

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
_____)	

**MOTION OF DEBTORS TO REJECT THE MEMBER AGREEMENT WITH THE
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors-in-possession, file this Motion (the “Motion”) pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”) for authority to reject the Member Agreement (the “Contract”) between the Florida Reliability Coordination Council, Inc. (“FRCC”) and Mirant Americas Development, Inc. (“MADI”), which is described below in greater detail.¹ The terms of the Contract are provided by the “Bylaws of the Florida

¹ The Debtors are unable to locate a copy of the Contract. However, the material terms of the Contract are described herein and in the Bylaws, as defined below, which are attached hereto as Exhibit B.

Reliability Coordinating Council” (the “Bylaws”) which are attached hereto as Exhibit B.² In support thereof the Debtors represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), Mirant Corporation and 82 of its direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary chapter 11 petitions and manage. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

5. The Examiner. On April 7, 2004, this Court authorized the UST to appoint an examiner in these cases to analyze certain potential causes of action and act as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The UST appointed William K. Snyder as the examiner in these cases.

RELIEF REQUESTED

6. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C.

² Not all parties were served with the Exhibits. Any party may request a copy of the Exhibits by making a written request therefor to the Debtors’ counsel.

§ 365(a) authority to reject the Contract listed below, effective ten (10) business days from the date of service of this Motion.

BASIS FOR RELIEF

7. On August 14, 2003, the Court entered an amended order (the “Order”) approving procedures (the “Rejection Procedures”) for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

8. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors’ ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

9. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Contract will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the “Effective Date”):

(a) **Title of the Contract:** Member Agreement between FRCC and MADI.

Effective Date of Rejection:

July 8, 2004, subject to paragraph 9 hereof

Parties to the Contract:

Florida Reliability Coordinating Council, Inc.
Mirant Americas Development, Inc.

Contact Information for Non-Debtors:

Florida Reliability Coordinating Council
1408 N. Westshore Boulevard, Suite 1002
Tampa, Florida 33607-4512
Attn: Ken Wiley, CEO

10. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Contract, then the Contract shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Contract.

11. Pursuant to the Order, claims arising out of the rejection of the Contract must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Contract, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract (the "Rejection Claims Deadline").

12. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Contract who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions

from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

General Description Relating to the Contract.

13. The purpose of the FRCC is to ensure and enhance the reliability and adequacy of bulk electricity supply in Florida, now and into the future. It is a voluntary association comprised of companies including investor owned utilities, cooperative systems, municipals, independent power producers, federal systems and power marketers. FRCC is dedicated to maintain reliability of energy supply within the geographic area of Florida east of the Apalachicola River (the "FRCC Region").

14. The Debtors entered into the Contract because, as a member of FRCC, the Debtors have direct access to the FRCC operating standards and compliance program information. As such, the Debtors would be involved in studying and ensuring the reliability of the electrical power supply following deregulation of the wholesale electricity markets. The Debtors would also be in a position to analyze new and evolving market practices on electric system reliability.

15. Pursuant to the Contract, the Debtors were required to pay annual dues established by a formula in the Bylaws. The Debtors' dues for 2004 were assessed at \$38,754.00, of which the Debtors have paid \$9,688.50.

The Contract May Be Rejected.

16. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Contract is clearly executory as it requires: (a) FRCC to provide certain member privileges to MADI, and (b) MADI to pay for

those privileges and services in the form of annual dues. Section 365 allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guaranty Co. v. Old Republic National Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)).

Rejection Of The Contract is Within the Debtors’ Business Judgment.

17. Rejection of a contract requires court approval. A debtor’s decision to assume or reject will be approved provided that it meets the “business judgment” test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) (“[A] bankruptcy court applies the business judgment rule to evaluate a trustee’s rejection decision . . .”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor’s request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The “business judgment” test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

18. “The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.” *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)). The Debtors’ have determined, after due inquiry, that the Contract is burdensome to their estates and should be rejected.

