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July 12, 2002

**VIA HAND DELIVERY**

Ms. Blanca S. Bayó, Director  
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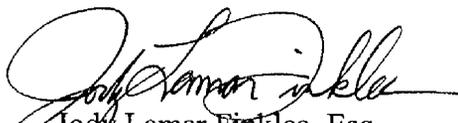
**Re: Docket No. 020233-EI  
Supplemental Post-Workshop Comments of Florida Municipal  
Power Agency on Market Design**

Dear Ms. Bayó:

Enclosed please find one (1) original and fifteen (15) copies of the Supplemental Post-Workshop Comments of Florida Municipal Power Agency on Market Design (the Filing), submitted for filing in the above referenced docket. Please also find the enclosed diskette, containing an electronic version of the Filing in Word format.

Please acknowledge receipt of these documents by time/date stamping the enclosed additional copy of the Filing, as indicated.

Very truly yours,

  
Jody Lamar Finklea, Esq.

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of GridFlorida Regional  
Transmission Organization (RTO) Proposal )  
\_\_\_\_\_ )

DOCKET NO. 020233-EI

**SUPPLEMENTAL POST-WORKSHOP COMMENTS OF  
FLORIDA MUNICIPAL POWER AGENCY ON MARKET DESIGN**

Pursuant to the Commission's June 25, 2002 "Second Order Revising Procedure Granting Extension of Time to file Post-Workshop Comments and Expansion of Page Limit" in the above-captioned docket,<sup>1</sup> Florida Municipal Power Agency ("FMPA") submits its supplemental post-workshop comments on market design. These supplemental comments respond to the July 2, 2002 "Supplemental Post-Workshop Comments of Florida Power Corporation, Florida Power & Light Company, and Tampa Electric Company Addressing Market Design."

While FMPA views as a positive step the decision by Applicants<sup>2</sup> to abandon their physical rights market design and move toward the financial rights model, that step does not change FMPA's message to this Commission. Specifically, as FMPA stated in its May 8 Pre-Workshop Comments (at 31-32, 36-38) and its June 21 Post-Workshop Comments (at 24-27), the Commission should resist the urge to be prescriptive on the design of the wholesale electric market in Florida. Rather, this Commission should become an active participant in the standard market design ("SMD") rulemaking at the Federal Energy Regulatory Commission ("FERC") and should argue forcefully in favor of a market design that protects Florida consumers by assigning transmission rights to preserve existing uses and by establishing effective market power mitigation. The Commission should also permit Applicants to move forward at FERC

<sup>1</sup> Order No. PSC-02-0459-PCO-EI, *In Re: Review of GridFlorida Regional Transmission Organization (RTO) Proposal*, Docket No. 020233-EI (April 3, 2002).

<sup>2</sup> Applicants are Florida Power & Light Company ("FPL"), Florida Power Corporation ("FPC"), and Tampa Electric Company ("Tampa Electric").

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FPSC-COMMISSION CLERK

with an SMD-consistent market design. However, it should not needlessly cede to GridFlorida and FERC its jurisdiction over capacity reserves, an area where this Commission's current regimen gives the nation a useful model for achieving the generation adequacy that is essential to avoiding price spikes and maintaining competitive markets.

***A. The Commission Should Not Enshrine Particular Elements of Applicants' New Market Design Concept, But Should Allow Them to Proceed at FERC with an SMD-Consistent Market Design***

In their July 2 Post-Workshop Comments, Applicants largely abandon their filed market design, which featured a physical rights congestion management scheme and a pay-as-bid market, and describe, in general terms, a new market design that they would propose to include in a revised filing to FERC. The new design would feature a Locational Marginal Pricing ("LMP") model, with a financial rights regimen and a market-clearing-price market mechanism, as well as selective aspects of the former market design. Applicants ask the Commission "to approve the Revised GridFlorida Market Design" (Applicants' Supplemental July 2 Comments at 19), and to make specific findings as to various certain aspects of their new concept (*e.g.*, that "narrowly tailored market power mitigation mechanisms should be developed to address market power," *id.* at 11).

