent would be treated like a passive ownership interest.<sup>10</sup> Applicants assert that it would be inefficient and undesirable for financial institutions to be excluded from active ownership, or to be limited in their financing and underwriting capacities. Applicants note that a high percentage of utility equity is held by the institutional investment sector, and that undue limitations on ownership by such institutions would make the stock less readily marketable and thereby

---

<sup>9</sup>Note, however, that Order No. 2000 requires an RTO to notify the Commission immediately if implementation of externally established reliability standards will prevent it from meeting its obligation to provide reliable non-discriminatory service. (at 31,106).

<sup>10</sup>Supplemental Filing at 10-11; and GF Inc Articles of Incorporation, Article VI.B.

limit its price growth. Applicants do not propose that financial institutions must extinguish ownership of voting stock by the end of five years.

b. Intervenor Comments

Calpine and FMPA protest this proposal, claiming that it would vest such institutional investors with substantial control over GridFlorida and/or GF Inc, either because voting restrictions on holdings greater than 5 percent are unclear, or because these non-voting Class A shares would, by implication, be treated as Class B shares and would therefore confer voting rights as to matters on which Class B shares may be voted.<sup>11</sup> FMPA seeks two clarifications. First, FMPA argues that Applicants should be required to exclude as many market participant votes as are necessary to satisfy the 5 percent and 15 percent limitations after the excess Class A shares are excluded. Second, FMPA suggests that the limitations should apply to the number of votes actually cast, rather than the total number of votes that could be cast. FMPA further argues that Applicants should provide for elimination of market participant voting rights within five years or seek waiver of that requirement, as set forth in Order No. 2000.

c. Applicants' Answer

Applicants indicate that intervenor concerns about holdings above the 5 percent level by market participant-financial institutions are unfounded, in that such holdings will not compromise RTO independence. They reiterate that limitations on ownership by financial institutions would reduce the liquidity of the stock and repress its value. They agree to FMPA's first suggested clarification, that the percentage limitations be calculated and met after the excess votes are excluded. Applicants argue, however, that the limitations imposed by Order No. 2000 apply to the total number of votes that could be cast, not votes actually cast. Applicants also clarify that the excess, non-voting Class A shares held by these financial institutions will possess no voting rights whatsoever, and will therefore not exercise any of the voting rights attendant to ownership of either Class A or Class B shares.<sup>12</sup>

d. Discussion

---

<sup>11</sup>See, e.g., FMPA Supplemental Protest at 96.

<sup>12</sup>Answer at 16-18.

In order to facilitate RTO development consistent with our independence requirements, we will accept Applicants' proposal, as clarified in their Answer, subject to one modification.<sup>13</sup> The Commission notes that Applicants have not defined or identified classes of market participants. As set forth in Article VI.B of the Articles of Incorporation, in order to determine whether any class of market participants exceeds the active stock ownership limit of 15 percent, it will be necessary to determine whether two or more financial institutions which own Class A voting stock and which have been determined to be market participants belong to the same class of market participants. That determination, in turn, cannot be made unless the classes of market participants are defined or identified. Therefore, Applicants should propose the possible classes of market participants and revise the Articles of Incorporation or other documents, as appropriate.

Applicants are also advised that all ownership of voting securities by market participants will be fully subject to the five-year limitation on active ownership. Any extension of this period for active ownership by market participants will require that Applicants file for waiver of the requirement and offer justification for the requested extension.

## 7. Passive Owners' Voting Rights

### a. Applicants' Proposal

Section 8.5 of the OA provides that an affirmative vote of the majority of the passive members of GridFlorida is required for approval of several business events, including the following: (1) transactions that would result in a change of control of GridFlorida; (2) acquisitions or investment business opportunities not related to providing electric transmission service; (3) disposition of substantially all of the assets of GridFlorida wherein all or a portion of the consideration received would be in cash; and (4) mergers or consolidation with another entity wherein all or a portion of the consideration received would be in cash. However, member approval would not be required for any merger in which no cash consideration would be paid and that would result in a change of control of GridFlorida to a transmission owner or RTO located in Florida or SERC (as it existed on September 1, 2000), unless a passive member sought an opinion from an independent investment banker that the transaction is fair to the interests of the members and the investment banker found that it could not render such an opinion.

---

<sup>13</sup>That is, the limitations will be calculated after the excess votes are excluded, and will be based on the total number of votes that could be cast.

Similarly, section VI.D of GF Inc's Articles of Incorporation provides that approval of a majority of the outstanding shares of Class A stock and of Class B stock voting as a single class is required for the same events listed above.

b. Intervenor Comments

Intervenors criticize the voting rights of passive owners contained in Applicants' proposal on numerous grounds. Regarding merger decisions, FMG is concerned that a passive (Class B) owner could, in effect, veto a logical merger with a SERC RTO by selectively using its right to secure what would be an unfavorable opinion from an investment banker. It interprets Alliance Companies, et al., 94 FERC 61,070 at 61,305) (2001) (Alliance III) as preventing transmission owners from having a voice in merger decisions, unless the RTO is essentially being liquidated. FMG contends that a decision by the independent GF Inc Board that a merger with another RTO is beneficial should be susceptible only to Commission approval under section 203, without also being subject to approval by passive owners. JEA, Duke ENA and Calpine also assert that GridFlorida's independence is compromised because even with TECO's divestiture of transmission assets (making it a passive member or Class B owner), FP&L effectively will have veto power over all provisions of the OA, including those involving mergers.

Calpine, Duke ENA, Seminole and FMPA contend that the provisions in the OA and Articles of Incorporation allowing GridFlorida to enter diversified lines of business, such as natural gas pipelines and telecommunication activities, present conflict of interest concerns, in that GridFlorida would have the potential to compete with the business interests of customers of GridFlorida. They also argue that diversification would diffuse GridFlorida's resources and detract from investments to improve the Florida transmission grid. They assert that no showing has been made that diversification is necessary for expanding GridFlorida's access to capital. Further, intervenors fault Applicants' proposal for effectively giving FP&L a veto voice in diversification, including its direction, since FP&L will likely represent a majority of passive owner interests, even with TECO as a passive owner.

c. Applicants' Answer

Applicants point out that the rights of passive owners to vote on mergers apply only when the consideration received is all or partly cash. They regard a merger transaction in which substantially all or part of GridFlorida's or GF Inc.'s assets would be exchanged for cash as equivalent to liquidation. They believe that the Commission reaffirmed the right of passive owners to vote on such matters as consistent with the independence requirement in Alliance III. Similarly, with regard to mergers with an RTO

in an adjacent region (other than SERC) not involving cash, Applicants believe the right of passive owners to vote when they are unable to obtain a favorable opinion from an investment banker is consistent with Alliance Companies, et al., 91 FERC ¶ 61,152 at 61,581 (2001) (Alliance II). They further argue that a merger or change in control to an entity outside SERC or Florida would go beyond the purpose of establishing GridFlorida to benefit Florida markets and, thus, should be subject to passive owner control to help protect their investment.

Applicants contend that allowing GridFlorida to engage in activities not related to transmission service will enhance shareholder value and expand its access to capital. They note that GF Inc's Articles of Incorporation prevent GridFlorida from undertaking any activity that would make it a market participant or that would not comply with Order No. 2000. Applicants also assert that the right of passive owners to vote on non-transmission-related acquisition or business opportunities is a right usually provided to investors. They believe that passive owners should be able to protect investments that are outside the Commission's scope of jurisdiction and that do not implicate the goals of Order No. 2000.

d. Discussion

In Order Nos. 2000 and 2000-A, we recognized the need for passive owners to protect the value of their assets they commit to and investments they make in the RTO and found that these concerns must be balanced against the need for an independent RTO.<sup>14</sup> In Alliance II, we stated that "it is reasonable for passive owners to expect protection of the integrity of their capital investment . . . ." <sup>15</sup> We accepted, in Alliance II, limited veto rights for each individual passive owner, including the right to veto any transaction that would result in a change of control of the RTO.<sup>16</sup> Therefore, we find that a limited reservation of rights over certain fundamental business decisions is an acceptable means for GridFlorida members to preserve their financial investment and we will permit the passive owners to exercise voting rights on changes in control, mergers and diversification, as provided for in the OA and Articles of Incorporation, modified as

---

<sup>14</sup>Order 2000-A at 31,366.

