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Undocketed – Regional Transmission Organization and Related Issues

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A PROPOSED PUBLICLY OWNED AND NOT-FOR-PROFIT TRANSCO FOR FLORIDA

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Presented by: Jacksonville Electric Authority (JEA)

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EXECUTIVE SUMMARY

This proposal is presented by Jacksonville Electric Authority (JEA) in response to the Florida Public Service Commission's undocketed inquiry into the transmission situation in Florida. That action was precipitated by the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking concerning the establishment of regional transmission organizations (RTOs). JEA is a municipally owned and vertically integrated electric, water and wastewater utility. It owns transmission facilities which represent a material portion of its total investment in electric facilities necessary to serve their customers.

After several workshops on the subject of transmission in Florida at the FPSC, and observing the state of complicated and confusing efforts to fashion a workable transmission regime, JEA reached the reasoned conclusion that the most efficient solution to the problem of adapting the existing transmission system to the requirements of a competitive wholesale market is to create a publicly owned and not-for-profit transmission system, referred to hereafter as transco. It is recognized that this is a radical restructuring of the existing electric utility regime in Florida. JEA does not believe that the Florida transmission system should be restructured until more time has elapsed for the various experiments not taking place around the country to have had time to yield studied results. However, if a different transmission regime is to be compelled by changing circumstances, JEA suggests that it should be done right, and with the focus on maximizing the benefits of competition for all the electric consumers of Florida. After studying the other proposals made in these proceedings in light of the FERC mandated requirements for a RTO, and observing the California and other transmission situations, JEA has con-

cluded that the only viable solution to the multifaceted problems of combining a monopoly function (transmission) with a market driven function (generation) is to not combine them.

Divestiture from present owners of the facilities necessary to establish a unitary transmission system in Florida is the most logical course given the realities of the evolving electricity market. Having gone that far, the question next presented is where to lodge the transmission function. Only two viable possibilities exist: an investor-owned transco or a publicly owned not-for-profit transco. The latter structure would offer the best mechanism to optimize the benefits of wholesale competition for all the electric consumers of Florida through a truly robust competitive market in the generation dimension of the business. This is true because the monopoly nature of transmission remains a dominant fact in moving the traditional vertically integrated industry to a market orientation. It is believed that the most realistically achievable efficiencies for the electric consumers of all Florida are in the generation dimension of the electricity market. Therefore, the state's policy should be to develop a structure in which the detrimental effects of monopoly power over an essential function are eliminated to the fullest extent possible.

This proposal is the most conducive to maximizing the benefits of free-enterprise competition to the public rather than to one or another segment of market participants. Without separation of these two functions, the wholesale market will never reach its full potential for benefit to the public at large. It will remain mired in a confusing regime of competing market participants using a mixed regulatory and legislative structure as the arena for posturing for competitive advantage. In our system of democratic capitalism, that cannot, nor should it be materially circumscribed. However, the detrimental impact

of that tension on the efficient workings of the competitive market should not be unduly exacerbated by failure to recognize the inconsistency of molding an electricity market where monopoly forces are an essential part of what should otherwise be an open and competitive market. That situation is best mitigated by avoidance. We are given the opportunity at this early stage of the evolution of the electricity market to accomplish that by creating a publicly owned and not-for-profit transmission system. As the electricity market evolves, that opportunity will likely not be available again under reasonable circumstances.

To create a publicly owned transco as envisioned here, enabling legislation would have to establish a separate entity. Its primary governance board would be appointed by the governor and confirmed by the senate for staggered terms of 4 years. It should not be a “stakeholder” board. It would have to possess all the necessary powers to own, operate, finance, and manage a unitary transmission system within peninsular Florida. Its principal financing mechanism would be issuance of revenue bonds with transmission revenues pledged to support them.

Such an entity would be distinct from any segment of the existing industry – investor-owned, publicly owned, or cooperatively owned. It would be governed by a single overriding purpose: to optimize the benefits of competition in the wholesale market for the entire body of electricity consumers in Florida. All providers would have equal access. The transmission facilities necessary to accomplish that purpose would be transferred to the new entity either on a negotiated basis or through the legal process of condemnation. The value of the necessary facilities would be negotiated, or failing that, fixed by a jury in condemnation proceedings in accordance with statutory and constitu-

tional safeguards. Creating a publicly owned transco at this early stage will focus the process of restructuring the electricity market on achieving the greatest overall benefits to the public. That purpose should not be subordinated to the posturing of individual market participants or segments of the market for the sake of contrived competitive advantage.