Applicants' abandonment of their physical rights/pay-as-bid market design is a step in the right direction. As FMPA explained in its earlier comments, Applicants' former market design conflicts with the direction FERC appears to be taking in its SMD rulemaking. Adherence to such an approach would create needless roadblocks to GridFlorida's development and to achieving the benefits identified in the Commission's December 20 Order. In addition, imposing a market design for GridFlorida inconsistent with that of its neighbors would further isolate Florida and aggravate its already severe market power problems. From a FERC perspective, lack

of synchrony between GridFlorida's market design and the wholesale market design for the remainder of the country makes a single-state RTO even less appetizing. Thus, we view positively Applicants' intent, as expressed in their July 2 Supplemental Comment, to move forward at FERC with an LMP-based, financial rights model.

FMPA also strongly agrees with Applicants (Supplemental Comments at 12-13) that financial transmission rights should be assigned to preserve existing uses, in order to protect ratepayers from undue congestion costs. *See* FMPA's Post-Workshop Comments at 25-27.

That being said, we continue to urge this Commission not to rule on the details of a GridFlorida-specific market design for wholesale power markets, but rather to participate in the FERC's standard market design ("SMD") rulemaking, Docket No. RM01-12. The Commission should urge FERC to ensure that standard market design adopted for nation-wide application is one that benefits Florida consumers, *e.g.*, by providing strong market-power protections and by assigning financial transmission rights to reflect existing firm uses. FMPA and other Florida utilities rely upon those existing uses to provide reliable service at reasonable cost.

The Commission should deny Applicants' requests for "approval" of the new market design concepts barely sketched in Applicants' July 2 Supplemental Comments, and should decline to provide specific endorsements of isolated elements of this new concept. Granting Applicants' request will necessarily lead to needless jurisdictional tangles, delay, and extra costs that ratepayers will ultimately be asked to bear. FERC's SMD proposed rule is expected to issue by month's end, and the final SMD rule is expected this fall. The market design that Applicants have outlined cannot have anticipated everything in these future FERC issuances (especially the latter), and almost certainly will not conform to them in every regard. Even greater differences

are likely at the level of the more-detailed tariff provisions that Applicants plan to develop following conceptual approval by this Commission.

Applicants' request that the Commission lock in specific aspects of their concept is particularly inappropriate because of the lack of context. Applicants request this specific Commission guidance in a virtual vacuum, without providing the specific terms of their proposal even as to the particular matters on which they seek specific approval, much less a full proposal. Because the devil is in the absent details, the Commission should generally forebear from providing specific approvals of selected elements of the new market design.

For example, Applicants ask the Commission to find "that a narrowly tailored market power mitigation mechanism should be developed to address market power concerns." Assuming the Commission were to adopt Applicants' request, what would it be approving? What makes a market power mitigation mechanism "narrowly tailored"? Could Applicants use such approval as a shield against FERC's imposing the effective market power mitigation that is needed to protect Florida consumers (as hopefully will be developed in FERC's SMD rulemaking), and as a blessing of the wholly ineffective mechanism presented in Applicants' last FERC compliance filing?<sup>3</sup>

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<sup>3</sup> At FERC, Applicants appeared to suggest a single cost-based bid cap for each entity, rather than caps for each underlying generating unit, and which they contemplate as including fixed costs. Applicants' proposal that the cap "could be either at an existing cost-based rate for energy or a newly filed one" (FERC Compliance Filing at 46) leaves open the potential for use of an artificially inflated "cost-based rate" like the caps established in the FPC Wholesale Power Sales Tariff, Docket No. ER98-374, based on FPC's highest cost QF units. Such caps would all but invite the exercise of market power.

