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Committee on Regulated Industries

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Chairman

REVIEW OF FLORIDA'S WHOLESALE ELECTRICITY MARKET

SUMMARY

Florida should proceed slowly with any changes to its electric industry. Making the transition from a fully regulated market to a competitive market is complicated, uncertain, and risky. It is too early to know the effect of electric competition in other states. Additionally, the Federal Energy Regulatory Commission (FERC) is developing new market power tests and mitigation mechanisms, and is modifying its policy on regional transmission organizations. At this point, the Legislature should only authorize construction of merchant plants in Florida and clarify the issues relating to plant transfer and review authority.

The Study Commission filed an interim report that included a proposal that the Investor Owned Utilities (IOUs) transfer their existing plants and plants under construction to their unregulated affiliates at book value, with no monetary exchange. One of the consequences of these transfers would be a shifting of regulatory jurisdiction from the PSC, which regulates retail utilities, including all integrated functions, to the FERC, which regulates the wholesale market. A number of members of the Senate Regulated Industries Committee had concerns about potential harm to ratepayers as a result of the transfer at book value and the loss of PSC regulation.

Subsequently, the President of the Florida Senate directed committee staff to review and evaluate the current wholesale electricity market and formulate recommendations for the Legislature as to what statutory changes are necessary to best ensure an efficient, affordable, and reliable supply of electricity with consistent and fair treatment of those proposing to build power plants.

BACKGROUND

In recent years, Congress and FERC have been encouraging competition in the wholesale electricity market. Several states have taken steps to deregulate their wholesale and retail electricity markets, and Independent Power Producers (IPPs) have increased construction of power plants across the country.

In Florida, several IPPs announced their intention to build and operate wholesale power plants. However, the Florida Supreme Court held that the PSC could determine a need for a proposed plant only if the proposed output was fully committed to use by Florida retail customers. As such, a wholesale generator could not be a proper applicant.

Subsequently, during the 2000 Regular Session of the Florida Legislature, a bill was filed to create a study commission on electric industry issues. The bill did not pass, but Governor Bush used it as a model to create the Energy 2020 Study Commission (the Study Commission) by executive order.

METHODOLOGY

Staff continued to monitor the Governor's Energy 2020 Study Commission and reviewed and evaluated its final report; met with representatives of the Florida Public Service Commission, the investor owned utilities, those companies gaining or seeking entrance into Florida's wholesale market, and other interested parties; reviewed developments in other jurisdictions; and reviewed current Florida statutes, Florida case law, and relevant federal law and orders.

FINDINGS

I. Current Situation

Florida's existing regulated, integrated electricity system is working well. Although the system does

not provide guarantees as to specific results, it provides a very high level of assurance that both ratepayers and utilities will have certain benefits. All customers will have a reliable supply of electricity, even during peak demand periods or unplanned plant outages, and the rates will be relatively low and without volatility. Utilities will have a captive customer base within a service territory; will recover all costs, including any increases in fuel costs; and will almost always earn a profit within a specified range.

The Study Commission found that:

- Florida has an adequate supply of reasonably priced electricity (page 21);
- There are numerous participants in Florida's energy market, including 56 electric utilities, consisting of five IOUs, 17 cooperatively owned utilities, and 34 municipally owned utilities, and approximately 60 non-utility generators (cogenerators and peakers) (page 21);
- Electric rates have been stable in Florida for more than a decade and, when adjusted for inflation, have declined by 38 percent since 1984 (page 25);
- Florida's average electric rate of 7.1 cents per kilowatt hour (KWH) is slightly above the national average of 6.7 cents per KWH (page 25);
- Florida's electric utility industry has provided reliable service at reasonable prices, despite the fact that Florida produces no generating fuels and all fuels must be transported long distances to the Florida plants and the fact that Florida had rapid growth over the last ten years (page 25);
- Based on current utility plans and projections, for the summer of 2002 Florida will have a total of 48,611 megawatts (MW) of generating assets available in Florida to serve a total firm peak demand of 39,469 MW, giving Florida a 23 percent reserve margin (page 33);¹ and

- While peak demand will increase by over 9,700 MW over the next ten years, peninsular Florida electric utilities plan to build or acquire approximately 15,200 MW of new generating capacity during that time (page 33).

II. Need for change

The IPPs argue that the power plants necessary to satisfy the increasing demand for electricity should be built by unregulated generators. They argue that if regulated utilities build the plants in rate base, the ratepayers bear all the cost and risk, while if competitive generation companies build the plants, the ratepayers do not bear risks associated with the capital costs. The IPPs also argue that they can build less expensively and charge lower wholesale prices.