1 I. WHY IS A PUBLICLY OWNED-NOT-FOR PROFIT TRANSCO NEEDED?
2 WHAT IS BROKEN?

3 This is an appropriate question for initiating this phase of the inquiry into the
4 electrical transmission situation in Florida. From JEA's perspective, there is nothing
5 "broke" in the Florida transmission situation which necessitates a radical restructuring at
6 this time. This is said with full realization that there are transmission-dependent entities
7 in Florida that maintain the existing system structure does not operate equitably in ful-
8 filling their needs. Those allegations should be considered and resolved, but such resolu-
9 tion standing alone should not be the sole driving force to restructure the electric trans-
10 mission system of the entire state.

11 Because JEA believes that on balance the existing state-wide transmission system
12 well serves Florida's electrical consumers, it feels that Florida should maintain the status
13 quo until such time as the numerous market-place experiments taking place around the
14 nation produce a clearly superior approach to providing consumers with electric energy.
15 However, JEA also recognizes the inevitability of change. There are forces at work to
16 mold the electric utility industry to a free-market orientation in place of the traditional
17 vertically integrated monopoly structure that has been the industry's hall mark since its
18 inception almost a century ago. The option to maintain the status quo has been, for all
19 intents and purposes, subsumed in the larger national imperative of wholesale competi-
20 tion. The Energy Policy Act of 1992 has loosed the hounds of change, and since there
21 seems no plausible way of getting them back in the truck, the only rational thing left to
22 do is to hunt with them. So, while nothing is really broken in the Florida system from the
23 perspective of the status quo, it might be said that FERC is in the process of "breaking

1 it” in order to reset the system in line with the national goal of a competitive wholesale
2 electricity market.

3 With the process of change going forward in the industry at an ever quickening
4 pace, it is becoming clear the existing transmission regime is not compatible with the
5 new and diverse demands being placed on it by a changing electricity market. As stated
6 by FERC in its introduction to the NOPR: “As a result [of the changes], the traditional
7 means of grid management is showing signs of strain and may be inadequate to support
8 the efficient and reliable operation that is needed for the continued development of com-
9 petitive electricity markets.”¹ JEA agrees with that generalization. It should also be said
10 that the competitive wholesale market envisioned by national policy will be a good thing
11 for the overall body of Florida consumers even if its impact may vary somewhat from
12 one system’s body of consumers or owners to another. No free market structure or regu-
13 latory system can guarantee equal results to all participants and consumers. However,
14 open and non-discriminatory access to the market for all potential suppliers is the *sine*
15 *qua non* for bringing the hoped for benefits of wholesale competition to the greatest
16 range of the state’s consumers. The criteria set forth by FERC seem well suited to this
17 goal while also offering reasonable expectations of gain to the market participants. In
18 this context, JEA believes that the existing transmission regime in Florida does not per-
19 mit the optimization of the potential benefits to the public of a truly competitive whole-
20 sale market.

21 JEA believes that the present Florida system is workably efficient, but if change
22 is to be forced from the national level in pursuit of competitive wholesale market, then
23 the state should restructure its transmission system for the sole purpose of optimizing the

1 benefits of wholesale competition to the public at large, and not just to preserve or maxi-
2 mize the gain to one or another of the various existing market participants. The state
3 should not settle for some less-than-optimal transmission regime cobbled from the status
4 quo in a compromise effort to indulge inherently inconsistent competitive interests. To
5 do so is to drift inexorably toward a contrived arrangement of accommodating market-
6 participant interests to the ultimate detriment of the overall body of Florida consumers.

7 The individual economic interests of all segments of the electricity market should
8 be subordinated to the overriding purpose of optimizing the economic benefits of whole-
9 sale competition to the public. That can be best accomplished by creating a publicly
10 owned transmission system established to serve only one overriding purpose: Maximize
11 the benefits of wholesale competition to all the citizens of Florida. In public policy de-
12 liberations such as this, it is important to keep in mind that potential public benefits
13 arising from competition in the electricity markets come primarily from the generation
14 sector. The “wires” sectors of the business offer little, if any, expectation of increased
15 efficiency and benefits to ultimate consumers from competitive market forces. The tan-
16 gible benefits of competition for the public will come almost totally from an efficient
17 wholesale generation market. The publicly owned transco will best facilitate passing that
18 benefit beyond the economically interested stakeholders and onto the full spectrum of
19 electricity consumers.

20 Notwithstanding much talk about “unbundling” other dimensions of the electricity
21 supply, the fact remains that the distribution and transmission sides of the business will
22 remain for the reasonably foreseeable future natural monopolies subject to multifaceted
23 layers of regulation. As one industry observer put it, this is clear “for reasons that should

¹ FERC, Notice of Proposed Rulemaking, (May 13, 1999), Docket No. RM99 – 2 – 000, p. 9.