19. After due inquiry, the Debtors have determined that the Contract is burdensome to their estates and should be rejected. The Debtors entered into the Contract in order to obtain direct access to the FRCC operating standards and to be involved in decisions concerning the electric power supply in the FRCC Region. The privileges conferred by membership in FRCC are not commensurate with the cost of membership. The Debtors have determined that it is in their best interest to reject the Contract is uneconomical and an impediment to their ongoing business operations and should be rejected.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
June 23, 2004

Haynes and Boone, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

-and-

By /s/ Michelle C. Campbell

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 23rd day of June 2004.

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue
Suite 1600
Austin, TX 78701

Deborah D. Williamson
Thomas Rice
Cox & Smith Incorporated
112 East Pecan Street
Suite 1800
San Antonio, TX 78205-1505

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place I, 185 Asylum Street
Hartford, CT 06103-3401

Bruce R. Zirinsky
Gregory Petrick
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

Mark Thompson
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

Edward S. Weisfelner
Leslie H. Scharf
Brown Rudnick Berlack Israels LLP
120 West 45th Street
New York, NY 10036

Scott C. Shelley
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022

Paul N. Silverstein
Andrews & Kurth, L.L.P.
805 Third Avenue
New York, NY 10022

FRCC
Florida Reliability Coordinating Council Inc
1408 N. Westshore Boulevard
Suite 1002
Tampa, FL 33607-4512
Attn: Ken Wiley

Jason S. Brookner
Andrews & Kurth, L.L.P.
1717 Main Street
Suite 3700
Dallas, TX 75201

/s/ Michelle C. Campbell

EXHIBIT A

U.S. BANKRUPTCY COURT,
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ENTERED
TAWANA J. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
)	Jointly Administered
Debtors.)	
_____)	

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER
PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE
AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contacts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

ORDERED that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

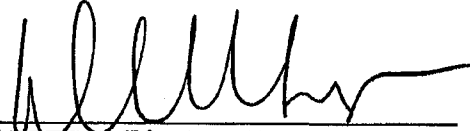
ORDERED that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

ORDERED that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unitil; (vi) the NSTAR Companies (as each entity is defined it is respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

ORDERED that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2007



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

Rejection Procedures

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

Exhibit "A-1"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
Debtors.)	Jointly Administered
_____)	

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C.

§§ 101-1330, as amended (the "Bankruptcy Code").¹ The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

RELIEF REQUESTED

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

BASIS FOR RELIEF

5. On _____, 2003, the Court entered an order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit "A".

7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

**Title of Lease/Contract:
Effective Date of Rejection:
Parties to the Lease/Contract
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
_____, 2003

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By _____

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian Peck
State Bar No. 24013306

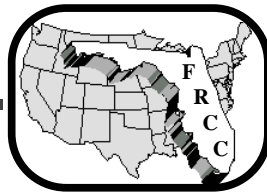
-and-

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT B

**BYLAWS
OF THE
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**



FLORIDA RELIABILITY COORDINATING COUNCIL
1408 N. Westshore Blvd., Suite 1002
Tampa, Florida 33607-4512

January, 1998
Amended December 19, 2001

**BYLAWS
OF THE
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

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**BYLAWS
OF
FLORIDA RELIABILITY COORDINATING COUNCIL, INC.**

ARTICLE I

Membership

Section 1.1 Eligibility. Membership in the Florida Reliability Coordinating Council, Inc. ("FRCC") is open to any entity that (i) has or is expected to have financial transactions in the wholesale electric market in the FRCC Region; (ii) qualifies for eligibility in one or more of the Sectors identified in section 1.2; (iii) executes a written application for membership; and (iv) agrees to comply with and be bound by the Bylaws and other rules and regulations adopted by the FRCC Board of Directors by execution of the appropriate form of Member Agreement set forth in Appendix A to these Bylaws. The FRCC Region is defined as the geographic area of Florida east of the Apalachicola River.