The IOUs argue that to obtain the full benefits of competition, they must be allowed to divest their plants so that all generation is in the competitive wholesale market. They argue that this maximizes the number of competitive sellers in the market and thereby maximizes the effect of the market forces of supply and demand.

The Study Commission states its view on page 54 of the report: "Implemented correctly, competition in the wholesale market should spark innovation and lead to greater efficiencies and lower prices than a regulated market would produce."

III. Analysis of the Study Commission's recommendations

A. Summary of the recommendation

The Study Commission's goal is to transition to a competitive market by allowing retail utilities to acquire power from a variety of suppliers through contracts with varying lengths and through the spot market. As a result, retail utilities and their ratepayers would no longer be making 20-30 year or more commitments to specific power plants and would no

¹ Reserve margin is extra generation capacity that is not needed under normal conditions but is necessary in instances of unforeseen power plant outages, unusual weather, maintenance of power plants, and unexpected customer growth. Non-firm demand is 2,795 MW of this reserve margin. Without it, the reserve margin is 6,347 MW or 15%. Non-firm demand refers to an agreement between utilities and

certain customers that during peak demand the utility can interrupt electric service. In return, the customer receives a credit or a discounted monthly rate. As the system allows utilities to reduce demand instead of increasing supply, they can build fewer power plants. The Study Commission report notes at page 35 that, through this process, the equivalent of ten modern, gas-fired power plants have been avoided.

longer bear risk associated with long-term capital costs. The proposed method for accomplishing this transition is to allow IPPs to participate in Florida's wholesale market and allow IOUs to divest existing power plants.

The recommended method for allowing IPPs into Florida is abolishing the determination-of-need process.² The Study Commission recommends authorizing the IOUs to divest of their existing power plants in one of two ways. First, they could transfer a plant to an "affiliate" at book value, with no actual cash sale.³ Second, they could sell a plant to a third party in a cash sale. Divestment would be optional. Any retained power plants would remain in rate base and remain subject to PSC jurisdiction in traditional cost-based regulation.

The recommendation deals with "stranded investments" associated with divestments through the voluntary nature of divestment, through sharing of profits from plant sales under specified conditions, and through transition contracts.

The theory of "stranded costs" is that when a utility has incurred costs under regulation that it cannot recover under restructuring, a regulatory taking for which the utility should be compensated has occurred. The Study Commission rationalized that by making divestment optional, there is no mandated transfer to a regulatory system in which stranded costs cannot be recovered and therefore there can be no taking. As such, any stranded costs are borne by the utility and its shareholders, not the ratepayers.

There are two types of "stranded benefits," first the excess of market price over book value and second the loss to the ratepayers of the benefits of low cost generation. The recommendation deals with the first type of stranded benefits through sharing of profits from sales in specified circumstances. Sales by an IOU or an affiliate to a third party are to be actual cash sales at market value. When an IOU sells to a third party, or when an affiliate sells a plant that is still subject to a transition contract to a third party, any profit (stranded benefits) are to be shared among the IOU's shareholders and its ratepayers, with a

² To build a power plant, a generation company would still have to establish that the proposed power plant would meet environmental and local land use and zoning requirements.

³ An IOU affiliate is essentially an IPP owned by the same holding company as the IOU.

recommendation that the ratepayers receive 50 percent of any profits. When an affiliate sells a plant that is no longer subject to a transition contract, either because it has expired or been cancelled, there are no stranded benefits issues. Additionally, when an IOU transfers a plant to an affiliate, this is done at book value, with no cash exchange. As the transfer is at book value, no stranded investment issues arise.

The recommendation deals with the second type of stranded benefits through transition contracts of up to six years. The transition contracts are not subject to PSC review. The transition contract for any given plant begins with the transfer or sale of that plant and runs for six years or until cancelled by the IOU. The transition contracts must require the acquiring company to make the plant's generation available to the divesting utility at cost-based rates. The IOU could cancel the contract during the six-year transition period if it could acquire power at a lower price than that specified in the contract, ensuring that the utility and its ratepayers have the lowest priced power. However, cancellation of the transition contract also terminates the requirement to share any profits upon a sale of the plant to a third party.