<sup>15</sup>91 FERC at 61,581.

<sup>16</sup>91 FERC at 61,581-82 (2000) (accepting limited specific veto power of transmission owners).

follows. Consistent with our rulings in GridSouth<sup>17</sup> and Alliance II, if a passive owner is dissatisfied with a merger or consolidation decision by the independent Board, it must come to the Commission and affirmatively demonstrate that the proposed merger or consolidation would adversely impact the integrity of its investment. Similarly, other affected parties may file a complaint asking the Commission to review passive owners' exercise of the veto right. We note that under the OA and Articles of Incorporation majority approval by the passive owners is not required for any transaction that involves no cash consideration and that would result in a transfer of control to an RTO located in the SERC region. Any change in control over GridFlorida is subject to the Commission's prior authorization under section 203 of the FPA. Because it will be independent, we expect the Board of GF Inc to make corporate expansion decisions which are, consistent with their fiduciary duties, in the best interests of GridFlorida.

With respect to diversification, the Commission does not at this time see a need to impose limitations on the undertaking of diversified business activities by GridFlorida or GF Inc, except that as stated in Article V of GF Inc.'s Articles of Incorporation and section 2.3 of the OA, GridFlorida and GF Inc and their affiliates may not diversify into activities that would make them market participants. The only circumstance in which the independence of GridFlorida could be impaired by diversification of its business activities is when GridFlorida is engaged in a line of energy-related business which relates to, supplies, or competes against a market participant. In the event that a party believes that the diversified business activities of GridFlorida are detrimental to GridFlorida's fulfillment of its required characteristics and functions, that party would be free to make the appropriate filing with the Commission to seek to preserve GridFlorida's independence. The Commission will not preclude diversification in the abstract.

#### 8. Filing of Governance Documents under Section 205

##### a. Applicants' Proposal

In addition to the OATT, Applicants are filing the following jurisdictional documents under Section 205 of the FPA.<sup>18</sup>

##### 1. Participating Owners Management Agreement

---

<sup>17</sup>Carolina Power & Light Company, et al., 94 FERC ¶ 61,273 (2001) (slip op. at 15).

<sup>18</sup>As is the case with all the documents submitted with the Application, these documents also are being submitted pursuant to Section 203 of the Federal Power Act.

2. Agency Agreement
3. GF Inc and GridFlorida Codes of Conduct
4. GridFlorida LLC Information Policy
5. Market Monitoring Tariff
6. Market Design Specification

Applicants assert that the Commission should not treat GridFlorida's and GF Inc.'s corporate agreements (RTO Formation Plan, GF Inc Articles of Incorporation, GF Inc Bylaws, the Limited Liability Company Operating Agreement, and the Voting Trust Agreement) as filed rate schedules subject to the Commission's Section 205 authority. They state that the vast majority of the provisions in these agreements are unrelated to independence or other aspects of the Commission's jurisdictional authority; many relate to the mechanics of board and shareholder meetings, are ministerial in nature, or simply satisfy requirements of state law.

However, Applicants are willing to commit to a process that will ensure that changes to the corporate documents do not violate Order No. 2000. Under this process, GridFlorida or GF Inc will make an informational filing with the Commission at or before the time that they make any such changes. Notice of these informational filings will be posted on the GridFlorida OASIS. Market participants will be entitled to protest such filings and GridFlorida or GF Inc would bear the burden of proving that the change was appropriate. Were the Commission to rule that GridFlorida's or GF Inc's action was inappropriate, or that the action otherwise should be modified, GridFlorida or GF Inc would be obligated to cease that activity and conform to the Commission's ruling, which could include reverting to the status quo if the Commission so orders.

b. Intervenor Comments

Several parties have asked the Commission to require that any proposed change to the independence or governance aspects of Applicants' proposal be made subject to the requirement of advance notice and filing under section 205 of the FPA.<sup>19</sup> These parties assert that the formation and organization of GridFlorida, GF Inc., and the Market Monitoring Corporation are key factors in the independence of the proposed RTO. They argue that in the absence of a prior-filing requirement under section 205, GridFlorida or GF Inc might be able to implement organizational changes which might damage

---

<sup>19</sup>See, e.g., Seminole Initial Protest at 9-10 and 23-24; Calpine Initial Protest at 14; FMPA Supplemental Protest at 99-102.

independence with no opportunity for comment, and leaving no option for the Commission but the retrospective modification of the changes.

c. Applicants' Answer

In their answer, Applicants acknowledge that:

"Order No. 2000 requires all jurisdictional transmission owners to file proposals that include decisions on how each necessary RTO function will be performed. ... Significant decisions will not be made without consultation of the stakeholder Advisory Committee, and jurisdictional activities, if any are taken at all, will not be taken without the Commission's approval."<sup>20</sup>

d. Discussion

Were the Commission to require all of the GridFlorida and GF Inc. organizational and corporate documents to be filed under section 205 of the FPA, Applicants would face potential delay in implementing even the most routine corporate changes, and the ability of the proposed RTO to respond competitively and quickly to financial and market issues could thereby be impaired. In this particular case, it appears that most of the corporate agreements at issue do not involve or significantly affect matters within this Commission's jurisdiction. Accordingly, at this time we will direct Applicants to file under section 205 of the FPA only those agreements or documents that involve or significantly affect the rates, terms and conditions of transmission in interstate commerce, including the independence of the RTO.<sup>21</sup> For documents that do not fall within this category and are not filed under section 205, we accept Applicants' proposal to make informational filings. Further, we clarify that even if agreements or documents are on file under section 205, we will require Applicants to follow section 205 procedures for

---

<sup>20</sup> Answer at 6-7.

<sup>21</sup> This is consistent with our action in Alliance II, in which we concluded that the Commission would have to give prior authorization to any changes to the Alliance Agreement which would allow the Alliance Transco the ability to unilaterally engage in a transaction that a passive owner deems unrelated to the Alliance Transco's purpose. The Commission stated: "Any changes to the Alliance Agreement would be subject to our prior authorization, and the Alliance Transco's passive owners would retain the opportunity to object to changes as part of that authorization process." 91 FERC 61,152 at 61,581 (2001). ¶

proposed changes to the agreements only for those changes that involve or significantly affect compliance with RTO functions and characteristics or other matters within our jurisdiction.

### 9. Other Specific Issues

In their Supplemental Filing, Applicants include a form Subscription Agreement which will enable the initial Directors of GF Inc to purchase Class A common stock in GF Inc, which they in turn are to pledge to the Voting Trust, as set forth in the RTO Formation Plan. Duke ENA and Calpine construe the sole incorporator identified in the Subscription agreement to be an initial director of GF Inc and assert that, as such, the sole incorporator should be selected by the Board Selection Committee. In response, Applicants state that intervenors' understanding is not correct and that the role of the sole incorporator is to file corporate documents for GF Inc. Applicants state that the sole incorporator will not be an initial director of GF Inc. With these amplifications, the Commission believes that Duke ENA and Calpine's concerns should be resolved.

Duke ENA and Calpine believe that section II.D.1 of GridFlorida's and GF Inc's Code of Conduct should be revised to provide for independent review, rather than Board review, of whether adverse financial consequences would be suffered by prospective directors, officers or employees if they were required to transfer pension accounts in a pre-existing plan with interests in a market participant to another unrelated plan. They contend that the Board will not have sufficient expertise to make this judgement and may also be subject to the same conflict. Similar arguments are made regarding the Market Monitoring Corporation's Code of Conduct. As Applicants point out, the Commission approved the same provisions in GF Inc's By-Laws in GridFlorida, 94 FERC at 61,048-49. No request for rehearing of that decision was filed. In any case, the Commission does not find a adequate reason to revisit the merits of its prior ruling.

Reedy Creek Improvement District (Reedy Creek) is also concerned that section 11.3 of the POMA which would require a Participating Owner to waive its sovereign immunity liability limitations up to the limits of any insurance it has. Reedy Creek asserts that the U.S. Supreme Court has many times reaffirmed states' immunity in the face of federal laws that would impose greater liabilities. Applicants respond that Reedy Creek

has misread this provision. They note that section 11.3 limits the liability of a non-sovereign Participating Owner with regard to claims brought by a sovereign Participating Owner, and does not affect the sovereign statutory limitations on liability.