1 be obvious to all save those who believe a transmission tower is lovelier than a tree.”²

2 The basic thesis of this proposal is that the natural monopoly nature of the trans-
3 mission dimension should be harnessed to the goal of maximizing benefits to the public
4 of the competitive nature of generation. Where a market can be truly competitive, as in
5 the generation sector, the profit motive is generally the best promoter of market effi-
6 ciency. However, where an unavoidable element of a particular economic endeavor is its
7 natural monopoly structure, as is the case with the electric transmission, its efficient op-
8 eration should not be hinged on the workings of the profit motive. For a variety of rea-
9 sons – its capital intensive nature, social and environmental costs, impact on market
10 power of players on the competitive side of the equation, inclination for planning and ex-
11 pansion financing to be pulled at cross-purposes between maximizing return on invest-
12 ments and optimizing the efficient workings of a competitive wholesale market for the
13 general public – transmission will remain a highly regulated monopoly. It is unlikely that
14 it will be able to compete readily for the investment dollar against the generation sector
15 without constant pressure on the regulatory machinery for increased revenues. In that
16 same context, management will incline away from making optimal expansion investment
17 when better returns on existing investment can be obtained by pursuing higher revenues
18 for use of an essential but limited commodity. A publicly owned transco is the best pub-
19 lic policy choice to mitigate the adverse consequences of the monopoly nature of trans-
20 mission while maximizing its positive potential to optimally facilitate a competitive gen-
21 eration market.

² Irwin Stelzer, “Vertically Integrated Utilities: The Regulators’ Poison’d Chalice,” *The Electricity Journal*, (April 1997), 20, at 29.

1 II. ADVANTAGES AND DISADVANTAGES OF A PUBLICLY OWNED

2 TRANSCO:

3 a) Disadvantages

4 The first apparent disadvantage a publicly owned transco is having a public
5 structure instead of private enterprise to provide an essential component to what is argua-
6 bly the public service most essential to the general welfare of the state. This will be the
7 view of those who are unalterably locked into the notion that a regulated monopoly in the
8 hands of its investor-owners is inherently more efficient than a similar monopoly oper-
9 ated exclusively for the public benefit by a well-thought through public governance
10 structure dedicated exclusively to maximizing the public benefits from a competitive
11 generation market. For many, that is a bedrock proposition of economic philosophy,
12 akin to an article of blind faith. It is true that, on balance, the private sector energized by
13 the profit motive is the best means to achieve economic efficiency in markets. Yet, even
14 the most persuasive advocates of Adam Smith's *laissez faire* will admit that in monopoly
15 prone markets, corrective intervention is necessary on behalf of the public, even to the
16 point, in some instances, of public ownership.

17 This is especially true where the service to be provided is essential to the public
18 welfare. The function of that essential service being considered here, i.e., transmission,
19 is absolutely vital to the efficient working of a separate dimension of the essential serv-
20 ice, one that is clearly best suited to the free-market, i.e., generation. Due to structural
21 differentiation in economic and physical functions between generation and transmission
22 components, these two dimensions cannot be completely separated in physical operation,
23 but, neither can they operate to the desired economic efficiency if joined in one common

1 economic enterprise, part market oriented and part regulated.³ The inherent capacity in
2 such an arrangement to manipulate market power for competitive advantage can only be
3 cured in the long run by complete divestiture of the generation function from the trans-
4 mission function. Anything less than complete divestiture will most likely result in a
5 contrived solution more for the benefit of current stakeholders than for the public overall.
6 What the policy makers are confronted with here is an entirely new situation, one with-
7 out tried precedent from which to proceed.

8 It is a situation that calls for reasoned consideration of changed and changing cir-
9 cumstances, and not rigid reliance on principles evolved from a previous era under en-
10 tirely different circumstances. The concept of a free-market was elaborated by Adam
11 Smith in 1776, long before the problems inherent in unbundling the complex physical and
12 economic functions of a modern electric utility system were thrust on policy makers.
13 Here, we are confronted with a paradoxical situation where time-tested guidelines should
14 be tempered with the projected consequences of inevitable change. To achieve the agreed
15 on benefits of a free market place in generation, we cannot blindly rely on the same mar-
16 ket place to assure us of efficient operation of the transmission function essential to a
17 competitive generation market. JEA is proposing a transmission structure which will en-
18 hance competition by focusing the dynamic forces of competition in the generation mar-
19 ket where they will work best to bring the most benefit to the public. Again, the public
20 perspective is best served in these policy considerations by giving serious consideration
21 to public ownership of the transmission function in order to derive the maximum eco-

³ See Barry J. Fleishman, "Electric power's future in the courts," *CCH Power and Telecom Law*, (November-December, 1998), 37-40; the author states at p.39 that the top challenge facing the competitive electricity market is the "...challenge of providing monopoly and competitive services within the same business unit." Recent news accounts of a FTC conference report that California Commissioner Gregory

1 nomic efficiencies of a competitive market in generation. The publicly owned transco
2 offers the most efficient solution to the vexing problem of how to unbundle the transmis-
3 sion function without skewing the competitive balance of the generation market. It offers
4 the best protection to the overall body of Florida electric consumers against the sub-
5 optimization of the de-regulated wholesale generation market which will follow from a
6 compromised solution looking only to market participant interests.