When a retail load-serving utility (LSU) acquires new energy, it must do so at the lowest cost. Energy would be acquired through competitive bidding (requests for proposals for new capacity needs), negotiated bilateral contracts, and the short-term or spot market. Bidding would be optional except in situations where the LSU purchases electricity from its affiliate. Acquisitions are subject to a PSC prudence review in which, before allowing the utility to pass-on the cost to retail customers, the utility would have to show that the acquisition was prudent and at the lowest cost. In addition to prudence reviews of acquisitions, the PSC could do retail rate reviews and reviews of other costs recovered through cost recovery clauses, such as fuel costs and environmental costs.

Under the recommendation, the PSC also would monitor competition. The Study Commission determined that the state has a vital interest in the functioning of the wholesale market as wholesale prices are a part of retail prices, and excessive wholesale prices can have an adverse impact on all retail customers and on the ability to attract new businesses for economic development. Because of this interest, the Study Commission recommends that the PSC monitor the market and market power. It would have access to books and records and could

investigate any potential market abuse. If any market abuse could not be resolved through informal means, such as mediation, the PSC could petition FERC for administrative remedies.

The PSC would continue to have regulatory authority over reliability. The Study Commission notes that in competitive markets, the market forces of supply and demand determine the quantity of a particular good or service produced. This generally leads to a cycle between periods of under-supply with high prices and over-supply with low prices. This could be exacerbated by the fact that electricity cannot be stored. Accordingly, the PSC is authorized to obtain necessary reliability information from load-serving utilities, the regional transmission organization, and the generators. If the PSC determines that there was a potential problem with future reliability, it could order an LSU to acquire additional energy. As a last resort, the PSC could order an LSU to build a power plant.

The PSC would also have access to books and records of affiliates and the ability to prescribe codes of conduct regarding affiliate transactions to prevent cross-subsidization to protect consumers and to prevent unfair competition.

B. Analysis of the recommendation

The Study Commission's goal is to provide retail utilities with as many sources of electricity as possible, so they can choose from among various alternatives to hedge and minimize costs. Its recommendation would have the potential to get the maximum number of power plants into the competitive market in the shortest time in that it both opens the market to IPPs and allows IOUs to divest all their plants. In making these sweeping changes, however, it creates unnecessary risk.

While a fully functional competitive market typically brings more supply, lower prices, and more innovation, there are some important distinctions here that merit consideration. First, electricity is not a typical product. It is a necessity, and one that cannot be stored, so demand is relatively inelastic. Second, this is not a new market in which competition is developing around a new product or service; it is a switch from a well-developed, integrated, relatively closed, regulated market to an unbundled, open, competitive market. Care must be taken in making such changes. Costs and benefits must be projected and weighed.

However, there was no such process here. When Senator Lee, a member of the Study Commission, asked if there were any projections on potential gains to customers in the proposed competitive market as compared with the customer benefits in the current regulated system, representatives of the IOUs answered that the question could not be answered, that there has to be faith that true competition will deliver the best price.⁴

On page 54 of the Study Commission report, one general study on competition in electricity is briefly discussed as support for the benefits of competition.⁵ However, it appears that Florida, under regulation, has lowered its rates more than the national average as reported in this study. The study was done for the Electric Power Supply Association (the EPSA) by one of its supporting members, Boston Pacific Company, Inc.⁶ The study found that inflation-adjusted electricity prices decreased over the period of 1985-1999, with the average reduction in price being 30 percent for residential customers and 36 percent for industrial and commercial customers.⁷ But the Study Commission itself found that Florida's inflation-adjusted rates decreased by 38 percent since 1984.⁸ Finally, in an article that discussed the EPSA study, a spokesperson for the EPSA indicated that it is still too soon to analyze the effects of competition in the electricity industry because it has not been given full effect yet in any state.⁹

Also, another study, conducted by the Consumer Federation of America, determined that market forces do not work well in electricity markets as demand is fairly constant and is not significantly affected by price increases, which makes market power problems inevitable.¹⁰ The report states that this conclusion is

⁴ August 29, 2001, Meeting Minutes, Florida Energy 2020 Study Commission, Task Force on Stranded Investment.

⁵ This study was never mentioned or discussed at any Study Commission meeting and so could not have been a factor in the Study Commission's recommendations.

⁶ EPSA membership details are available at <http://www.epsa.org/about/index.cfm?section=about> by clicking on "membership" and then "members".

⁷ *Assessing the "Good Old Days" of Cost-Plus Regulation*, page 10, Boston Pacific Company, Inc.

⁸ *Florida ... Energywise! A Strategy for Florida's Energy Future*, Florida Energy 2020 Study Commission, page 22.

⁹ *Bills Higher in Open Power Markets*, Tampa Tribune, September 1, 2001.