Section 1.2 Voting Member. A Voting Member is defined as an entity meeting the eligibility requirements of Section 1.1. Voting Members will be classified into one of the following Sectors:

- (a) **Power Marketer Sector-** any Power Marketer engaged in wholesale transactions in the FRCC Region.
- (b) **Generator Sector** - any of the following that owns or is developing generation greater than 20 MW located within the FRCC Region: (1) an entity with FERC-approved market-based rate authority; or (2) an exempt wholesale generator; or (3) a facility selling any output pursuant to a power purchase agreement (including fuel conversion arrangements) and (4) a FERC approved Qualifying Facility.
- (c) **Non-Investor Owned Utility Wholesale Sector** - generation and transmission cooperatives and municipal joint action agencies that sell electricity to non-investor owned Load Serving Entities with native load in the FRCC Region.
- (d) **Load Serving Entity Sector** - any FRCC load serving entity that generates less than 25% of its energy requirements or has an annual Full Requirements Energy for Load (FREL) of 1800 GWH or less.

- (e) **Generating Load Serving Entity Sector** - any non-investor owned FRCC load serving entity that generates at least 25% of its energy requirements, and that has an annual Full Requirements Energy for Load (FREL) greater than 1800 GWH.
- (f) **Investor Owned Utility Sector** - the Investor Owned Utilities generating and serving retail native load in the FRCC Region.

Section 1.3 Affiliate Member. An Affiliate Member is defined as an entity (i) that otherwise qualifies as a Voting Member pursuant to Section 1.1 and 1.2 and (ii) that is an Affiliate of an entity who is a Voting Member. For purposes of these Bylaws, an "Affiliate" shall mean (1) another entity which controls, is controlled by or is under common control with, such entity, and (2) for any exempt wholesale generator, as defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in Section 214 of the Federal Power Act. Affiliate Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Affiliate Members shall be bound by the same obligations as Voting Members and Adjunct Members of FRCC.

Section 1.4 Adjunct Member. An Adjunct Member may be approved for Adjunct Membership by the Board if such entity does not meet the definitions and requirements to join as a Voting Member or Affiliate Member. Adjunct Members shall have no right to vote on any matter, nor any right to be elected or appointed to the Board. Adjunct Members shall be bound by the same obligations as Voting Members and Affiliate Members of FRCC.

Section 1.5 New Members. The Board shall review and act upon all membership applications for Voting Members, Affiliate Members and Adjunct Members in the FRCC. Prior to membership, the Board shall certify Members that comply with the eligibility requirements.

Section 1.6 Membership Commitment. Each Voting Member, Affiliate Member, and Adjunct Member of the FRCC shall be required to execute, in counterpart, a Member Agreement, as applicable, in the form shown in Appendix A to these Bylaws.

Section 1.7 Obligations.

(a) Each Voting Member, Affiliate Member, and Adjunct Member of the FRCC shall have the responsibility to promote, support and comply with the purposes and policies of the FRCC as set forth in its Certificate of Incorporation, Bylaws, Planning and Operating Policies and Reliability Standards.

(b) Each Voting Member, Affiliate Member, and Adjunct Member of the FRCC shall appoint a representative as provided herein to receive notices from the FRCC and shall give to the FRCC Chief Executive Officer ("CEO") in writing (signed by a duly authorized representative of the Member) the name, business address and electronic address of the person thus appointed. An appointed representative of the Voting Member, Affiliate Member, and Adjunct Member who is unable to attend a meeting may designate, in writing, an alternate to act on behalf of the appointed representative. For purposes of these Bylaws, "Member" shall refer to the Voting

Member, Affiliate Member, and Adjunct Member or the appointed representative of same as the context so requires.

Section 1.8 Participation.

(a) For purposes of these Bylaws, an entity and all of its Affiliates shall be considered one "Entity". No Entity shall simultaneously hold more than one Voting Member status or have more than one voting representative on each of the Standing Committees, or more than one seat on the Board.

(b) Entities may join FRCC in any Sector in which they qualify for Membership provided that an Entity may join as a Voting Member in only one Sector. In the event that an Entity qualifies for more than one Sector, such Entity may join such other Sectors as an Affiliate Member upon payment of the Affiliate Member Annual Fees for each Sector in which such Entity desires to participate as an Affiliate Member. Once an Entity has elected to be a Voting Member of one Sector, the Entity must continue to vote in that Sector for a minimum of one (1) year. If, at any point, it is determined that an Entity no longer meets the qualifications for the Sector so elected, the Entity may not vote in that Sector; however, that Entity may then immediately elect to become a Voting Member in any Sector for which it does qualify.