7 JEA does not oppose the concept of free competition where it is likely to achieve
8 the most efficient results. Instead, it is proposing a structure of public ownership for a
9 discrete element of an essential service that, because of its monopoly nature, is not suited
10 to being completely unbundled in the market place. Thus, the monopoly nature of trans-
11 mission will be harnessed completely to the purpose of enhancing competition where it
12 truly will count for the overall body of Florida consumers.

13 The management of a private firm cannot relieve itself of the necessary and
14 proper concern for maximizing return on the investment of its owners. In the context of
15 the emerging electricity market, there will always be tension in reconciling that ethical
16 and essential obligation with the purpose of facilitating the most efficient wholesale mar-
17 ket for the benefits of the general public. A board of directors of a investor-owned
18 transco allocating scarce capital resources will always have to lean toward maximizing
19 the return on its owners' investment. That will necessarily take precedence in a board's
20 perspective over investment to replace or expand a transmission network for the para-
21 mount purpose of facilitating the efficient operation of unrelated businesses enterprises.
22 Regulation seeks to ease that tension, but in reality , it only removes it from the board

Conlon, has told the FTC that if he could remake the California experience, he would require complete divestiture of transmission assets from their utility owners.

1 room to a different setting in the regulatory and political arenas. That scenario could not
2 be better designed to slow to a snail's pace the planning process and result in solutions
3 compromised to the point of ever-diminishing efficiency. The relegation of the transmis-
4 sion function to the vagaries of a privately owned entity in a regulated sphere of what is
5 an integral part of a competitive market is to assure a permanent state of litigious tension
6 between the various market participants, private transmission owners, and the regulators.
7 Final appeal in that contentious atmosphere will frequently lie in the legislative forum,
8 hardly a promising regime for the difficult planning and financing decisions that will be
9 essential to providing an efficient transmission system for Florida.

10 In judging whether there is an inherent and material disadvantage in public over
11 private ownership of the transmission function, one is compelled to remember that the
12 laws of physics are invariable regardless of ownership. There is no persuasive evidence
13 to show that managers and engineers in the public employ are more or less competent and
14 efficient than their private sector counterparts in efficiently dealing with those laws.
15 Comparison of operating statistics in Florida will bear that out as between similarly situ-
16 ated public and private utilities.

17 Another perceived disadvantage would be the cost to the state of initiating a pub-
18 licly owned transmission system capable of efficiently meeting needs of the state. That
19 will be discussed in the section on financing. Here it will be noted that this proposal
20 hinges on complete divestiture of the transmission facilities necessary for a state wide
21 system from their present owners, either investor-owned, publicly owned, or coopera-
22 tively owned. This would require the use of eminent domain power, and the granting of
23 such authority is always a contentious issue in the Florida legislature. Particularly con-

1 tentious would be the question of what constitutes “fair value” in the constitutional sense
2 for the facilities to be divested. This would be a difficult issue for the legislature to con-
3 front, and its resolution would be the single most important factor in determining the ini-
4 tial cost to the state, and the long-term cost to the consumers. The capital investment
5 necessary to establish a publicly owned transco should approximate that necessary to an
6 investor-owned transco. However, in an investor-owned context, there will be pressure
7 to maximize the investment for rate-base purposes, most of which would represent equity
8 ownership with its concomitant requirement of higher return than debt. This pressure to
9 maximize rate-base would be absent in a publicly owned transco. In the long-term, this
10 would be a significant benefit to the overall body of electric consumers, and the policy
11 makers of the state should focus on the long-term in this debate.