Even if caps were based on individual units, there is no legitimate justification for Applicants' proposal to recover fixed costs in the bid cap. As explained by FERC in *San Diego Electric & Gas Co. v. Sellers of Energy and Ancillary Services*, 95 F.E.R.C. ¶ 61,418 (2001), slip op. at 13, in supporting its requirement that all generators must offer the ISO all their capacity (except hydro and power scheduled to run under bilateral contracts), in all hours available and not already scheduled, at marginal cost:

The basis for this requirement is that, under competitive conditions, a generator that has available energy in real time should be willing to sell that energy at a

Similarly, Applicants ask the Commission to “specifically find that under the GridFlorida market design LSEs that unduly lean on the real-time market will be subject to settlement penalties,” and refer to thresholds “similar to the ... penalties included in the March 20 Filing to minimize over-reliance on the real-time market.”<sup>4</sup> The tariff provision cited by Applicants would impose significant penalties — 10–25% of the “Settlement Zone Energy Market Clearing Price” on forecast deviations of as little as 2–3 MW, or 2–3% — to address a hypothetical “leaning” problem.<sup>5</sup> In contrast, when FERC found load underscheduling to be a serious and actually realized problem in the California market design, its scheduling penalty was limited to deviations exceeding 5% or 10 MW, with a maximum penalty of \$100/MWh, and even that penalty ultimately was withdrawn without application once California returned to advance contracting and restored a more balanced supply.<sup>6</sup> In any event, the reasonableness of any penalty scheme must be assessed in the context of LSEs’ opportunity to adjust their schedules close to real time, a matter not even touched upon in Applicants’ market design sketch.

It may well be worthwhile for this Commission to hold educational workshops on the subject of market design for wholesale electric markets, so it can better provide input into the

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price that covers its marginal costs, since it has no alternative purchaser at that time.

The fixed costs of generation bid into the balancing market should be covered by forward contracts or the generator’s load, which have first call on that capacity.

<sup>4</sup> Supplemental Comments at 17-18, citing GridFlorida Transmission Tariff, Attachment P, § 13.2.3.

<sup>5</sup> Attachment P, § 13.2.3. That provision also speaks in terms of “load deviations in a Settlement Zone,” a concept that is highly discriminatory against entities who, like FMPA, have loads and resources distributed among several of the previously-proposed Settlement Zones. In any event, a Settlement Zone concept has no place in the nodal, LMP-based regimen Applicants are apparently contemplating.

<sup>6</sup> See *San Diego Gas & Elec. Co.*, 93 F.E.R.C. ¶ 61,294, at 62,003 (2000) (establishing underscheduling penalty for market participants that met more than 5% of their load in real-time markets), *clarified*, 94 F.E.R.C. ¶ 61,005, *on reh'g*, 97 F.E.R.C. ¶ 61,275 (2001) (withdrawing penalty), *further reh'g denied*, 99 F.E.R.C. ¶ 61,160, at 61,658

FERC SMD rulemaking process. However, the Commission should resist the temptation to lock into a particular market design (or market design elements) for wholesale power markets, the issue before FERC in its SMD rulemaking. Rather than getting mired, in this compliance filing proceeding, in the details of difficult, cutting edge, market design issues, the Commission should advocate at FERC for a standard market design and market power mitigation plan that protects Florida ratepayers from exercises of market power. In addition, the Commission should encourage Applicants to proceed at FERC with a market design consistent with SMD.

***B. The Commission Should Reject Applicants' Suggestion that it Cede Authority Over Capacity Reserves***

In pre-workshop comments, at the workshop, and in post-workshop comments, FMPA urged the Commission to retain its jurisdiction and its process for establishing and enforcing reserve requirements, rather than ceding jurisdiction to GridFlorida and FERC by endorsing inclusion of the Installed Capacity and Energy (“ICE”) “principles” in a FERC-filed GridFlorida tariff. In their July 2 Supplemental Comments (at 14), Applicants state that they “do not agree with the assertion that a capacity requirement should not be included in the GridFlorida market structure.” They go on to ask this Commission to “specifically find that under the GridFlorida market design *LSEs will be required to satisfy LSE-specific capacity requirements through an ICE market* established consistent with the GridFlorida ICE proposal included in the March 20 Filing.” *Id.* at 15, emphasis added. FMPA again urges the Commission to reject Applicants’ request that Commission voluntarily cede its Grid Bill jurisdiction and endorse a ICE market

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(2002), *appeals docketed sub nom. California Public Utilities Commission v. FERC*, No. 02-71426 (9th Cir. May 23, 2002) and *Dynegy Power Marketing, Inc. v. FERC*, No. 01-1528, et al. (D.C. Cir. May 24, 2002).

mechanism that has proven problematic and subject to abuse in other RTOs and ISOs, and about which FERC itself has significant doubts.