¹⁰ Cooper, Mark, *Electricity Deregulation and Consumers: Lessons from a Hot Spring and a Cool*

evidenced in a number of markets that have restructured, not just California. Pennsylvania, New York, Massachusetts, and Montana have all seen price increases.¹¹ Even the United Kingdom, “the longest running major electricity restructuring in the world,” changed its pricing mechanism last year after failing for a decade to eliminate market power abuse.¹²

Thus reports on competition in other states and elsewhere are in conflict.¹³

Turning to an analysis of the potential benefits of restructuring in Florida, it appears that competition would be limited. As is discussed in the Study Commission report, and as is illustrated in the supply stack diagram on page 29 of the report, fuel prices and economic dispatch play an important part in what energy is actually purchased. Clearly, oil and older gas-fired plants are too expensive and inefficient to compete with the new technology combined cycle gas-fired plants that the IOUs are building and that the IPPs would like to build. On the other extreme, the fuel for nuclear plants is so cheap that nothing can compete with it. Coal is cheap enough that gas-fired generation is unlikely to be competitive with it for the foreseeable future. It is likely that competition will be among the newer combined cycle gas-fired plants.

The likely results are: oil and older gas-fired plants will be largely displaced; with an abundant power supply, the market price will be set at something close to the cost of production in new technology gas plants; and the price for nuclear and coal generation will increase to just below that market price.

The situation could be drastically altered if there isn't an abundant supply. The Study Commission report acknowledges that an abundant supply and low prices generally are not concomitant; typically sellers produce more when prices are higher and cut back on production as prices decrease. Nonetheless, the Study Commission's recommendations seem to be based on

Summer, page 16 (Consumer Federation of America, August 31, 2001).

¹¹ *Id.* at 1-4.

¹² *Id.* at 3.

¹³ The Consumer Federation report also recommended that states that have not restructured not do so, and said that if a state was to move forward, competition in the wholesale market is a reasonable starting point. *Id.* at 27. Additionally, states should retain control over generation and transmission assets as long as possible.

the conflicting assumptions that competition will result in lower prices and that the PSC will be able to require LSUs to acquire an abundant supply of power.

An additional complication to supply and price considerations is the reserve margin requirement. Currently, part of the price of electricity is payment to the utilities to build more generation capacity than they generally need, and therefore having that capacity sit idle at times. Without this “premium” for a safety reserve margin, there would be power supply problems when there is unusual weather or an unforeseen power plant outage, possibly resulting in blackouts. This extra capacity for reserve margin has to be paid for through higher prices at some point, either through higher average prices or price spikes during times of peak demand or shortfalls due to circumstances such as power plant outages.

Adding to this risk is the shift in regulatory authority from the PSC to the FERC. The PSC is here in Florida, is intimately familiar with industry developments, and can react quickly. In contrast, there have been a number of complaints about the lack of FERC enforcement, for example in California and the West. FERC now has a new Chairman and enforcement appears to have improved, but FERC's ultimate role is uncertain at this time.

Another concern with the Study Commission recommendation is how it treats stranded benefits. The recommendation deals with stranded benefits that are due to the loss to the ratepayers of the benefits of low cost generation through six-year, cost-based transition contracts. Whether the 6-year contract term is adequate is subject to question, as the report discusses on page 71. Many of the plants may continue to produce low-cost generation well past the end of the six-year period, and the better policy may be to allow ratepayers to continue to receive this benefit for a longer period. Based on information extracted from the Ten Year Site Plan, none of the IOUs have indicated that they will be retiring any plants of significant size over the next ten years. The biggest plant currently scheduled to be retired is an 80 MW plant to be retired in December 2003. It was placed in service in October 1956.

The recommendation deals with stranded benefits that are due to the excess of market value over book value by requiring that profits from sales to third parties be split among the IOUs' shareholders and their ratepayers. But there is no recognition of any

potential for stranded benefits in cash-less transfers to affiliates, which could be the method of divestment for most plants. This allows the affiliates to realize any and all benefits instead of ratepayers.¹⁴

IV. Alternatives to the Study Commission Report

A. Do nothing

Although it may seem that doing nothing would be risk-free and leave Florida with the historical status quo, this is not so. There have been several changes in industry practices even without any changes in current law.