In Order No. 888,<sup>22</sup> the Commission discussed the indemnification provision of the pro forma tariff (section 10.2). The Commission explained that it did not believe it appropriate to require transmission customers to indemnify transmission providers in cases of negligence or intentional wrongdoing by the transmission provider.<sup>23</sup> In Order Nos. 888-A and 888-B, the Commission further explained that the pro forma tariff does not address, and was not intended to address, liability issues. Rather, the Commission explained, transmission providers may rely on state laws, when and where applicable, protecting utilities or others from claims founded in ordinary negligence.<sup>24</sup> In subsequent cases, the Commission has consistently rejected liability limitation provisions in tariffs involving open access transmission service.<sup>25</sup>

Applicants have not explained why these liability provisions are necessary as part of the POMA or any other document filed with us in light of the Commission's statements in Order No. 888. Accordingly, we reject the proposal to incorporate liability provisions (sections 11.3 through 11.4) into the POMA. In so doing, we are not making any determination regarding the merits of the liability provisions under applicable law. The RTO participants have alternatives with respect to liability matters. As we have explained, there is nothing in the pro forma tariff that would preclude those entities from

---

<sup>22</sup>Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), cert. granted, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809) cert. denied, id. (No. 00-800) (U.S. Feb. 26, 2001).

<sup>23</sup>Order No. 888 at 31,765-66; Order No. 888-A at 30,301.

<sup>24</sup>Order No. 888-A at 30,301-02; Order No. 888-B at 62,080-81.

<sup>25</sup>See, e.g., Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,082 (2001); New York Independent System Operator, Inc., 90 FERC ¶ 61,015 at 61,034, order on reh'g, 91 FERC ¶ 61,012 at 61,051 & n.23 (2000); Pacific Gas and Electric Co., et al., 81 FERC ¶ 61,122 at 61,520-21 (1997).

relying "on the protection of state laws, when and where applicable protecting utilities or others from claims founded in ordinary negligence" or intentional wrongdoing.<sup>26</sup>

Finally, Reedy Creek believes that transmission owners will be discouraged from participation in GridFlorida by the requirement in sections 6.11, 7.11 and 8.5 of the POMA to use "best efforts" to implement certain functions. To avoid possible huge burdens on parties, it recommends that GridFlorida or Participating Owners be required to use "commercially reasonable efforts." In their Answer (Exhibit C at 3), Applicants agree to make this change.

### RTO Characteristic No. 2: Scope

#### An RTO must serve an appropriate region.

##### 1. Physical Scope

###### a. GridFlorida's Proposal

Applicants' proposal maintains that GridFlorida's scope is reasonable for two reasons: First, GridFlorida will encompass the entire FRCC region, which consists of peninsular Florida. Further, it will encompass transmission facilities that are already subject to regional coordination for reliability purposes. While GridFlorida acknowledges that it is limited to only one state, it maintains that it will serve a relatively large market. It also points out that its unique geography, surrounded by water on three sides, places limits on its physical scope beyond its control. On the other hand, it states that it would not rule out the possibility of expanding its scope in the future.

Second, GridFlorida states that all jurisdictional transmission facilities located within the FRCC are included in its proposal.<sup>27</sup> While it welcomes participation by non-public utility entities as well, GridFlorida maintains that it will still be able to function efficiently and fulfill the objectives of Order No. 2000. GridFlorida asserts that it has had discussions, and will continue to do so, with such non-public utility entities some of whom have expressed an interest in participating. In the interim, GridFlorida maintains that there will be some degree of coordination of transmission facilities between

---

<sup>26</sup>See Order No: 888-A at 30,301; see also Order No. 888-B at 62,081.

<sup>27</sup>The proposal transfers to GridFlorida all transmission facilities greater than or equal to 69kV owned by public utilities (as defined by the FPA). The Commission makes no finding that these are all of the jurisdictional facilities located within FRCC.

GridFlorida and non-Participating Owners in the region. GridFlorida also plans to be the security coordinator for all entities in the FRCC, whether or not they join the RTO.

b. Intervenors' Comments

Many intervenors assert that GridFlorida's scope is limited, that it will inhibit competition, and that it is discriminatory.<sup>28</sup> Industrial Consumers assert that scope is measured by the ability to mitigate market power. Scope must be sufficiently large to disallow the exercise of market power. Similarly, the Florida Commission states that while peninsular Florida has adequate scope, GridFlorida needs to foster further competition in the region as there are currently too few wholesale generators to encourage competition. Lee County maintains that while the FRCC is highly interconnected, there is a lack of interconnection between other regions and peninsular Florida. The lack of interconnection results in lack of interest in participation from a transmission perspective and does not generate a competitive wholesale electric market.

Seminole argues that while the scope is highly limited, it is acceptable as long as the Commission requires GridFlorida to make concerted efforts to expand and periodically report back on its progress. While Seminole would prefer that GridFlorida include GridSouth and Southern Companies' RTO,<sup>29</sup> it will not formally protest the scope.

FMPA takes a stronger position, contending that Applicants are unwilling to "meaningfully accommodate" non-public utility facilities, leaving internal holes and scope gaps. Moreover, FMPA asserts that GridFlorida has "sub-FRCC" scope as it is looking only south from the Georgia-Florida border. This unidirectional focus ignores the substantial interests of others, such as JEA and Tallahassee, who have substantial interests north of the border and face constraints to the south. FMPA asserts that the potential loss of JEA and Tallahassee as participants in the RTO will deprive GridFlorida of transmission facilities. It will further cause potential reliability issues as JEA and Tallahassee may calculate their own ATC and other capacity requirements.

---

<sup>28</sup>FMPA, Lee County Electric Cooperative (Lee County), Reedy Creek, Seminole, Dynegy and the South Carolina Public Service Commission.

<sup>29</sup>Carolina Power & Light Company, *et al.*, 94 FERC ¶ 61,273 (2001), and Southern Company Services, Inc., 94 FERC ¶ 61,271 (2001).

Seminole argues that Applicants need to specify which facilities will be included in GridFlorida's transmission system. First, Seminole questions whether GridFlorida intends to include all transmission facilities 69 kV or above. Second, Seminole seeks clarification with respect to Applicants' control over the Florida-Georgia Interface tie (Tie) facilities.<sup>30</sup> In that regard, Seminole urges Applicants to divest operational control over all of their transmission facilities and disallow FP&L or Florida Power Corp. to withhold their respective shares of the Tie facilities. Seminole argues that it is important for the RTO to own or control as much of the Tie facilities as possible in order to prevent the exercise of anticompetitive practices. Further, Seminole asks that, in the absence of a list of facilities in the OATT which Applicants intend to turn over to GridFlorida's control, the Commission ascertain whether Applicants do indeed intend to turn over their share of the Tie facilities to GridFlorida.

JEA notes that Florida's peculiar geography causes it to be dependent on power from the north. The facts that current state law prohibits new merchant generation facilities and that FP&L and Florida Power Corp. have most of the Tie capacity, turns peninsular Florida into an island. This arrangement would give Applicants too much market power in that their affiliated generation will continue to be the primary sources of capacity, energy, and ancillary services.

c. GridFlorida's Answer

Applicants affirm that the scope of GridFlorida is sufficient, reminding intervenors that peninsular Florida is surrounded by water which naturally limits scope. Nevertheless, peninsular Florida has a peak megawatt demand of 40,000 MW. The scope also reflects existing markets and the configurations of the transmission system. Moreover, Applicants own a majority of the transmission facilities in the region which they are turning over to GridFlorida. Applicants assert that their only interconnection is in the north and poses a logical boundary between RTOs.

To address Seminole's concerns, Applicants dispel the notion that they intend to retain some of their own 69kV facilities, and state that they intend to turn over all facilities, 69kV and higher, to GridFlorida.

---

<sup>30</sup>The Tie facilities have a total import capability of 3,600 MW (winter and summer) and a total export capability of 2,500 MW (winter) and 1,900 MW (summer). The import capability is allocated as follows: Florida Power & Light Company - 1,734 MW; Florida Power Corporation - 438 MW; Jacksonville Electric Authority - 1,228 MW; and City of Tallahassee - 200 MW.

d. Discussion

Though the physical scope of the proposed RTO is limited to peninsular Florida, it satisfies several scope and configuration factors laid out in Order No. 2000.<sup>31</sup> GridFlorida encompasses one contiguous geographic area, a portion of the transmission grid that is highly integrated, and all of the jurisdictional transmission entities located within the FRCC. Further, GridFlorida encompasses an existing boundary, the FRCC, which is an established NERC reliability region.