(c) Subject to any specific provisions in these Bylaws or the Articles of Incorporation, each Voting Member in good standing is entitled to one vote on each matter submitted to a vote of the Voting Members. A Member in good standing is one that (i) meets all qualifications for membership as provided in these Bylaws, (ii) is not in arrears for payment of its Annual Fees for membership or payment of any other fees owed to FRCC unless such payment is being disputed in good faith, and (iii) has not been found by a court to be in breach of any contract with FRCC. Voting Members that are not in good standing are not entitled to vote on any matters until they have regained good standing.

ARTICLE II

Meetings of Voting Members

Section 2.1 Annual Meeting of Voting Members. Voting Members shall meet at least annually on a date and at a place to be established by the Board ("Annual Meeting"). Each Voting Member shall be represented at such meetings by a delegate. Each Voting Member shall inform the CEO of FRCC in writing the name of its delegate. Delegates shall serve at the pleasure of their respective Voting Members. The delegates from each Sector shall elect, by majority vote, each Voting Member's delegate having one (1) vote, Directors to the Board who will represent their respective Sector. The Voting Members' delegates shall conduct such other business as may be properly brought before them. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. The Annual Meeting shall be open to Affiliate Members and Adjunct Members, and such other invitees as the Board may deem appropriate.

Section 2.2 Special Meetings. Special meetings of the Voting Members, for any purpose or purposes, unless otherwise prescribed by the laws of the State of Florida, or by the Articles of Incorporation, may be called by the Chair of the Board. Special meetings shall be called upon request of six (6) or more Voting Members representing three (3) or more Sectors. Notice of a special meeting stating the place, date, hour and agenda for the special meeting shall be given to the Voting Members not less than three (3) business days before the meeting. Such request for a special meeting shall state the purpose or purposes of the proposed special meeting which shall be included as part of an agenda to be distributed to the Voting Members not less than three (3) business days before the meeting. Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other.

Section 2.3 Place of Meeting. All meetings of the Voting Members shall be held at or near the principal office of the FRCC in Tampa, Florida, or at such other place within or outside the State of Florida as shall be determined from time to time by the Board.

Section 2.4 Notice of Meetings.

(a) Notice of the Annual Meeting or any regular or special meeting of the Voting Members shall be sent by mail or electronic means to each Member, at such Member's usual place of business at least ten (10) days, in the case of an annual or regular meeting, before the date of the meeting. The notice shall set forth a proposed agenda for the meeting, but any matter may be considered and acted upon at any meeting, whether or not the matter was listed in the proposed agenda, if addition of the item to the agenda is approved at the meeting by the vote of Voting Members whose votes equal 66.7% or more of the total weighted sector vote of the Voting Members; provided, however, that at least four (4) Sectors are represented in the affirmative. Meetings may be held at any time without notice if all of the Voting Members are present, or if those not present waive notice in writing either before or after the meeting.

(b) The record date for determining Members entitled to notice shall be one month prior to the meeting date.

Section 2.5 Quorum. Representation at any meeting of the Voting Members of more than 50% of the Voting Members; provided, however, that at least five (5) Sectors are represented, shall constitute a quorum for the transaction of business at such meeting.

Section 2.6 Voting. Voting requirements for Voting Members shall be by the six (6) Sectors as defined in Section 1.2, except as otherwise provided herein. Each Voting Member within a Sector has one non-divisible vote. Each Sector has 1.00 "Sector Vote" which is to be split into an affirmative and a negative component, in direct proportion to the total votes of the Voting Members within that Sector. Action by the Voting Members shall require the affirmative vote equal to or greater than the combined Sector Vote of 4.0.

Section 2.7 Action without Meeting. Any action that may be taken at a meeting of the Voting Members may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed by all Voting Members before the action is taken.