As recognized by Applicants (*id.* at 15), FERC's SMD proposals have not included a capacity reserves regimen. Although FERC has recognized that adequate capacity reserves are key to avoiding price spikes and keeping wholesale power markets stable, it is struggling to figure out who should be responsible for maintaining reserve adequacy and how. *See* FERC Options Paper at 13.<sup>7</sup> Applicants cite FERC's "request ... for input as to whether such a mechanism is warranted, and if so what that mechanism should be" as a basis from which to urge that "a specific finding by the Commission in this regard is of particular importance." Supplemental Comments at 15.

FMPA agrees that FERC's quandary over how best to promote reserves adequacy puts this Commission in a position to chart its own course. However, FMPA rejects Applicants' suggestion that the Commission should respond to this invitation by releasing the rudder, *i.e.*, by surrendering its Grid Bill jurisdiction to FERC. We continue to urge the Commission to not endorse the inclusion of ICE principles in the GridFlorida tariff. Nor is it necessary or appropriate for the Commission to take the further step urged in Applicants' July 2 Supplemental filing of specifically calling for LSEs to "satisfy LSE-specific capacity requirements *through an ICE market.*" Supplemental Comments at 15 (emphasis added). Recent disclosures confirm the significant opportunity for gaming, manipulation, and exercise of market power in such capacity reserves markets. These revelations are made all the more disturbing by the fact that they arise

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<sup>7</sup> *See also* Commission Staff's September 26, 2001 Capacity Reserves Discussion Paper (available at [http://www.ferc.gov/calendar/commissionmeetings/discussion\\_papers.htm](http://www.ferc.gov/calendar/commissionmeetings/discussion_papers.htm)), and FERC Staff's discussion paper, "Ensuring Adequate Capacity Reserves," prepared for the joint NARUC-FERC conference held February 11, 2002 (available at <http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/naruc-02-11-02.pdf>).

in the context of PJM<sup>8</sup> and ISO-New England,<sup>9</sup> ISOs where market power problems are generally much less daunting than we face in Florida. *See* FMPA's Pre-Workshop Comments at 32-33. Also significant, Applicants suggest no market power mitigation plan to operate in connection with the capacity markets on which they urge this Commission to require LSEs to rely.

In short, No compelling track record supports abandoning this Commission's successful approach, in favor of reliance on a capacity market for reserves. Indeed, the market power and market manipulation that have plagued such markets, and raised costs to consumers, make this Commission's tried and true mechanism of establishing reserves standards enforced through review of ten year site plans look very good indeed.

Nor is this Commission's authority preserved by Applicants' suggestion (Supplemental Comments at 14-15) that this Commission "develop the capacity standards for the State" but "GridFlorida then should implement those standards as part of the overall GridFlorida market structure." If capacity requirements are specified through a FERC-jurisdictional GridFlorida tariff as Applicants have proposed, this Commission's role in setting and enforcing those requirements will become inappropriately ministerial. FERC will have exclusive jurisdiction over the rates and terms of GridFlorida's OATT, including any ICE requirement that Applicants

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<sup>8</sup> As noted in FMPA's Post-Workshop Comments, the Pennsylvania PUC recently found that Pennsylvania Power & Light had economically withheld installed capacity to game the PJM "ICAP" market, thereby damaging wholesale and retail markets and participants. It referred the matter and the underlying record to the Attorney General of Pennsylvania, the United States Department of Justice, and the Federal Energy Regulatory Commission. *See* Statement of Chairman Glen R. Thomas, *Investigation Upon the Commission's Own Motion With Regard to PJM Installed Capacity Credit Markets*, Pa. PUC Docket No. I-00010090 (June 13, 2002) (available at [http://puc.paonline.com/press\\_releases/Press\\_Releases.asp?UtilityCode=EL&UtilityName=Electric&PR\\_ID=841&View=PressRelease](http://puc.paonline.com/press_releases/Press_Releases.asp?UtilityCode=EL&UtilityName=Electric&PR_ID=841&View=PressRelease) (last visited June 19, 2002)).