GridFlorida's market now has relatively weak ties to other markets. As noted by Applicants in their answer, the maximum transmission import capability into peninsular Florida is currently 3600 MW, which is about 9 percent of the total peak demand in peninsular Florida. However, Applicants state that they would not rule out the possibility of expanding GridFlorida's scope in the future. In any event, they will continue to consider expanding GridFlorida's scope as well as encourage non-public utility transmission owners, such as JEA and Tallahassee, to join. In consideration of the above, we conclude that the GridFlorida's proposed scope and configuration are consistent with Order No. 2000. GridFlorida must file a status report on or before May 14, 2001, that addresses its efforts to expand the scope of the proposed GridFlorida RTO.

Further, we believe that Applicants have addressed Seminole's concerns regarding control of the Tie facilities.<sup>32</sup> In their answer, Applicants state that they intend to turn over all of their transmission facilities, 69 kV or higher, to GridFlorida's control. In addition, Seminole indicates that FP&L has informed it that FP&L intends to turn over the Tie facilities to GridFlorida. Accordingly, since Applicants intend to turn over the Tie facilities to GridFlorida, we need not address this issue further.

2. 200 Percent Charge

a. GridFlorida's Proposal

---

<sup>31</sup>Order No. 2000 at 31,084.

<sup>32</sup>Intervenors also question whether GridFlorida will have full operational control over the Tie facilities. This issue is addressed below.

The GridFlorida OATT proposes a double, or 200 percent, charge for service to those transmission owners located within the region who elect not to participate in the RTO. GridFlorida reasons that the double charge provides an appropriate incentive to join. Realizing that not all transmission owning facilities will be able to join, GridFlorida has proposed allowing them to avoid the 200 percent charge so long as they eliminate pancaked rates for use of their system. In other words, non-participants must provide reciprocal network and point-to-point service to GridFlorida.

b. Intervenors' Comments

Some intervenors, such as FMPA and JEA, assert that the 200 percent penalty is discriminatory and unjust and unreasonable. JEA contends that its unwillingness to participate in GridFlorida is justified for the reasons stated above and participation is not in the best interests of its native load. South Carolina Public Service Authority (SCPSA) also protests the 200 percent charge as discriminatory, whether it be applied to transmission owners within the proposed RTO region or outside the region. SCPSA also maintains that the 200 percent penalty violates Order Nos. 2000 and 2000-A because GridFlorida has failed to take into account the reasons for non-participation.

SCPSA argues that the Commission does not have jurisdiction over municipalities nor does Order No. 2000 permit an RTO to apply different rates to a non-participant in another region. GridFlorida's proposal applies the 200 percent charge to non-participants across the board regardless of their location or jurisdiction. Both SCPSA and Reedy Creek strongly oppose the 200 percent charge as a way of circumventing the Federal Power Act's exclusion of municipal utilities from the Commission's jurisdiction (16 U.S.C. § 824(f)).

c. GridFlorida's Answer

Applicants maintain that the 200 percent charge for use of GridFlorida's transmission facilities by non-participants is just and reasonable. Applicants continue to state that the 200 percent charge is an incentive to join and is consistent with Order No. 2000 guidelines. In addition, Applicants ask for guidance on whether the 200 percent charge should apply to non-participating owners in other regions

d. Discussion

GridFlorida is entitled to charge different rates to non-participating transmission owners within the region so long as the rates are not unduly discriminatory. However, GridFlorida's proposal for a 200 percent charge (applicable to zonal and Through-and-Out

rates) for use of its transmission facilities by non-participants is arbitrary. GridFlorida states that this charge is designed to entice transmission owners to participate in the RTO. Though the Commission permits an RTO to apply different charges and terms to regional non-participants, it requires the RTO to show that such terms and charges are just and reasonable and not unduly discriminatory. GridFlorida has not done so. We would consider different rates for non-participating transmission owners in the region. For example, one appropriate method may be to withhold the benefits of non-pancaked rates for such entities.

In addition, Order No. 2000 makes clear that this provision is not intended to apply to transmission owners who are not located within an RTO's region.<sup>33</sup> Therefore, GridFlorida may design a Through-and-Out rate that is higher than a zonal rate to recover its costs, but it may not charge a higher rate for non-participants located outside of its proposed RTO region, such as SCPSA, that is designed to encourage RTO participation.

Accordingly, we reject the level of the proposed charge for regional non-participants. GridFlorida may propose a different charge, and must provide adequate support for such level. In addition, GridFlorida must explain what charge non-participants in the region would be assessed and under what circumstances they can avoid such charges. We also reject the proposed charge for non-regional non-participant transmission customers.

### 3. Existing Transmission Agreements

#### a. GridFlorida's Proposal

Regarding Existing Transmission Agreements (ETA), GridFlorida believes that the parties to the ETAs are in the best position to determine the changes that are appropriate for their respective agreements. Under GridFlorida's proposal, those parties may choose to negotiate conversion immediately to the GridFlorida OATT or amend their agreements as necessary. GridFlorida applies the following two exceptions to ETAs: first, for those with ETAs, multiple zonal rate charges will remain in effect during Years 1-5, and phased out in Years 6-10, consistent with its license plate transmission pricing proposal discussed below; second, to prevent gaming prior to the date GridFlorida commences operations, if a participant enters into an agreement after December 15, 2000, that agreement will be automatically converted to GridFlorida service upon commencement of operations.

---

<sup>33</sup> Order No. 2000 at 31,180.

b. Intervenors' Comments

Dynegy notes that the proposal does not require parties to existing transmission agreements (ETAs) to convert their arrangements to the GridFlorida OATT. Dynegy argues that this layering of tariffs must be eliminated to treat all transmission customers equally. Seminole asserts that further information is needed regarding how holders of ETAs will be impacted if ETAs are converted to the GridFlorida OATT.

c. GridFlorida's Answer

Applicants submit that their proposal complies with the need to balance existing contracts with the need for eliminating rate pancaking. However, GridFlorida recognizes that all contracts are different and will not require uniform contract amendments. Rather contract parties are in the best position to determine their needs and have the right to convert their contracts to the GridFlorida OATT when appropriate.

d. Discussion

Order No. 2000 does not establish a rigid method for treating existing transmission agreements (ETAs), sometimes referred to as "grandfathered" contracts, but rather provides that this issue will be addressed on an RTO-by-RTO basis with the goal being to balance the desire to honor existing contracts with the need for a uniform approach for transmission pricing and the elimination of pancaked rates.<sup>34</sup> Therefore, we will not require all existing contracts to be immediately converted to the OATT as requested by Dynegy. GridFlorida's proposal regarding ETAs details transition plans for ETAs and gives adequate consideration to ETAs that may be entered into after December 1, 2000 solely for the reason of attaining ETA status prior to the formation of the RTO. We find that the proposal for transitioning ETAs to the GridFlorida OATT is sufficiently detailed in procedures for renegotiation of such agreements, and is reasonable. We discuss below other aspects of Applicants' proposal concerning ETAs.

RTO Characteristic No. 3: Operational Authority

1. Order No. 2000

Order No. 2000 requires that an RTO have operational authority for all transmission facilities under its control and that it must be the security coordinator for its

---

<sup>34</sup> Order No. 2000 at 31,204.

region. Order No. 2000 allows flexibility in how this is carried out. Order No. 2000 states that an RTO may choose to operate the transmission system by what traditionally has been thought of as a single control area for its region, by contractual agreements with other entities, or it may elect to use a hierarchical control structure involving direct and functional control. Additionally, Order No. 2000 states that an RTO may contract its security coordinator functions out to an independent security coordinator if this is justified. Order No. 2000 left it to the discretion of the region to decide on the combination of direct and functional control that works best for its circumstances. However, regardless of the method chosen, the RTO must be able to direct all actions that affect the facilities under its control, including the decisions and actions taken at any satellite control centers.<sup>35</sup>

## 2. The GridFlorida Proposal

### a. Operational Control

Applicants state that GridFlorida will satisfy both the operational authority and security coordinator requirements of RTO Characteristic No. 3. It is proposed that GridFlorida will exercise direct control over any transmission facilities owned by Participating Owners that GridFlorida determines should be subject to direct control. All other transmission facilities included in the RTO will be subject to indirect control.