First, questions have been raised about the Florida Supreme Court's decision in the Duke – New Smyrna case, *Tampa Electric Co. v. Garcia*, 767 So.2d 428 (Fla. 2000). In this case, Duke Energy New Smyrna Beach Power Company Limited (Duke) was a co-applicant with the Utilities Commission of the City of New Smyrna Beach (New Smyrna) for a determination of need and a permit to build a plant. The plant would have had a net capacity of 514 MW, with 30 MW to be sold to New Smyrna and the remaining 484 MW available to be sold in the wholesale market, primarily, but not exclusively, in Florida. The application was contested by Tampa Electric Company (TECO), Florida Power Corporation (FPC), and Florida Power and Light Company (FPL). The PSC found a need for the plant, and that determination of need was appealed to the Florida Supreme Court. The Court found that the determination of need statute “was not intended to authorize the determination of need for a proposed power plant output that is not fully committed to use by Florida customers who purchase electrical power at retail rates.” *Tampa Electric*, at 435. The Court stated “the Legislature must enact express statutory criteria if it intends such authority for the PSC.” *Id.*

Since this decision, questions have been raised as to:

¹⁴ Since buying an existing plant is the only way an IPP can get a merchant steam generation plant, they are sometimes willing to pay a premium price, a part of which is the price of entry into the Florida market. This should disappear if IPPs are allowed to build modern technology merchant plants in Florida.

What will not disappear is additional value of a plant site attributable to existing capability for expansion, existing pollution permits and local government approval, and existing transmission connections. Also, some plants may have additional value from being located in areas with transmission constraints.

how much capacity must be committed; for how long it must be committed; and what happens when the contracts expire? To illustrate, Calpine Construction Finance Company, Inc. (Calpine), and Seminole Electric Cooperative, Inc. (Seminole), filed a joint petition for a determination of need for a plant to be built and operated by Calpine.¹⁵ The plant would have a net capacity of 529 MW, with 350 MW committed to Seminole under a 5-year contract, with extensions available in 5-year increments through May 22, 2020. The petition was not contested. The PSC found that Seminole was a proper applicant, that Calpine a proper co-applicant, and that a firm commitment for 350 MW out of 529 MW was sufficient to meet the *Tampa Electric* requirement of fully committed for use by Florida retail customers and therefore granted the determination of need.

Second, the decision apparently caused IPPs to focus on building plants under the Siting Act exclusions (with no steam or with steam generation of less than 75 MW) that do not have to go through the Siting Act process. Even an IOU affiliate, DeSoto County Generating Co., a subsidiary of Progress Energy and a sister company to FPC, is building a peaker plant outside the Siting Act.¹⁶ The power plants built outside the Siting Act use single-cycle combustion turbines, which are not as efficient as the combined cycle plants that can be built within the Act, so optimal results are not produced for the citizens of this state.¹⁷

Third, another IOU began building a plant in rate base and later decided to transfer it to an unregulated affiliate.¹⁸ Gulf Power began building its Smith Unit 3 plant then later filed a petition with the PSC in which it proposed to transfer the plant to Southern Power Company, an affiliated subsidiary of Southern

¹⁵ *In re: Petition for determination of need for the Osprey Energy Center in Polk County by Seminole Electric Cooperative and Calpine Construction Finance Company, L.P.*, PSC Docket No. 001748-EC, Order No. PSC-01-0421-FOF-EC, Issued February 21, 2001.

¹⁶ *Utility Enters Merchant Market*, St. Petersburg Times, July 10, 2001.

¹⁷ However, the situation is better than it could be as either type of gas-fired generation is much cleaner and more efficient than the oil-fired and older gas-fired generation that it displaces.

¹⁸ *In re: Gulf Power Company's petition for approval of purchased power arrangement regarding Smith Unit 3 for cost recovery through recovery clauses dealing with purchased capacity and purchased energy*, PSC Docket 010827-EC, Petition filed June 8, 2001.

Company, and to buy back the electricity generated at the plant. Gulf did not seek approval of the transfer. It sought approval of passing on to retail customers the costs of buying back the power under the purchased power cost recovery clause. During the discovery process, the petition was withdrawn without explanation. This situation, however, raised uncertainty about the legal authority of the IOUs to transfer existing generating and transmission assets and the authority of the PSC to review and approve such proposed transfers.

These developments make clear that even if the law is not changed to restructure the wholesale market, Florida will not have the historic status quo. They also make it clear that there is no structured, coherent policy to guide the industry in its future actions. Doing nothing is not an option.

B. "Merchants-only"

The initial incentive for a study commission was to address *Tampa Electric* and allow IPPs to build merchant plants under the Siting Act. As debate expanded to include proposals allowing the IOUs to divest existing plants, the original approach became known as "merchants-only."

