



Florida Power

A Progress Energy Company

ORIGINAL

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September 18, 2002

Ms. Blanca S. Bayó, Director
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Florida Public Service Commission
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Re: Docket No. 020233-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Florida Power Corporation's Motion for Reconsideration of Order No. PSC-02-1199-PAA-EI.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 020233-EI

Submitted for filing:
September 18, 2002

**FLORIDA POWER CORPORATION'S MOTION FOR
RECONSIDERATION OF ORDER NO. PSC-02-1199-PAA-EI**

Florida Power Corporation ("Florida Power"), pursuant to Rule 25-22.060, F.A.C., hereby submits its Motion for Reconsideration of Order No. PSC-02-1199-PAA-EI, issued September 3, 2002 in this docket ("the Order"), to the extent the Order may be deemed to constitute final agency approval of the revised demarcation date for new transmission facilities contained in the March 20, 2002 GridFlorida compliance filing. In support hereof, Florida Power states as follows:

Background

On December 20, 2001, the Commission issued Order No. PSC-01-2489-FOF-EI (the December 20 Order) following a hearing in Docket Nos. 000824-EI, 001148-EI, and 010577-EI to determine the prudence of the formation and participation in a proposed GridFlorida Regional Transmission Organization (RTO) filed with the Federal Energy Regulatory Commission (FERC) on December 15, 2000 by Florida Power, Florida Power & Light Company, and Tampa Electric Company (the Applicants). The December 20 Order required the Applicants to file a modified GridFlorida proposal that complied with the findings of that order. The Applicants filed the modified GridFlorida proposal on March 20, 2002 (the compliance filing).

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Proceedings were then conducted in this docket to determine whether the Applicants' compliance filing did, in fact, comply with the Commission's December 20 Order. At its August 20, 2002 Agenda Conference, the Commission considered a number of compliance issues identified in Staff's recommendation. In general, a Commission ruling that the subject matter of an issue either was or was not in compliance with the December 20 Order was to be considered final agency action, while a ruling that the subject matter of an issue was not only in noncompliance but also required the Applicants to file revised language not contained in the original GridFlorida filing was to be considered proposed agency action.

An exception to this distinction between final and proposed agency action concerned Issue 3Ba, regarding a change made in the compliance filing to the demarcation date between existing and new transmission service contracts (sometimes called the Attachment T cutoff date and referred to in this motion as the Contract Date). Staff recommended that the Commission deny this change through final agency action because Staff believed the change was not necessary to comply with the December 20 Order and no additional language was required by the denial. However, after a lengthy discussion regarding the effect of re-establishing the Contract Date as originally proposed, including the effect on another demarcation date between existing and new transmission facilities (the Facilities Date),¹ the Commission found that sufficient uncertainty existed on this issue to warrant changing the nature of its decision from final agency action to proposed agency

¹ Both the Contract Date and the Facilities Date were set in December 2000 in the original December 15, 2000 GridFlorida filing with FERC, and both dates were revised to January of the year GridFlorida became operational in the March 20, 2002 compliance filing. Although Staff recommended the Contract Date revert back to December 2000, it did not recommend a similar reversion of the Facilities Date.

action. This change was intended to provide the Commission an opportunity to hear the positions of the parties on the appropriate treatment of the Contract Date if a hearing on the issue was requested, thereby allowing the Commission to resolve the existing uncertainty and reach an informed decision.

Florida Power intends to request a hearing on this PAA decision. The Company's protest and supporting testimony will explain its position that, while Florida Power agrees with the decision requiring the Contract Date to remain as originally proposed, the Commission erred by not requiring that the Facilities Date also remain as originally proposed in order to maintain the important linkage between these two dates. Florida Power believes it is clear from the Agenda Conference discussion that the Commission intended to leave all aspects of its PAA decision open for consideration if a hearing is requested, including the issue of linkage between the Contract Date and the Facilities Date that is central to the Company's position.

However, Florida Power recognizes the possibility an argument could be asserted that the Order constitutes final agency approval of the revised Facilities Date. In the unlikely event such an argument were to be accepted, it would seriously compromise, if not completely preclude, Florida Power's opportunity to present testimony asserting its position that the linkage between the Facilities Date and the Contract Date must be maintained by re-establishing both dates as originally proposed.

Florida Power believes that an argument to this effect would be without merit and contrary to the Commission's clear intent in reaching its PAA decision on the Contract Date. Nonetheless, out of an abundance of caution and in the interest of

protecting the Company's testimony from a challenge to its admissibility based on such an argument, Florida Power has decided to seek reconsideration of the Order to the extent it is deemed to constitute final agency approval of the revised Facilities Date.