As defined in section I.A.3 of the Operating Protocol, direct control means that the facilities are placed into or out of service by GridFlorida from the GridFlorida control center either directly in the case of GridFlorida-owned facilities or relayed automatically from the GridFlorida control center through a Participating Owner control center in the case of Participating Owner-owned facilities. In addition, GridFlorida's facilities are considered to be under the direct control of GridFlorida if they are operated manually by GridFlorida employees.

Under section I.B.2 of the Operating Protocol, indirect control means that GridFlorida issues instructions to the owner of the facilities, who then places the facilities into and out of service. The owner of facilities subject to GridFlorida's indirect control

---

<sup>35</sup>Order No. 2000 at 31,091.

may not take such facilities into or out of service without GridFlorida's approval, except in the event of an emergency.

Applicants state that GridFlorida may not be able to exercise direct control over all facilities in the beginning. Therefore, a transition mechanism is proposed to facilitate the transition from indirect control to direct control. This mechanism allows GridFlorida to contract with the Divesting Owners to perform operations and maintenance services on the divested facilities for a transition period until GridFlorida is ready to perform this function itself.

b. Hierarchical Control Area

Applicants propose that GridFlorida will operate a "hierarchical" control area and will exercise operational control by communicating with control centers operated by the existing control area operators. Applicants state that GridFlorida will perform all scheduling prior to each hour and relay the results of the scheduling process to the control area operators. Within each hour, GridFlorida will have the authority to direct control area operators to redispatch generation in their control areas in order to manage congestion or to address reliability issues. Control area operators may either elect to have GridFlorida redispatch their generation, either directly or through instructions to their control centers, in order to perform real-time balancing, or choose to continue to perform real-time balancing themselves. GridFlorida will also act as a control area operator for any control area operator that wishes to relinquish its control area operations function and for any entity that prefers to be located in the GridFlorida control area instead of an existing control area. With respect to these entities, GridFlorida will assume all the functions of a control area operator directly without the need to issue instructions to an existing control area operator.

c. Security Coordinator

Applicants propose that GridFlorida be the security coordinator for the entire FRCC region, including the entities which do not participate in the RTO. Applicants propose that GridFlorida will perform the following functions: conduct load-flow and stability studies; monitor, maintain and exchange security information; real-time operation monitoring; security analysis; transmission maintenance approval and coordination; maintain reliability; and approval of generation maintenance related to system reliability. Under the proposal GridFlorida will be a member of the FRCC, its

authority will be limited to implementation of NERC and FRCC Security Coordinator standards, policies and procedures, and GridFlorida will be compensated by FRCC for the costs related to GridFlorida's security coordinator activities.

### 3. Intervenor's Comments

Orlando states that GridFlorida has no authority over the FRCC and cannot assign tasks to the FRCC or dictate how the FRCC performs its functions and responsibilities. Orlando protests the provisions of GridFlorida's OATT that attempt to do so and requests that these provisions be revised or stricken.

FMPA expresses concern that GridFlorida may not have all the authority it needs, and Order No. 2000 requires, to render GridFlorida the sole provider of transmission service. FMPA alleges that Florida Power Corp. and FP&L have structured the RTO proposal to retain significant rights to control the use, scheduling and expansion of their own shares of the Tie facilities, thus severely constraining GridFlorida's authority. FMPA states that the authorities retained by FP&L and Florida Power Corp., with respect to the competitively critical Tie facilities, make it unclear whether a third party seeking to use Florida Power Corp.'s share of the Tie capacity would make the request to GridFlorida, or the Florida Power Corp. on its OASIS.

Seminole states that it appears that under the RTO proposal FP&L, as a Divesting Owner, will retain greater rights to the Tie facilities than to other transmission facilities which are turned over to GridFlorida. Seminole cites section 4.1 of Attachment T of the proposed OATT, which provides that any transmission service set forth in interface agreements (including any physical transmission rights allocated to such existing firm rights) shall be retained by the Divesting Owner to enable it to meet its native load and contractual obligations under any of its TSAs. Seminole argues that FP&L has retained the first call on the use of the Tie facilities instead of being allocated PTRs on the basis of existing use as is the case with all other transmission facilities. Seminole further argues that Florida Power Corp. will retain preferential rights to the use of the Tie facilities. Seminole points out that the proposed OATT provides that GridFlorida shall administer the operational provisions of the interconnection and interface agreements of a Participating Owner such as Florida Power Corp. but the "operational provisions" do not include the provisions that govern the scheduling and use of transmission service. Seminole believes that it is essential that GridFlorida, not Florida Power Corp., implement the provisions of the interface agreement that govern the scheduling and use of transmission service across the Tie facilities.

### 4. Discussion

The GridFlorida OATT provides that the FRCC "will" perform several functions, including assembling annual schedules for generation maintenance and determining aggregate reserve margins. We agree with Orlando that GridFlorida has no authority over the FRCC and cannot assign tasks to the FRCC or dictate how the FRCC performs its functions and responsibilities. It is not clear whether GridFlorida has established an understanding with FRCC as to the necessary functions and the timetable for their completion. Therefore, GridFlorida is directed to submit a statement of whether it has reached agreement or entered into a memorandum of understanding, concerning the functions specified in OATT Attachment O, sections III.D.1.(c).1 and 2, with FRCC, and to file such statement within 60 days of the date of this order.

FMPA and Seminole essentially complain about the same issue, the retention of certain rights in interconnection and interface agreements by Divesting Owners or Participating Owners. FMPA argues that because certain rights are retained by FP&L and Florida Power Corp., GridFlorida may not have all the authority it needs to render GridFlorida the sole provider of transmission service. Seminole argues that it is essential that GridFlorida, not Florida Power Corp., implement the provisions of the interface agreement that govern the scheduling and use of transmission service across the Tie facilities. Applicants answer that the treatment of the interfaces will not impede GridFlorida's ability to develop competitive energy and ancillary services markets, and that the GridFlorida proposal simply allows Participating Owners and Divesting Owners to meet their pre-existing native load obligations. Applicants further respond that the allocation of transmission rights with respect to the Tie facilities will be treated no differently than the allocation of transmission rights over an interface between two or more existing transmission systems within GridFlorida, and that existing interface users will be allocated PTRs only to the extent of their historical use in accordance with Attachment P of the OATT.

Regarding the capacity of the Tie facilities, Order No. 2000 does not require the abrogation of existing contracts. Therefore, there is no requirement that FP&L relinquish the rights that it has to the capacity of the Tie facilities. Consequently, we will not require that FP&L reduce its contractual rights to its historical usage of those facilities rather than its contractual rights to those facilities. However, we also find no reason for not assigning to GridFlorida the scheduling operational provisions of the interchange and interface agreements as provided by Attachment T, section 5.1 of the OATT. To have operational control of its system, GridFlorida should administer the scheduling and use of transmission service operational provisions of the interchange and interface agreements of Participating Owners. Therefore, we direct that, in the case of Participating Owners, Attachment T, section 5.1 of the OATT be revised to specify that GridFlorida will administer the operational provisions of interchange and interface agreements including

those operational provisions governing scheduling and use of transmission service. These modifications are to be filed as part of GridFlorida's compliance filing.

#### RTO Characteristic No. 4: Short-Term Reliability

##### 1. Order No. 2000

Order No. 2000 requires that RTOs must have exclusive authority for: (1) receiving, confirming and implementing all interchange schedules; (2) redispatch authority for any generator connected to its transmission facilities if necessary for the reliable operation of these facilities; and (3) approval and disapproval of all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.<sup>36</sup> An RTO must also perform its functions consistent with established NERC reliability standards, and notify the Commission if these, or any other externally established, reliability standards prevent it from meeting its obligation to provide reliable, non-discriminatory transmission service.

##### 2. The GridFlorida Proposal

###### a. Interchange Scheduling

Applicants state that GridFlorida will have exclusive authority to receive, confirm, and implement all interchange schedules. GridFlorida will be the transmission provider under its OATT and thus will have the sole responsibility for transmission reservations and scheduling. Also, Applicants state that the POMA gives GridFlorida the sole authority to reserve and schedule transmission over the transmission system.