Section 2.8 Remote Attendance. Any Member may participate in any meeting of the Voting Members by telephone, videoconference communications equipment, or other means enabling all persons participating in the meeting to communicate with each other. A Member participating in a meeting by such means shall be deemed present in person at such meeting.

Section 2.9 Termination of Members.

(a) A Member, may be terminated due to non-payment of fees or monies due FRCC, as provided for in Section 6.3, or due to a significant violation of Obligations as set forth in Section 1.7. The Board may, by resolution, establish a fair and reasonable procedure to terminate a Member.

(b) A Member whose membership has been terminated shall be liable to FRCC for fees and any other monies due FRCC as a result of obligations incurred or commitments made prior to termination.

Section 2.10 Resignation. Any other provision of these Bylaws notwithstanding, any Member may withdraw from participation in the activities of FRCC at any time upon written notice to the CEO, whereupon it shall cease to be a Member and shall cease to be entitled or obligated to participate in the activities of the Board, Standing Committees, or any subcommittees, and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Member's receipt of its statement of fees and expenses for a fiscal year, the Member shall be obligated to pay its fees and other monies due to FRCC for the full fiscal year within which such termination is effective.

Section 2.11 Reinstatement. A former Member shall be required to apply for Membership as set forth in Section 1.1. The Board may reinstate Membership on any reasonable terms that the Board deems appropriate.

Section 2.12 Property Ownership and Control. Subject to applicable laws, rules, regulations, agreements, and FRCC protocols, each Member shall retain sole control of its own facilities and the use thereof, and nothing in these Bylaws shall require a Member to construct or dedicate facilities for the benefit of any other electric system or allow its facilities to be used by any other Member or to construct or provide any facilities for its own use, and nothing herein shall be deemed to impair the ability or right of any Member to take such actions or to fail to act, as it deems necessary or desirable, with respect to the management, extension, construction, maintenance and operation of its own facilities, present and future, unless such actions by the Member threaten the reliability of the bulk electric power system. A Member has no interest in specific property of FRCC and waives the right to require a partition of any FRCC property.

ARTICLE III

Board of Directors

Section 3.1 Powers. The affairs of FRCC shall be managed by the Board of Directors ("Board"). The Board may exercise all such powers of the FRCC and do all such lawful acts and things as are not prohibited by the laws of the State of Florida, by the Articles of Incorporation or by these Bylaws.

Section 3.2 Number, Election, Tenure and Governance.

(a) **Number.**

The Board shall include a total of fourteen (14) Directors, and such other Directors as provided in by Section 3.2 (b) (4), as follows:

- (1) **Power Marketer Sector**- two (2) Directors
- (2) **Generator Sector** - two (2) Directors
- (3) **Non-Investor Owned Utility Wholesale Sector** - two (2) Directors
- (4) **Load Serving Entity Sector** - two (2) Directors
- (5) **Generating Load Serving Entity Sector** - two (2) Directors
- (6) **Investor Owned Utility Sector** - Three (3) Directors
- (7) **The CEO of FRCC** - an ex-officio non-voting Director.

(b) **Election.**

(1) Directors, with the exception of the CEO, shall be elected as described herein.

(2) Within each Sector, only Voting Member delegates from a given Sector shall elect Directors for that Sector.

(3) Within the Load Serving Entity Sector, Director(s) representing 0.5 votes shall be from a Municipal and Director(s) representing 0.5 votes shall be from a Cooperative.

(4) Any Sector may elect additional Directors subject to a maximum of five (5) Directors representing such Sector. The total votes of each Director for such Sector shall not exceed the total votes of the Directors of such Sector existing prior to the election of additional Director(s).

(c) **Alternate Director.** Any Director unable to attend a meeting may designate, in writing, an alternate to act on behalf of the Director.