Given the limited purpose of this motion for reconsideration and the possibility that it will become moot if a challenge to the admissibility of the Company's testimony based on this argument is not made, Florida Power suggests that the motion be held in abeyance until the hearing. If such a challenge is not forthcoming at the time the Company's testimony is offered into evidence, the motion will be withdrawn.

Argument

Florida Power submits any conclusion that the Order constitutes approval of the revised Facilities Date by final agency action is based on mistake, misunderstanding, or oversight in the application of the criteria used by Staff and accepted by the Commission to identify those changes contained in the compliance filing that were not required by the December 20 Order.

In its written recommendation, Staff described the Applicants' contention that the original Contract Date and Facilities Date needed to be revised to bring them in closer proximity to GridFlorida's actual commencement of operations, since the original commencement date was significantly delayed. Staff then discussed the reasons it found this contention to be unpersuasive as a basis for finding that these revisions were necessary to comply with the December 20 Order. However, Staff concluded its analysis by recommending only that the revised Contract Date be found out of compliance with that order; it was inexplicably silent on the Facilities Date.

In response to questions from the Commission at the August 20 Agenda Conference, Staff explained why the Facilities Date was omitted from its recommendation. While neither date revision was required to comply with the December 20 Order, Staff stated that the intervenors had express a concern only about the change to the Contract Date. For example:

MS. BASS: Commissioner Baez, the date that was changed, the subsequent date, the other date that we're talking about for existing facilities, was included in the compliance filing, and it was filed, and there was no one who expressed a concern with that date being changed. And a lot of the change that we keyed off of or that we identified, we keyed from people who had concerns with the dates that had proposed them. Either we were concerned with the change that was made or the intervenors were concerned with the date, and there was no concern expressed with the change of that date, which was changed to January 1 of the year of the commercial operation of the RTO. That was only -- this came up subsequent to all of that. (Agenda transcript, pp. 86-87.) (Emphasis supplied.)

And:

MS. BASS: Commissioner Baez, there's another date that's included in this filing that talks about the date for existing facilities. That date was changed to be consistent with this January 1 of the year the transmission provider begins commercial operations.

COMMISSIONER BAEZ: And just so that I can understand, the January 1, et cetera, date, the January 1 after commercial implementation, that is currently part of the filing?

MS. BASS: That was a change that was made and included in the compliance filing.

COMMISSIONER BAEZ: That's part of the compliance filing.

MS. BASS: Yes.

COMMISSIONER BAEZ: Okay. So that change -- and staff is seeing that change as consistent and necessary?

MS. BASS: Yes. That change was not identified by any intervenors as being a problem date, that there was a concern about the change to that date. There was some concern expressed concerning the change in the date of the existing transmission agreements, the ETAs --

COMMISSIONER BAEZ: The grandfathering --

MS. BASS: Which is the Attachment T cutoff date.

COMMISSIONER BAEZ: The grandfathering issue.

MS. BASS: Yes. (Agenda transcript, pp 93-94.) (Emphasis supplied.)

The mistake underlying Staff's premise that noncompliance of the revised Facilities Date had not been raised by any party is that, in fact, it had been raised. On pages 31 through 34 of its Post-Workshop Comments filed on June 21, 2002, the Florida Municipal Power Agency (FMPA) objected to the changes in both the contract and the facilities demarcation dates included in the March 20, 2002 compliance filing. With respect to the Facilities Date, FMPA stated:

Thus, until the Applicants made their March [20], 2002 filing in this proceeding, the new facilities demarcation date had always significantly preceded the anticipated GridFlorida operational date. That was and remains appropriate, because facilities are now being planned and completed with the expectation that GridFlorida will use them for its statewide service, and because a retrospective date prevents gaming harmful to Florida rate-payers and potentially harmful to reliability, in which needed upgrades are deferred so that their costs will be spread throughout GridFlorida. (FMPA Post-Workshop Comments, p. 33.)

FMPA then concluded:

Thus, the Commission should make clear that it is not approving Applicants' proposed shift of the demarcation dates. (FMPA Post-Workshop Comments, p. 34.)

Had it been aware of FMPA's objection, there can be no question that Staff would have included the revised Facilities Date in its noncompliance recommendation, given its stated rationale for including the revised Contract Date.

By the same token, had Staff done so, there is little doubt that the Commission would have approved Staff's recommendation for the same reason it approved Staff's recommendation on the revised Contract Date. Accordingly, if the Order is deemed to constitute approval of the revised Facilities Date, such approval would be based on a mistake of material fact and would not be sustainable on reconsideration.

Florida Power further submits any conclusion that the Order constitutes approval of the revised Facilities Date by final agency action is based on mistake, misunderstanding, or oversight of the Commission's clear intent in its decision to rule on the Contract Date through proposed agency action that the parties would have the opportunity to fully address the issue at hearing, including any linkage with the Facilities Date.