###### b. Redispatch Authority

Applicants state that GridFlorida will have the authority required under Order No. 2000 to redispatch generation when necessary for reliability purposes. This authority is granted in a number of places. First, sections 30.5 and 33.2 of the GridFlorida OATT give GridFlorida the authority to require the redispatch of Network Resources when necessary to preserve the reliability of the Transmission System. Second, in exercising its authority as Security Coordinator for the FRCC, GridFlorida will have the ability to order the redispatch of generation. Third, under service level agreements, interconnection agreements, and the congestion management proposal, GridFlorida will have the authority

---

<sup>36</sup>Order No. 2000 at 31,104.

to order the redispatch of generation to manage congestion and preserve reliability. Finally, GridFlorida will have the authority to revise generation maintenance schedules on a short-term basis to preserve system reliability.

c. Transmission Maintenance Authority

Applicants state that GridFlorida will have exclusive control over the maintenance of the transmission facilities of FP&L and any other Divesting Owner by virtue of its ownership of those facilities. All Participating Owners who do not divest their transmission facilities will be required under the Operating Protocol to obtain GridFlorida's pre-approval of their transmission system maintenance, and to further obtain approval from GridFlorida to deviate from previously approved maintenance schedules. GridFlorida also is given the authority to change the time of a Participating Owner's previously approved maintenance, subject to the payment of the Participating Owner's net direct costs resulting from the change. Finally, GridFlorida also will have the ability to coordinate maintenance of non-Participating Owners' transmission facilities as part of its role as security coordinator for the FRCC.

d. Reporting Problems With Reliability Standards

Applicants state that it is not clear that any specific grant of authority to GridFlorida is necessary to report to the Commission if any regional reliability standards interfere with GridFlorida's ability to provide reliable, non-discriminatory transmission service. However, Applicants state that this authority is included in the Operating Protocol.

e. Approval of Generation Maintenance

Applicants state that the proposed Operating Protocol provides for GridFlorida and the FRCC to jointly coordinate generation maintenance in the FRCC, and for an annual generation maintenance review process by the FRCC. The FRCC will have the authority, in consultation with GridFlorida, to propose adjustments to proposed generation maintenance schedules if a generation deficiency will exist or if a transmission reliability criterion is violated. If an affected load-serving entity (LSE) or generator does not agree to adjust a maintenance schedule, then the dispute will be referred to dispute resolution. In either event, the generator will be entitled to compensation for any net direct costs incurred as a result of an adjustment to its proposed schedule. Finally, GridFlorida will have the authority, as security coordinator, to require short-term changes in generation maintenance. The generation owner again will be compensated for any net direct costs resulting from such a change.

f. Facility Ratings

Applicants state that the proposed Operating Protocol gives transmission owners the ability to set the initial line ratings for lines being transferred to GridFlorida's control. However, the Operating Protocol also assigns to GridFlorida the responsibility and the authority to confirm the ratings. To the extent that there is a dispute over the rating of a particular line, GridFlorida's determination prevails until the dispute is resolved.

g. Liability

Applicants have not provided for liability provisions related specifically to the performance by the RTO of its reliability functions. However, there are liability provisions in both the GridFlorida OATT and the POMA. The Applicants state that the GridFlorida OATT contains the standard Order No. 888 pro forma tariff liability provisions in Section 10.2, while the POMA includes typical provisions requiring all parties to take responsibility for damages caused by their actions.

3. Intervenors' Comments

Reedy Creek is concerned that it would lose its ability to preserve the reliability of the electric service it provides to its customers if it were to turn over its facilities to the control of GridFlorida. Reedy Creek states that its maintenance programs for its systems are more strict than typical utility maintenance programs, that it builds in redundant capacity for critical power facilities, maintenance work is done during night-time hours when feasible, and it often has to construct new facilities on short notice. Reedy Creek is very concerned that joining the RTO will cause it to lose its ability to provide high quality service at reasonable prices. Reedy Creek cites the lack of detail regarding planning, operating, maintenance, and construction protocols and standards, some of which may not be developed for years, as possibly negatively impacting the service it provides to its customers.

Reedy Creek wants the tariff protocols, at a minimum, to clarify that design, construction, operating, and maintenance standards established by GridFlorida will not prevent a Participating Owner from implementing higher standards if it chooses to do so. Reedy Creek believes that a Participating Owner should be able to expand its facilities or to add generation on an expedited basis if it so chooses, and that flexibility to adjust maintenance schedules should be allowed.

Reedy Creek states that it recognizes that the Operating Protocol proposes to assure LSEs that they will continue to receive service "such that each LSE's System

Average Interruption Duration Index (SAIDI), System Average Interruption Frequency Index (SAIFI), Customer Average Interruption Duration Index (CAIDI), attributable to the transmission system shall be no more than the three-year average transmission SAIDI, SAIFI and CAIDI for that LSE for the three years immediately preceding the formation of GridFlorida." However, Reedy Creek is not clear that it would receive any meaningful remedy if GridFlorida failed to provide service that meets these standards. Further, Reedy Creek states that if a Participating Owner or a Divesting Owner desires to improve over past performance, it should be allowed to do so.

Reedy Creek argues that the service reliability standards as drafted may result in a diminution of the reliability standards for service to its customers. Reedy Creek explains that by apparently establishing an RTO-wide standard for SAIDI and SAIFI, without regard for the higher levels of service maintained by individual LSEs, its customers would be subject to a lower reliability standard than was previously provided. Reedy Creek believes it would be best to explicitly allow a potential Participating Owner to preserve its ability to implement, within its own zone, standards higher than those prescribed by GridFlorida for general system use, and to consider whether additional costs would be includable in rates charged by GridFlorida on a case-by-case basis.

Reedy Creek points out that GridFlorida's proposal talks about phasing in new construction and related standards over a five-year period. Reedy Creek is unsure of what this means and believes the ambiguity needs greater explanation and justification.

Finally, Reedy Creek seeks assurance that GridFlorida will not be in a position to interfere with participants' commercial functions in the implementation of its duties. Reedy Creek believes that access to a Participating Owner's controlled facilities should be restricted to reasonable times compatible with the needs of the local utility and its customers, and be subject to reasonable notice.

The Florida Commission states that additional work is needed in GridFlorida's proposal to ensure that development of transmission reliability measures for the RTO will preserve and improve the current performance and operation of the system without undue discrimination between urban and rural areas.

FMG states that a list of maintenance activity standards is not included in the RTO proposal. FMG argues that potential RTO participants need to know whether, by transferring maintenance responsibilities for their transmission facilities to GridFlorida, they may erode their historical level of service quality. FMG suggests that GridFlorida volunteer or be required to provide elaboration on maintenance standards before being permitted to implement its proposed RTO.

Seminole is concerned with delivery point reliability and states that its members have historically experienced inferior transmission service from FP&L and Florida Power Corp., and that this issue is being addressed separately in the Seminole Members' Protest.

Seminole believes that maintenance standards should be included among the standards to be developed before the commencement of GridFlorida operations. Seminole also believes that uniform maintenance standards should be developed. Seminole states that it has experienced terrible transmission reliability and, in addition to the inferior design of the transmission facilities, one of the principal reasons for the terrible reliability is poor maintenance by the transmission providers. Seminole cites Seminole Members' protest as indicating severe problems with reliability stemming from inferior transmission facility design and poor maintenance by transmission providers. Seminole requests that the OATT be amended to include maintenance standards to apply on a comparable basis across GridFlorida. Seminole states that maintenance standards already exist for the FP&L, Florida Power Corp., and TECO internal systems, and if these standards were to be shared with the stakeholders, uniform standards could be developed before the commencement of operations.

National Rural Electric Cooperative Association (NRECA) is concerned that the proposed RTO would continue historical discriminatory, anticompetitive practices as a result of the application of the reliability performance factors that are based on the averages of the three preceding years as benchmarks for target reliability of transmission service. NRECA states that reliability has been a continuous and severe problem for the entire three years used to establish the performance benchmark. NRECA argues that a performance standard based on this criterion is a guarantee of continued superior reliability transmission service for FP&L, Florida Power Corp., and TECO, and continued second-class-citizen status for the rural electric cooperatives that must compete with the RTO applicants for load.