The Study Commission heard testimony that Florida is the only state that does not allow IPPs to build merchant plants. This is particularly incongruous as IPPs both can buy existing plants and operate them as merchants and can build merchant peaker plants under the exclusions to the Siting Act. When Pat Wood, now Chairman of FERC, then Chairman of the Texas PSC, testified at a Study Commission meeting, he recommended undoing *Tampa Electric* and getting supply into Florida as soon as possible.

Allowing IPPs to obtain a determination of need under the Siting Act would be beneficial for Florida. The method to accomplish this would be either to abolish the determination-of-need process or to amend the Siting Act to allow IPPs to obtain a determination of need, with the latter being the recommended method.

Allowing construction of merchant plants would shift long-term capital cost risks for these plants from ratepayers to IPPs' shareholders. It would increase both the amount of generation and the number of generators, resulting in more reliability. There should be lower wholesale prices, resulting in lower retail prices. There would be environmental benefits as oil-fired plants, which produce more pollutants, are

displaced.

Allowing IPPs to build merchant plants also would be a good way to begin the transition to competition. It would capture some benefits of competition, would begin the process towards broader competition, and would greatly reduce the risks associated with the potential for market abuse and the shift from PSC to FERC regulation.

The argument against the merchants-only approach is that it would not let the affiliates of those IOUs that have market power sell at market rates under FERC rules.

V. CONCLUSIONS

Florida should proceed slowly with any changes to its electric industry. While a fully functional competitive market typically brings more supply, lower prices, and more innovation, electricity is not a typical product. As the Study Commission report points out: "Electricity is no ordinary commodity. It is the single most important product that drives Florida's economy, maintains our standard of living, and keeps us comfortable."¹⁹ Additionally, transitioning from a well-developed, integrated, relatively closed, regulated market to an unbundled, open, competitive market is an uncertain and difficult process.

Many factors mandate a slower, more deliberate approach. The ultimate effect of electric competition in other states is not yet known. Moreover, there may not be sufficient mechanisms in place to assist in the transition. Even FERC does not know what the ultimate market power test or mitigation measures will be and how they might affect Florida and its electric industry. The formation of a regional transmission organization is also uncertain; Florida may have GridFlorida or it may be forced to join a geographically broader RTO. Additionally, both the nation and Florida are in the middle of a recession. Finally, no one knows what affect the collapse of Enron will have on the developing competitive markets, on electricity trading and transmission, and on the capital supply for the industry.

Accordingly, the first step should be to allow IPPs to build merchant plants in Florida under the Siting Act using a statewide determination of need. Allowing construction of merchant plants would shift long-term

¹⁹ *Florida ... Energywise!*, page 13.

capital cost risks for these plants from ratepayers to IPPs' shareholders. It would increase both the amount of generation and the number of generators, resulting in more reliability. There should be lower wholesale prices, resulting in lower retail prices. There would be environmental benefits as oil-fired plants, which produce more pollutants, are displaced. It will take three years to build these plants built and to begin a competitive market. In the meantime, many of the uncertainties listed above should be resolved. At that point, the Legislature can make more informed decisions on IOU divestment of plants.

Additionally, the Legislature should expressly require that the IOUs obtain PSC approval prior to any proposed transfers of power plants or power lines, with the PSC to ensure that the transfer would not be detrimental to ratepayers as to factors such as rates, stranded benefits, and reliability. This not only clarifies the authority of the PSC, but also clarifies that IOUs can divest plants, when appropriate and in an orderly, deliberate fashion. This will assist with divestment of market power.

Although this may appear to be detrimental to the IOUs, it is not necessarily so. Any divestment proposal should contain a requirement for cost-based buy-back transition contracts, such as that proposed in the Study Commission recommendations. Under the Study Commission proposal, for example, divested plants would not be able to enter the competitive market for a minimum of six years anyway. As such, there can be no detrimental impact on the ability of the IOUs or their affiliates to compete for at least that time period. While the ultimate outcome is uncertain, this is a much more deliberate, informed process.

RECOMMENDATIONS

The Florida Legislature should amend the statutes to allow merchant plants to obtain a determination of need under the Siting Act, with the PSC to use a statewide need basis for the determination.

To ensure that the same rules apply to all similarly situated parties and to preserve an orderly process, the Legislature should expressly require that the IOUs obtain PSC approval prior to any proposed transfers of power plants or power lines, with the PSC to ensure that the transfer would not be detrimental to ratepayers as to factors such as rates, stranded benefits, and reliability.