12 b) Advantages

13 To a great extent, the advantages of a publicly owned transco are the reciprocal of
14 the disadvantages discussed above. There are also affirmative advantages accruing to
15 public ownership of the state’s transmission system which mitigate strongly in favor of
16 its adoption by the state of Florida. First, however, its clearly superior capacity for
17 meeting and exceeding the FERC mandates should be put in perspective. Objective con-
18 sideration shorn of economic self-interest will convincingly demonstrate that the publicly
19 owned transco will, far and away, satisfy the required characteristics set forth by FERC in
20 the NOPR. It will also be capable of performing the required minimum functions better,
21 or as well as any other transmission governance regime as is elaborated below:

22 a. Independence from Market Participants: Independence from market partici-
23 pants is a principal feature of the publicly owned transco. By removing the

1 transmission function from the competitive arena and divesting all other partici-
2 pants in that arena of any economic interests in the transmission system, com-
3 plete independence will be assured. With independence, the sole focus of the
4 publicly owned transmission system will be on the optimization of the competi-
5 tive generation market. A public entity with that focus will be the best protection
6 against inappropriate concentration of market power to the detriment of the effi-
7 cient working of the wholesale market.

8 b. *Appropriate Scope and Configuration: Florida's transmission system has*
9 *been developed under the constraints imposed by the state's peninsular geogra-*
10 *phy. Situated as it is, the state has developed a certain independence of the elec-*
11 *trical regions which adjoin it. Although possessed of interties to the north and*
12 *west, the state has been forced into a self-reliant posture regarding bulk power*
13 *supplies. One of the few things that operating utility executives in Florida agree*
14 *on across the spectrum of ownership is the desirability of keeping peninsular*
15 *Florida a distinct transmission region. The imperatives of planning, financing and*
16 *expanding the Florida system with the appropriate concern for the state's envi-*
17 *ronmental and economic welfare should not be subsumed in a regional structure*
18 *harnessed to entirely dissimilar or even conflicting purposes. A publicly owned*
19 *Florida transco would be the best mechanism to assure the proper prioritizing of*
20 *those concerns and balancing them with its fundamental purpose of maximizing*
21 *the benefits of generation competition to all of Florida.*

22 c. *Possession of operational authority for all transmission facilities under its*
23 *control: This concern would be best satisfied by divestiture of transmission facili-*

1 ties from all market participants and vesting them in a public entity created for
2 that purpose.

3 d. Exclusive authority to maintain short-term reliability: This would be accom-
4 plished by virtue of having sole ownership and operating control of the state's
5 complete transmission system. The operation of "must-run" units, provision of
6 ancillary services, and control of dispatch are all necessary ingredients to maintain
7 transmission system reliability. They are difficult technical issues which have to
8 be resolved regardless of what kind of ownership structure emerges. They would
9 be no different in the case of a publicly owned transco. Indeed, resolving such
10 issues would be easier under a structure where the necessary facilities are com-
11 pletely removed from the competitive tensions of the market-place where a single
12 set of planning and operating criteria can be uniformly applied to meeting the
13 transmission function of a diverse group of generation entities.

14 c) Advantages Beyond the FERC Mandate:

15 The Commission should not be satisfied, however, with merely fulfilling the
16 minimum conditions imposed by federal regulators. It should go forward with a compre-
17 hensive plan to provide the optimal benefits of competition in the wholesale market to the
18 greatest spread of Florida electric consumers. There are compelling reasons for going
19 beyond simply meeting FERC's minimum standards. If Florida is compelled to alter the
20 *status quo* as a result of the FERC mandate, it should do so with a focus on the whole
21 body of Florida electric consumers. The opportunity to act in a comprehensive manner to
22 effect a holistic adaptation to the changing energy markets will not arise in such a favor-
23 able context again. There will be changes in the transmission dimension of Florida's

1 electricity supply, and once in place, it will be near impossible to dislodge what has been
2 cobbled together in a compromised first approach. Thereafter, a complex array of new
3 legal, contractual, and property rights, each with its very own highly protective constitu-
4 ency, will be a formidable barrier to effective incremental adjustments. A less than pub-
5 licly owned not-for-profit transco will be one of these competing interests and will, quite
6 properly, resist any perceived diminution of its right to maximize return on its invest-
7 ment. Once in place, whatever the Commission does by way of altering the status quo
8 will be highly resistant to change. This is said non-judgmentally to illustrate what is (or
9 will be) an inherent attribute of the electric utility industry, regulated, de-regulated, or re-
10 regulated. It should be done right the first time. Not only is a publicly owned transco the
11 best means of satisfying the FERC mandates, there are policy considerations beyond the
12 mandates which compel the same conclusion.

13 1. A publicly owned transco will derive the greatest benefit from wholesale competition
14 for Florida:

15 A publicly owned transco offers the best mechanism for reaping the maximum
16 benefits of competition for all the citizens of Florida. The point has been made that there
17 is only one dimension where competition really offers recognizably significant benefits to
18 the public overall. That is the generation side of the business. Only through a publicly
19 owned not-for-profit transco can the state develop a singular focus on using transmission
20 as a positive force to optimize the advantages of that competition.