During the Commission's deliberations at the August 20, 2002 Agenda Conference that lead to the Order, extensive discussion took place on the Contract Date issue. (See, Agenda transcript, pp. 77-106.) In particular, considerable discussion and uncertainty arose over the effect that moving the Contract Date back to the original proposal might have on the Facilities Date, including the following exchange.

COMMISSIONER BAEZ: I wanted to get into -- I wanted to get straight in my head how many dates are we dealing with. And there seems to be an issue as to, you know, which of those dates need to be seamless in a transition. I mean, you've got cutoff dates for new facilities, and then you've got the contract dates. I mean, are we dealing with --

MS. BUTLER: * * * It has come to my attention that there's another date in the entire filing that deals with the existing transmission facilities. The staff

has discussed whether or not there's a connection between the existing transmission facilities date and the existing transmission agreement date and came to the conclusion that there was not a legitimate connection in terms of those two dates. However, that's a complicated matter as well, and if you want to further discuss that, there may be some people who might disagree with that conclusion, not amongst staff, but in the general population. (Agenda transcript, pp. 85-86.) (Emphasis supplied.)

And:

MS. BUTLER: * * * So we were not convinced that we could see that changing the dates of the existing transmission agreements affected the costs of the existing transmission facilities. If it was clear that they did affect the costs, then you would want to change the date for the existing transmission facilities, because you would want to increase the recovery, or you would want to vary the recovery from the way it was being collected to make sure that the additional costs were covered. But we weren't convinced that there was – that a case had been made that the existing – that the costs in fact were increased or changed. (Agenda transcript, pp. 97-98.) (Emphasis supplied.)

In the end, it appears that uncertainty over the possible connection between the two dates played a significant role in the Commission's decision to change its ruling on the Contract Date issue from final agency action to proposed agency action in order. This was intended to clarify the prevailing uncertainty that caused the Commission's reluctance to take final action on the issue by allowing parties the opportunity to present and explain their positions to the Commission at the hearing. Commissioner Baez expressed this desire for clarification as follows:

COMMISSIONER BAEZ: Well, it started from the point that I'm really trying -- I'm trying to get a handle on how many dates we're dealing with as part of the compliance filing, and which of those are not being accepted by staff, and to what extent we need to discuss the logic behind them not being accepted or not. And I know that off-line I may have -- it's just a thought. If anyone else seems to share some lack of clarity as to what the situation is and whether they're being moved up or moved back or not at all accordingly, and whether we shouldn't find a way to flesh out that issue, not just amongst ourselves, but amongst the parties, and have the positions laid out a little clearer. And that's just from someone seeking clarity to all of this so that I can understand what it is we're voting on and whether I agree with it or not. (Agenda transcript, pp. 92-93.) (Emphasis supplied.)

This sentiment was ultimately adopted by the full Commission when it voted unanimously to modify Staff's recommendation and issue its decision as proposed agency action.

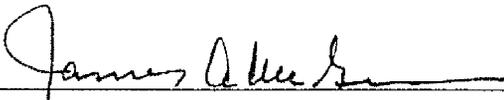
To the extent the Order is deemed to have approved the Facilities Date by final agency action, such approval clearly overlooked the Commission's intent to allow its unresolved discussion with Staff regarding the Contract Date, including any connection with the Facilities Date, to be addressed in a complete and meaningful manner at the hearing. For its part, Florida Power believes it can demonstrate a legitimate connection between the Contract Date and the Facilities Date, which, according to Staff, would mean that the Facilities Date should also be moved back as originally proposed along with the Contract Date. More importantly, Florida Power believes the Commission intended the Company to have at least the

opportunity to present such a demonstration. The Commission can find that Florida Power is correct by granting reconsideration if the circumstances on which this motion is predicated should arise.

WHEREFORE, Florida Power Corporation respectfully requests (a) that the Commission defer consideration of this motion for reconsideration until the hearing on the PAA decision regarding the Contract Date, and (b) if the admissibility of the Company's testimony or any portion thereof is challenged on the basis that Order No. PSC-02-1199-PAA-EI constitutes approval of the revised Facilities Date by final agency action, that the Commission grant this motion for reconsideration to the extent the order is deemed to effect such a result.

Respectfully submitted,

FLORIDA POWER CORPORATION

By 

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CERTIFICATE OF SERVICE
DOCKET NO. 020233-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail to the following on this 18 day of September, 2002.

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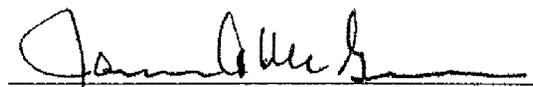
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