<sup>9</sup> *See ISO New England, Inc.*, 91 F.E.R.C. ¶ 61,311, at 62,080 (2000) (describing ISO New England's proposal to eliminate the ICAP market because it "serves no useful purpose and [because]... prices in the market reflect an

succeed in having specified in that OATT. For example, this Commission will lose the decisional authority to increase or decrease required reserve levels or to waive capacity shortfall penalties for cause. Those decisions will fall instead to GridFlorida as administrator of its OATT and to FERC as the ultimate regulator of that tariff, with this Commission reduced to participating in FERC proceedings on those matters.<sup>10</sup> In effect, this Commission will have delegated to FERC its statutory authority (and the accompanying responsibility) to ensure reserve adequacy, *see, e.g.*, Fla. Stat. § 366.06. Such delegation would be improper. The Commission must remain the decisional authority determining whether state-jurisdictional utilities are satisfying state statutory standards; it cannot delegate that responsibility even to its own staff, much less to the FERC. *See Citizens v. Wilson*, 567 So.2d 889, 892 (Fla. 1990) (Commission may delegate purely ministerial tariff review responsibilities to its staff, but only if it specifies in advance the “exact” tariff modifications that its staff is to accept); *Procacci v. State*, 603 So.2d 1299, 1300 (Fla. 1<sup>st</sup> DCA 1992) (“An agency may not delegate to a hearing officer its legislatively prescribed responsibilities.”).

Thus, this Commission should reassert its Grid Bill jurisdiction to establish reserve standards and enforce adequacy. It should decline to endorse both Applicants’ ICE principles and the requirement that LSEs satisfy capacity requirements through an untested capacity market that is very likely to be tainted by market power. Instead, it should take this opportunity to step

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exercise of market power”), *order on clarification*, 92 F.E.R.C. ¶ 61,254 (2000), *order on reh’g*, 96 F.E.R.C. ¶ 61,361 (2001), *reh’g denied*, 98 F.E.R.C. ¶ 61,036 (2002).

<sup>10</sup> Even a regimen under which the FERC-filed tariff specified this Commission as the arbiter of reserve adequacy would leave FERC in a position to unilaterally modify that delegation, and would raise legal difficulties mirroring the FPSC-to-FERC delegation problems discussed in the text. *See, e.g., Southern Cal. Edison Co.*, 55 F.E.R.C. ¶ 61,074, at 61,223 (“the Commission must fulfill its statutory responsibilities and cannot defer to the actions of a state regulatory agency. Even where the wholesale customer agrees for wholesale ratemaking purposes to abide by the decision of a state ratemaking authority, this Commission has an independent responsibility to review such an agreement.”), *reh’g denied*, 56 F.E.R.C. ¶ 61,117 (1991), *appeal denied*, 983 F.2d 1089 (D.C. Cir. 1993).

forward as a success story showing that active state supervision of reserve adequacy works, and obviates the need to address reserves through an enforcement mechanism established under a FERC-filed tariff or to otherwise make reserve adequacy a FERC-regulated matter.

### CONCLUSION

The Commission should participate actively in SMD rulemaking at FERC, and retain its process for ensuring adequate capacity reserves without ceding authority or jurisdiction to FERC and GridFlorida. Without expressly approving Applicants' new market design or specific elements thereof, the Commission should encourage Applicants to move forward at FERC with a market design consistent with the outcome of FERC's SMD rulemaking.

Respectfully submitted this 12th day of July, 2002,



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**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing SUPPLEMENTAL POST-WORKSHOP COMMENTS OF FLORIDA MUNICIPAL POWER AGENCY ON MARKET DESIGN was furnished to the parties on the attached Service List, by United States Mail, on this 12th day of July, 2002.

  
Jody Lamar Finklea, Esq  
FLORIDA MUNICIPAL POWER AGENCY

Three-page  
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Docket No. 020233-EU  
Review of GridFlorida  
Regional Transmission  
Organization Proposal  
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