21 2. A publicly owned transco is the best mechanism for planning and financing necessary
22 transmission expansion:

23 One of the most vexing problems that has emerged from the less-than-transco so-

1 lutions is that of planning, building , and financing necessary transmission expan-
2 sions. The problem is exacerbated by the diverse interests that must be accommo-
3 dated in situations where ties of ownership and economic interest exist between
4 transmission and various market participants. These ties can produce market power
5 situations which can combine with technical considerations to thwart or impair the ef-
6 ficient operation of a competitive wholesale market. Congestion inflated revenues
7 can alter the planning perspective regarding expansion. Situations can be contrived
8 where it is more remunerative to tolerate congestion than to build out of it, all to the
9 detriment of the efficient working of the competitive market. Allocation of capital re-
10 sources for investment within a profit-making concern is primarily governed by the
11 natural inclination to favor investments with the greatest potential return. It is virtu-
12 ally impossible to regulate away that mindset, and there may well be constitutional
13 protections for property rights that would stand in the way of attempting to do so. In a
14 publicly owned transco removed from the constraints of maximizing return on in-
15 vestment, the planning and financing function would not be governed by the cross-
16 currents of competing demands for the investment dollar and the imperative of maxi-
17 mizing return on it. Investment decisions would be governed by the legislative man-
18 date to maximize the benefits of generation competition. The state regulatory agency
19 charged with assuring a reliable and efficient energy supply to the state could also be
20 charged with institutional oversight of this function on behalf of the legislature. The
21 unification of planning and ownership functions with the expressed purpose of facili-
22 tating the generation market would provide a clearly superior planning and financing
23 regime for the state's transmission system.

1 3. A publicly owned transco offers the best mechanism for maintaining state regulatory
2 control over the transmission function in the evolving electricity market:

3 A publicly owned transco would not be regulated at the federal level under the exist-
4 ing laws on the subject, except possibly as to the reciprocity requirements set out in Order
5 888. Though it is by no means certain that publicly owned transmission systems will
6 continue to escape regulatory control at the federal level, they are far more likely to be
7 left to the control of the creating state than would be a investor-owned system. This is
8 especially true where the transco would be the unitary transmission provider within the
9 relevant state market (peninsular Florida). The primary federal interest would be that the
10 publicly owned transco did not discriminate against out-of-state providers. In light of the
11 singular purpose proposed for the transco under consideration, this would not be the case
12 since it would have no economic motivation to favor one set of providers over the other.

13 III. DISCUSS THE COSTS AND BENEFITS OF A PUBLICLY OWNED TRANSCO:

14 The major cost would be the initial acquisition of the necessary transmission fa-
15 cilities. The appropriate point to commence consideration of this question is the book
16 value of the major transmission systems. For discussion purposes, we will assume that
17 to be the transmissions systems of Florida Power and Light (FPL), Florida Power Corpo-
18 ration (FPC), TECO, and Jacksonville Electric Authority (JEA). For FPL and FPC, the
19 numbers are for 1997, and for TECO and JEA they are for 1998. These figures encom-
20 pass all lines classified as 69kv and above and extracted from FERC Form 1 of the in-
21 vestor-owned examples on file at the PSC; the JEA figure comes from its Form EIA
22 412.

23 System Original Cost Accumulated Depreciation

1	FPL (1997)	\$2,132,000,000	\$897,000,000
2	FPC (1997)	\$846,000,000	\$520,000,000
3	TECO (1998)	\$298,000,000	\$ 93,000,000
4	JEA (1998)	\$281,000,000	\$108,000,000
5	Total	\$3,557, 000,000	\$ 1,618,000

6 Net Book Value (Transmission for 4 largest owners) \$1,939,000,000.

7 The net book value figure is given as a starting point for discussion. The extent to which
8 the necessary facilities would reach downward in voltage level would also have an effect
9 on the total cost. The formula for fixing just compensation in a taking under eminent
10 domain powers is fixed by statute. In the enabling legislating, it could be altered to pro-
11 vide for elements of market value to be included so that the investors would be compen-
12 sated based on the reasonably expected value of their investment when it was made. That
13 is a policy decision that would have to be make by the legislature.

14 No attempt is made here to project initial start-up costs with precision, but as-
15 suming lessons learned in the California situation would be of assistance in a Florida
16 startup, one might assume \$400,000,000 as a discussion point.

17 The initial acquisition costs would be financed by revenue supported bonds. If
18 non-taxable bonds can be used, the overall cost of money would be reduced to the bene-
19 fit of all the users. The use of tax-free financing would redound to the benefit of all
20 transmission users and ultimately to the consumer on an equal basis through the uniform
21 rates. Whether that will be available is problematical currently due to a strong lobbying
22 effort by the Edison Electric Institute and its affiliated investor-owned utilities in Wash-
23 ington to prevent future use of tax-free bonds for financing transmission and generation.