NRECA is concerned that there is a population bias built into the portion of the operating protocol dealing with annual review, assessment, and corrective action required to maintain reliability at the point-of-delivery. For the SAIDI and SAIFI the denominator is the sum of all customers served by GridFlorida. NRECA argues that because of the population bias built into the Operating Protocol rural electric cooperatives experiencing a worse quality of transmission service than Applicants will not have their reliability problems addressed.

Seminole Members state that they face serious transmission reliability problems from their transmission provider and that this poor reliability causes them competitive

harm. Direct testimony was provided by seven of the Seminole Members describing the nature, frequency and duration of the transmission problems they have experienced with FP&L and Florida Power Corp. The testimony states that many of the reliability problems stem from the use of less reliable transmission equipment and poor maintenance on certain portions of the Florida Power Corp. and FP&L transmission systems. The testimony also states that certain members have resorted to performing maintenance operations such as switching, and the clearing of fallen conductors on Florida Power Corp.'s transmission systems in order to expeditiously restore service to customers.

Seminole Members argue that GridFlorida's proposed Operating Protocol is self-serving, patently discriminatory, and inadequate to remedy current reliability problems. Seminole Members claim that the result of basing the RTO reliability benchmarks on the previous three years before the creation of GridFlorida is to guarantee that the existing disparity in reliability will continue. Seminole Members further claim that the reliability indexes proposed by GridFlorida are strongly biased with regard to population density, *i.e.*, less serious reliability problems could receive attention at the expense of a more serious problem located elsewhere if the site of the less serious problem serves more people. Like others, Seminole Members cite the ambiguity in GridFlorida's proposed requirement to address reliability problems at the points of delivery with SAIFI and CAIDI in the worst three percent; it is not clear whether the three percent level is applicable to each index separately or both combined.

Seminole Members have submitted their own reliability proposal which they asserts would ensure that appropriate reliability data is collected and that addresses reliability issues without any bias for population. Under Seminole Members' proposal GridFlorida would be required to calculate reliability indices (SAIFI, SAIDI, CAIDI, and MAIFI) monthly on a comparable basis at the point-of-delivery, LSE, and system-wide levels without any bias for population. Seminole Members' proposal requires GridFlorida to annually develop plans for corrective action to the points-of-delivery in the bottom 6 percent, and allows LSEs to petition GridFlorida for reliability relief. Finally, Seminole Members' proposal provides that in the event GridFlorida does not carry out its commitments, a LSE would receive a transmission credit for the time period GridFlorida's commitment was not met, and reimbursed for expenses to patrol, maintain, or repair the affected facilities.

#### 4. Discussion

Applicants contend that the claims by Reedy Creek, NRECA, and Seminole Members, with regard to historically poor reliability of service, are without merit, beyond the scope of this proceeding, and should be denied. GridFlorida's proposal requires that

the level of service provided be at least equivalent to the reliability of the transmission system prior to GridFlorida assuming control. We agree that this is an appropriate standard for the formation of an RTO.

Seminole Members have alleged that the GridFlorida proposal would "institutionalize" the poor reliability it has experienced in the past as the norm. While it is true that the baseline standard for the reliability of the transmission system that will be used at the inception of GridFlorida will be based on the previous three years, the GridFlorida proposal contains a plan to address the reliability of the poorest performing points of delivery.

Several protestors have pointed out an ambiguity in GridFlorida's proposal concerning the percentage of poorly performing points of delivery that will be studied for re-dedication measures each year. Applicants acknowledge the ambiguity and have clarified in their Answer that the worst three percent of the points-of-delivery, on both a system wide index basis (using SAIFI) and point-of-delivery index basis (using CAIDI) will qualify as candidates for study for expenditures aimed at improving reliability.<sup>37</sup> However, the OATT, Attachment O, Operating Protocol, provides that the transmission service that GridFlorida will provide will be no worse than the average of the three years before commencement of GridFlorida operations, and specifies that GridFlorida will meet with representatives from any LSE that had one or more points of delivery that ranked in the worst three percent, in terms of SAIFI or CAIDI, and present a plan to improve the reliability at each such point of delivery. Over time, this program will reduce any disparity that may have existed in the reliability of certain points-of-delivery. We find that the GridFlorida proposal appropriately balances the utilization of resources to maintain and improve the reliability of the transmission system both at points-of-delivery serving large and small numbers of customers. We direct Applicants to revise the OATT to include the clarification contained in their answer that GridFlorida will meet with the representatives from any LSE that had one or more points of delivery that ranked in the worst three percent in terms of SAIFI and the worst three percent in terms of CAIDI and present a plan to improve reliability at each such point of delivery.

In response to Seminole's belief that GridFlorida should develop uniform maintenance standards before the commencement of operations, Applicants answer that a five-year phase-in is appropriate because: (1) stakeholders have insisted that GridFlorida adopt existing facilities plans; (2) supply arrangements for material delivery can extend

---

<sup>37</sup> Attachment A to Answer, Explanation of GridFlorida's Proposals Regarding Reliability.

up to two years; and (3) siting, routing, and engineering design must precede material acquisition. We find that GridFlorida's proposal is acceptable and we will not require the development of uniform maintenance standards before the commencement of GridFlorida's operations.

Applicants answer that the alternative reliability improvement proposal by Seminole is predicated in part by an ambiguity concerning the percentage of points-of-delivery that will receive reliability improvements each year. Applicants explain that their proposal, as now clarified, and unlike the Seminole alternative proposal, addresses the reliability issue from two different directions, that is: (1) by identifying those points-of-delivery where reliability improvements will benefit the greatest number of customers, and (2) by identifying points-of-delivery with inferior reliability regardless of location or number of customers served. Applicants state that their proposal more efficiently identifies those points-of-delivery that require rededication. We agree and find that GridFlorida's proposal provides an appropriate balance for improving transmission system reliability. We further find that the alternative proposal by Seminole is less desirable and will not require its implementation.

The maintenance of a high level of reliability is a desirable goal for transmission and distribution systems. However, there is always a trade off between the level of reliability to be achieved and the cost. If a particular user wishes a higher level of reliability for the facilities it uses than that which has been determined to be appropriate for the transmission system as a whole, it may be beneficial to allow these entities to do so if they are willing to bear the incremental costs associated with the measures necessary to achieve the desired level of reliability. Participants should address their concerns regarding the development of higher enhanced level of reliability to GridFlorida.

C. RTO Functions

RTO Function No. 1: Tariff Administration and Design

The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities.

1. Generation Interconnection Service (GIS)

a. GridFlorida Proposal

Applicants propose GIS request procedures which will be administered by the RTO to apply to all new customers seeking to interconnect generation or to add capacity or modify the operating characteristics of an existing generation facility connected to facilities operated by the RTO in a manner that materially impacts the transmission system.<sup>38</sup>

b. Intervenors' Comments, Applicants' Answer, and Discussion

Intervenors' comments regarding GIS fall into four categories: RTO authority over interconnection agreements; queue position; timing of studies and interconnection agreements; and pricing of interconnection costs.

In general, Applicants' Answer to protests suggests that they believe that the GIS Procedures as filed are reasonable and are consistent with Commission precedent. However, Applicants recognize that the development of interconnection procedures is an evolving process that can and should be improved, and that many of intervenors' suggestions have some merit and should be addressed by GridFlorida in the future. Applicants urge the Commission to accept their interconnection procedures as filed, noting that at least with respect to timing issues they will "...propose developing enhancements to the GIS process as the GridFlorida process moves ahead or upon commencement of GridFlorida operations, at which time GridFlorida itself could, in conjunction with the advisory process, consider developing such additional procedures."<sup>39</sup>

i. RTO Authority Over Interconnection Agreements

Calpine urges the Commission to provide generators with a one-time right to convert existing interconnection agreements to interconnection service under the GridFlorida OATT, solely at the generator's discretion. Calpine suggests this is needed because some generators were forced to negotiate their interconnection agreements in an environment in which local monopoly utilities may have had significant incentives to hinder interconnection of competing generators and were able to exercise market power. And for the same reasons, a local utility should face a higher burden of proof before being permitted to amend under § 205 an existing interconnection agreement.

As discussed above, Applicants oppose any requirement to abrogate existing contracts. And the Commission has articulated on several occasions that it will not

---

<sup>38</sup>GridFlorida OATT, Original Sheet No. 111-131.