(d) **Term.** The term for all Directors shall be two (2) years. Any Director may be reelected for consecutive terms, without limitation. The initial Board of Directors shall be elected as follows: Each Sector other than the Investor Owned Utility Sector shall elect one (1) Director for a one (1) year term, and one (1) Director for a two (2) year term. The Investor Owned Utility Sector shall elect one (1) Director for a one (1) year term, and two (2) Directors for a two (2) year term. If a Sector initially elects more than two (2) Directors, the terms of such Directors shall be as follows:

- (1) If the total number of Sector Directors is an odd number, an odd number of Director(s) shall serve an initial term of one (1) year, and an even number of Directors shall serve a term of two (2) years.
- (2) If the total number of Sector Directors is an even number, an even number of Director(s) shall serve an initial term of one (1) year, and an even number of Directors shall serve a term of two (2) years.

(e) **Voting Rights.**

- (1) Except as provided for in subsection (2) below, each Director shall have a single vote, with the exception of the Load Serving Entity Sector, whose Directors shall have one-half (1/2) vote each, for a total of one (1) vote.
- (2) If any Sector elects additional Directors, as provided for in Section 3.2(b)(4), each Director shall have an equal proportional vote of that Sector's total voting strength. This provision shall apply separately to the municipal and cooperative Directors of the Load Serving Entity Sector.
- (3) No Director shall have more than one (1) vote.
- (4) The CEO of FRCC shall not have a vote.

(f) **Limitations.** Each person or alternate serving on the Board shall be a representative of a Voting Member. Unless otherwise provided in these Bylaws, if a representative of a Voting Member is elected to serve on the Board, such person is only eligible to serve in such capacity so long as such person remains the representative of said Voting Member. A Voting Member shall not have more than one (1) Director serving on the Board.

Section 3.3 Meetings. Regular meetings of the Board shall be held at such times and places, within or outside the State of Florida, as may be determined by the Board. Special meetings of the Board may be called by the Chair. Special meetings shall be called upon request of six (6) or more Directors of the Board. Regular or Special Meetings may be held by telephone conferencing, video conferencing or by other means enabling all participants in the meeting to communicate with each other. The meetings of the Board shall be open to all Members, and such other invitees as the Board may deem appropriate. The Board may meet in closed session to

discuss matters of a confidential nature, including but not limited to personnel matters, litigation, or commercially sensitive information of any Entity.

Section 3.4 Notice of Meetings. Notice of any regular or special meeting of the Board shall be sent by mail or electronic means to each Director of the Board, and to each Member, at such Director's or Member's usual place of business at least (ten) 10 days, in the case a regular meeting, or (five) 5 business days, in the case of a special meeting, before the date of the meeting. Such notice shall also be sent to Observers of the Board. The notice shall set forth a proposed agenda for the meeting. No agenda item may be added to the agenda at any meeting of the Board which requires action by the Board unless all Directors are present and all agree to allow such an item to be put to a vote. Meetings may be held at any time without notice if all of the Directors of the Board are present, or if those not present waive notice in writing either before or after the meeting.

Section 3.5 Quorum. The presence at a meeting of the Directors of the Board whose votes equal two-thirds (2/3rds) or more of the total voting strength of the Board, provided, however, that at least one Director from at least five (5) Sectors are present, shall constitute a quorum for any action of the Board. If at any meeting a quorum shall fail to attend, a majority of those Directors present at the meeting may adjourn that meeting without further notice until a quorum shall attend. Once a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.6 Voting. Action by the Board shall require approval of two-thirds (2/3rds) or more of the total voting strength of the Board.

Section 3.7 Remote Attendance. Directors of the Board shall be deemed present and voting at a meeting of the Board if participating in the meeting by means of a conference telephone, video conferencing, or other means enabling all persons participating in the meeting to communicate with each other.

Section 3.8 Action without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action so to be taken, shall be signed before the action by all Directors of the Board.

Section 3.9 Vacancies and Removal. A Director may be removed with cause at any time by an affirmative vote of 60% of the Voting Members of the Sector allowed to elect that Director. In addition, the Board may remove a Director for cause, upon at least seventy-five percent (75%) affirmative votes of the remaining total voting strength of the Board. The right to elect Directors may not be assigned, sold, pledged or transferred in any manner. A vacancy may be filled only by the Voting Members of the Sector in which the vacancy occurs. Any Director so chosen shall hold office until their successor is duly elected and qualified or until their earlier resignation, ineligibility or removal.