1 Nevertheless, the merits of a publicly owned transmission system transcend the narrow
2 question of the taxability of interest on bonds issued by it.

3 IV. DISCUSS THE SHORT AND LONG-TERM FEDERAL JURISDICTIONAL
4 IMPLICATIONS OF A PUBLICLY OWNED NOT-FOR-PROFIT TRANSCO:

5 In the long-term, there would be less pressure to fully regulate a publicly owned
6 not-for-profit transco at the federal level. In the short-term, it would not be regulated at
7 the federal level other than as to reciprocity requirements under FERC Order 888. The
8 decision as to what extent and how it should be regulated at the state level would be an
9 appropriate subject for consideration in the enabling legislation when the system of man-
10 agement for the publicly owned transco is being determined. This is further discussed in
11 section on necessary regulatory and statutory authorization.

12 V. DISCUSS THE SHORT AND LONG TERM MARKET IMPLICATIONS:

13 It is reasonable to intuit that market implications of a publicly owned not-for-
14 profit transmission company would be positive. Certainly, there is no arguable negative
15 implication that would be unique to a publicly owned transco but absent in other forms of
16 transmission regimes. For all the reasons discussed above in the section on Advantages,
17 the long-term implications would be a more robust wholesale market, one less prone to
18 the negative influences of market power and one in which all participants are assured of
19 fair and equal access to the transmission service.

20 A better dimension in which to consider the market implications of a publicly
21 owned transco is to view it as being removed from the competitive dynamics of the mar-
22 ket and positioned instead to facilitate its efficient functioning. Since transmission will
23 remain a monopoly, it is not essential to the efficient working of the market in the eco-

1 nomic sense as it is in the technical sense. Its essentiality arises from the technical re-
2 quirements of transporting electricity from provider to user, not as a “but for” dynamic of
3 the market in the economic sense. A publicly owned transco can fulfill the technical re-
4 quirements of a robust wholesale market because its primary purpose is to assist the effi-
5 cient operation of the market, not to profit in it. The other market participants will stand
6 to benefit from the uniformity of transmission costs and will be able to focus on efficien-
7 cies in production to achieve competitive advantage as should rightly be the case.

8 VI. DISCUSS THE FUNDING MECHANISM:

9 The foundational legislation for a publicly owned transco should provide com-
10 plete authority to utilize revenue backed bonds for the necessary initial capital outlay and
11 start-up costs. In the early stages, it would be necessary for the state to appropriate funds
12 for start-up but these should be considered as a short-term loan, subject to repayment
13 from future revenues. In a growth state like Florida, the anticipation of transmission
14 revenues for a unitary transmission system would be sufficient to attract investors at fa-
15 vorable rates. This benefit would redound equally, in the first instance, to all market par-
16 ticipants, and ultimately to all the electricity consumers of the state.

17 VII. WHAT REGULATORY OR STATUTORY AUTHORIZATION WILL BE
18 NEEDED:

19 To establish a publicly owned transco as the sole transmission provider in the
20 state, the Florida legislature would have to enact a comprehensive and self-executing
21 statutory framework as to the governance structure. It is the proposers’ view that the
22 governance board should not be what has come to be known as a “stakeholder” board.
23 Stakeholder boards attempt to assure equal or proportional decision making authority to

1 some or all of the various categories of affected participants. In theory, this sounds like
2 a suitable way of mitigating the force of government acting on private interests, but in
3 practice, it produces the lowest common denominator of compromise from the decision
4 making process. While there is nothing inherently bad about compromise solutions in a
5 democratic system, it is not the stuff from which sound management decisions regarding
6 the planning, engineering and operation of an efficient transmission system can be made.
7 The “stakeholder board” concept also fosters protection of the various categories of mar-
8 ket participants at the expense of the public overall. Once just compensation has been
9 paid the owners of the transmission system taken for public use, there will be no vestiges
10 of “vested” interest to warrant preference of place on the principal governance board.
11 The legislation should provide for suitable technical advisory groups drawn from the in-
12 dustry along “stakeholder” lines, but these should not have anything more than advisory
13 status.