<sup>39</sup>Answer at 87.

impose a requirement to abrogate existing contracts as part of the process of forming an RTO. The Commission believes that the difficult issues faced by parties to existing contracts can best be resolved on a case-by-case basis, under § 205 and 206 of the FPA. Therefore, we reject Calpine's suggestion to give generators a one-time right to convert, but do encourage parties to renegotiate existing contracts as warranted. We note that parties may choose to avail themselves of the Commission's Dispute Resolution Service.<sup>40</sup>

Duke ENA protests a provision in section 36 of GridFlorida's OATT that requests to interconnect to facilities of an LSE that are not facilities operated by GridFlorida shall be made to and processed by the LSE. Duke ENA's argument suggests that interconnection by a generator to a FERC-jurisdictional facility, regardless of the voltage level of that facility, should be under the RTO's procedures. Duke ENA requests that the offensive provision be deleted from the GridFlorida OATT.

Applicants note that it was not the intent to exempt Commission-jurisdictional facilities from the GridFlorida Interconnection Procedures, and that it is only interconnections with distribution level facilities that will be processed by an LSE.<sup>41</sup>

We do not believe that a change to section 36 of the OATT is necessary. We recognize that some generators may interconnect at facilities operated by LSEs, because they are not facilities transferred to GridFlorida. Duke ENA's concern appears to be that some of these facilities, although operated by an LSE, may nevertheless be FERC-jurisdictional transmission facilities, e.g., if the LSE is a public utility under the FPA, and if the transmission facility would otherwise meet the FPA test of being a jurisdictional transmission facility. In such a case, the interconnection would be FERC-jurisdictional, although not necessarily governed by GridFlorida's interconnection procedures. However, the interconnection would be governed by interconnection procedures for the LSE, if such procedures for the LSE have been approved by the Commission, or otherwise subject to the pro forma tariff. In any case, interconnection to FERC-jurisdictional facilities will be governed by Commission procedures. For these reasons, we decline to order a change to GridFlorida's OATT.

## ii. Queue Position

---

<sup>40</sup> The Director of the Commission's Dispute Resolution Service, Richard L. Miles, can be contacted at (202) 208-0702, or toll free at (877) FERC-ADR.

<sup>41</sup> Answer at 87.

Calpine argues that GridFlorida has too much discretion to determine when a generator loses its queue priority. Specifically, Calpine suggests that GridFlorida has too much discretion to determine whether a particular material change in a project should result in a loss of queue position, and that these decisions should be guided by certain pre-established thresholds similar to those adopted by PJM. It suggests that the lack of standards or procedures for establishing a queue priority must be made subject to independent review and approval by the Commission. Similarly, Duke ENA argues that the provisions of §42 of the GridFlorida OATT are complicated and convoluted, and recommends revisions to this section.

In their answer, Applicants argue that the specificity of the provisions serves the interests of all parties in the queue, and protects generators in the queue from possible "gaming" of the queue by parties that have insufficiently developed projects.

In general, we believe the procedures outlined in the OATT are in sufficient detail so that they will be known in advance to all potential generators, and so that Grid Florida's exercise of the provisions will be fair. In addition, they are consistent with provisions we have accepted in other proceedings.<sup>42</sup> However, there is one suggested revision that Duke ENA makes which we believe is appropriate, since it will inform the GIS customer of the consequences of its actions. That is to add explicit language to §42 of the OATT that allows a GIS customer to request that the RTO state whether a change or substitution is material and/or whether it would materially affect interconnection requests with later queue priority dates. GridFlorida should revise its OATT accordingly in its compliance filing.

Competitive Power Ventures (CPV) makes a number of suggestions regarding the queue priority procedures. First, CPV recommends that an applicant be required to demonstrate at the time that it executes the Facilities Study Agreement that it has begun any required permitting process or that the given project is "permissible" under current law within the timeframe proposed for the project. Second, CPV suggests that a GIS customer should have the option of determining which projects higher in the study queue are included in the base case for its System Impact Study, provided that the applicant is willing to take the risk that a project higher in the queue which it elects not to include in its study is in fact built. Third, CPV argues that GridFlorida should adopt construction sequencing procedures in order to rationalize a project going into service earlier than other projects with higher queue priorities. Fourth, CPV argues to eliminate fuel

---

<sup>42</sup>Carolina Power & Light Company, 93 FERC ¶ 61,032 (2000) and Duke Energy Corporation, 94 FERC ¶ 61,187 (2001).

arrangements as a predetermined milestone in order for a GIS customer to keep its place in the queue. And fifth, CPV maintains that additional information about generators in the queue should be posted on GridFlorida's OASIS and thereby made available to other affected projects in the queue, including at minimum, the number of generators, the size of each generator and the applicable in-service date.

Applicants' Answer notes that they will take a number of suggestions regarding GIS procedures under advisement, and will propose modified procedures as appropriate. They observe that while New England has adopted some of the provisions that CPV advocates (e.g. with respect to CPV's second and third arguments discussed above), those provisions were adopted after New England had gained some experience with its interconnection procedures. We therefore direct Applicants to address CPV's recommendations in its compliance filing and provide support for its decisions on the various proposals.

### iii. Timing of Studies and Interconnection Agreements

CPV suggests that the language in sections 41.2 and 41.3 is unduly vague, and recommends that Grid Florida be required to modify its OATT to require completion of studies within 90 days, once a commencement date is determined. Calpine argues that the ninety day time frame for completing the Feasibility Study is too long. Calpine suggests that GridFlorida should be directed to commence work on a Feasibility Study within 10 days of the date of a request and complete the Study within 30 days, and that any time extensions sought by GridFlorida must be accompanied by an explanation and mutually agreed to by the requestor.

Duke ENA argues that GridFlorida's proposal is a deviation from both the pro forma tariff and evolving Commission decisional law, and notes that the pro forma tariff requires a transmission provider to use due diligence to complete system impact and facilities studies within a 60 day period. Duke ENA also protests that section 44.2 of the OATT provides too long a time period (30 days) for GridFlorida to tender a draft Interconnection Agreement. Duke ENA notes that a 7-day period to tender a draft Interconnection Agreement was adopted by AEP and approved by the Commission.

Applicants answer that their proposal reflects its best estimate of the necessary time, and not much would be accomplished by shortening time frames "...since extensions

of a shorter time period ordinarily would be required."<sup>43</sup> With respect to Duke ENA's suggestion that the time period for providing an Interconnection Agreement should be shortened to 30 days, Applicants offer to add a requirement that an explanation for extending the period beyond 30 days be provided.

We agree that GridFlorida's time schedule is vague in parts and generally too long. In American Electric Power Service Corp. (AEP), we rejected the proposed timeline for studies as not being consistent with the pro forma tariff.<sup>44</sup> There, AEP requested up to 105 days, and the Commission directed AEP to revise its procedures to reflect the timeline in the pro forma tariff. We therefore instruct Applicants to revise their procedures with regard to timing of studies and agreements so that the procedures generally are consistent with or superior to the pro forma tariff.

On a related issue, CPV argues that in some cases a GIS customer may not be able to meet its targeted in-service date if certain activities with long lead times are not started prior to the completion of a GIS Facilities Study or the execution of an interconnection agreement. CPV urges adoption of provisions in Grid Florida's tariff similar to those adopted by Entergy and Commonwealth Edison that would provide a GIS customer the option of early commencement of engineering, design, procurement, or construction activities prior to execution of an interconnection agreement, if it is willing to assume the risk. We agree, and instruct GridFlorida to modify its procedures to provide this option to a GIS customer willing to take the risk.

#### iv. Pricing of Interconnection Costs

FMPA opposes GridFlorida's proposal on crediting interconnection costs for a network resource based on the energy output of the unit rather than the capacity. FMPA suggests that this dispatch-based method of applying the credit sends a misdirected price signal against connecting capacity reserve resources and creates an incentive to export out of Florida such capacity resources. For example, it suggests that a peaking unit that provides capacity year-round but is only dispatched occasionally might take as much as 120 times as long to work off its interconnection cost credit as a baseload network resource or a resource associated with a point-to-point delivery. FMPA further argues

---

<sup>43</sup> Answer at 84.

<sup>44</sup> 91 FERC ¶ 61,308 (2000), order on reh'g, 94 FERC ¶ 61,166 (2001).