14 There are numerous examples of governance structures from which the legislature
15 can chose a suitable model. It is suggested that a governance board of seven to eleven
16 persons be appointed by the governor and confirmed by the Florida senate. The feasibil-
17 ity of an full-time and paid executive committee adjunct to the principal board should be
18 studied. If desired, the principle of the PSC nominating council could be utilized in the
19 selection process. The only proscription should be that no person in the employ of or fi-
20 nancially attached to a market participant could serve on the principal board without first
21 severing completely such relationship. This eligibility criteria should be crafted in such a
22 way as to prevent undue influence on the board, while recognizing that the expertise
23 needed to make this board truly independent can, as a practical matter, be found most

1 abundantly in the electric utility and related industries. If the criteria precludes all but the
2 completely uninformed or inexperienced persons from board membership, the most
3 likely result will be a board increasingly dependent on external technical and manage-
4 ment expertise. Such a situation would likely lead to interested market participants hav-
5 ing, or being perceived as having, more influence in the management process than is de-
6 sirable from the public perspective. That is a fine line for policy makers to walk between
7 the constitutional rights of parties directly affected by the board's actions and the overall
8 public interest in a robustly functioning wholesale electricity market.

9 The role of the Florida Public Service Commission in relationship to a Florida
10 publicly owned transco should be detailed in the enabling legislation. In the broadest
11 sense, it is suggested that the PSC have meaningful authority in the rate-making process,
12 preferably of some appellate or quasi-judicial nature. It would be desirable for the gov-
13 erning board not to have adjudicatory powers in the quasi-judicial sense so as not to bur-
14 den what should be executive management power with the constraints of judicial action.
15 The PSC should be vested with whatever quasi-judicial or appellate review is necessary
16 to assure that executive action of the board does not improperly abuse recognized rights.
17 This would require a clear demarcation between what is proper realm of executive man-
18 agement action and where that action improperly intrudes on the substantial interests of
19 affected parties.

20 It does not appear, under existing federal law, that any federal legislation would
21 be essential to formation of a publicly owned transco by a state. The present jurisdiction
22 of FERC over such an entity may be in a state of flux, but presently, a state agency as
23 contemplated here in not subject to the Federal Power Act except to the extent implied by

1 the Energy Policy Act of 1992. That is also a matter of contention at the present time. It
2 is reasonable to assume that the federal interest in assuring open access to a Florida
3 transmission grid will be safeguarded by some form of FERC regulation or federal legis-
4 lation, if necessary. It would seem plausible that to the extent a publicly owned state
5 transco is subjected to some independent state regulatory authority, the reasoning for
6 federal regulation would be less compelling.

7 To achieve the benefits of lower costs through tax-free financing—a benefit to be
8 spread equally across the full spectrum of users of a publicly owned transco—federal leg-
9 islation will be necessary along the lines of the Bond Fairness and Protection Act now
10 pending before the Congress.

11 VIII. HOW DOES THIS PROPOSAL IMPACT THE STATUS QUO:

12 This proposal would, if enacted, completely unbundle the transmission function
13 from the supply function in electric service. It is clearly a major change in the status quo.
14 It would clarify the workings of the competitive market for wholesale power by removing
15 the monopolistic transmission function as a driving force in the competitive market
16 scheme of a wholesale market. The existing utility systems in this state would be di-
17 vested of their transmission facilities down to a voltage level consistent with the needs of
18 an efficient state-wide transmission system. That part of what we now refer to as “trans-
19 mission” that remains in the divested systems’ ownership would become, as a practical
20 matter, part of its “wires” system and become part of its jurisdictional ratebase.

21 IX. ESTIMATED TIME FOR IMPLEMENTATION:

22 From time of legislative authorization, implementation should be achievable in
23 three years. If litigation is pursued, it will necessarily be longer. Whether this occurs

1 would be influenced substantially by what is determined to be a fair and just evaluation
2 standard under the enabling legislation.

3 X. DOES THE PROPOSAL MEET THE FERC NOPR:

4 The requirements of the FERC NOPR in the context of a proposed publicly
5 owned transco have been elaborated in previous sections of this paper. In summary, the
6 publicly owned not-for-profit transco meets all the FERC requirements in both the tech-
7 nical and economic dimensions. It is believed by the proposers, that it meets all techni-
8 cal requirements, e.g., assure reliability, provide ancillary services, etc., as well as, or
9 better than any other form of regional transmission organization. As to the economic re-
10 quirements, e.g., non-discriminatory access, mitigation of market power, planning and
11 financing, it is clearly superior to any other form of regional transmission organization.

12 SUMMARY

13 The publicly owned transco concept proposed here offers the best opportunity for
14 Florida to harness the maximum benefits from wholesale competition in the state's elec-
15 tric energy market for the public at large. Removing transmission from the competitive
16 workings of that market and mandating complete and open access for all suppliers from
17 within and without the state will best preserve state oversight and regulatory control over
18 this function so essential to the state's general welfare. It meets to the fullest extent all
19 the FERC requirements, and would be a positive force in facilitating a truly competitive
20 wholesale market.