Section 3.10 Officers. At the Board of Directors meeting following the Annual Meeting of the Voting Members, the Board shall elect a Chair, Vice Chair, and Secretary-Treasurer who shall be the officers of the FRCC, and who shall not be a Voting Member of the same Sector. The CEO of FRCC may not be elected to act as Chair, Vice-Chair or Secretary/Treasurer.

(a) **Term of Office.** Each officer shall hold office for two (2) fiscal years, except for the initial Director election as provided for in Section 3.2(d) and until their successor is duly elected and qualified.

(b) **Removal of Officers.** Any officer may be removed with or without cause at any time by the affirmative vote of seventy percent (70%) of the total voting strength of the Board

(c) **Compensation.** There shall be no compensation paid to any officer of the FRCC, provided that an officer serving on the staff of the Corporation may be compensated for their services on the staff of the Corporation.

Section 3.11 Responsibilities of Board of Director Officers

(a) **Chair.** The Chair shall serve as the Chair of the Board. The Chair shall preside at all meetings of the Members and Board. The Chair shall be responsible for the preparation of the agenda for all meetings of the Members and Board. The Chair shall be a member of and preside over a Personnel and Compensation Committee which shall have responsibilities for such matters relating to staff.

(b) **Vice Chair.** The Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair and shall perform such other duties and have such other powers as the Board may from time to time prescribe. The Vice Chair shall be a member of a Personnel and Compensation Committee which shall have responsibilities for such matters relating to staff.

(c) **Secretary-Treasurer.** The Secretary-Treasurer shall be responsible to assure that the FRCC staff has adequate procedures to distribute the agenda of the meetings of the Voting Members and the Board, keep the minutes of the proceedings of said meetings, and maintain the financial books and records of the FRCC including disbursement of the funds of the FRCC in accordance with the authorized annual budget. The Secretary-Treasurer shall be a member of the Personnel and Compensation Committee which shall have responsibilities for such matters relating to staff.

Section 3.12 Vacancy. Any vacancy in a Board of Director Officer occurring for any reason shall be filled as specified in Section 3.9.

ARTICLE IV

Chief Executive Officer

Section 4.1 CEO. The Board shall hire a Chief Executive Officer ("CEO") who, under the Board's supervision and direction shall carry on the general affairs of the FRCC. The CEO shall be a member of the staff of FRCC and shall be a non-voting Director. It shall be the CEO's duty to approve the expenditure of the monies appropriated by the Board in accordance with the Budget approved by the Board. The CEO shall make an annual report and periodic reports to the Board concerning the activities of FRCC. The CEO shall serve as President of FRCC. The CEO shall comply with all orders of the Board. All agents and employees shall report, and be

responsible, to the CEO. The CEO shall perform such other duties as may be determined from time to time by the Board.

ARTICLE V

Standing Committees

Section 5.1 Standing Committees. There shall be an Engineering Committee, Operating Committee, and Market Interface Committee, and such other committees, subcommittees, and task forces as the Board may appoint, when deemed necessary to carry out the purposes of the FRCC.

Section 5.2 Engineering Committee. Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Engineering Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Engineering Committee. Quorum and Voting Rights shall be as defined in Sections 5.6 and 5.7. The Engineering Committee shall report directly to the Board and is charged with the responsibility of promoting the reliability and adequacy of the bulk power supply within the FRCC Region as related to the planning and engineering of electric systems. The Engineering Committee shall establish subcommittees and task forces as deemed necessary by its membership.

Section 5.3 Operating Committee. Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Operating Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Operating Committee. Quorum and Voting Rights shall be as defined in Sections 5.6 and 5.7. The Operating Committee shall report directly to the Board and is charged with the responsibility of promoting the reliability and adequacy of the bulk power supply within the FRCC Region as related to the operation of electric systems. The Operating Committee shall establish subcommittees and task forces as deemed necessary by its membership.

Section 5.4 Market Interface Committee. Each Voting Member may appoint one (1) representative, empowered to vote on behalf of the Voting Member, to serve on the Market Interface Committee. A representative may, if unable to attend a meeting, designate, in writing, an alternate to act on behalf of the representative. Affiliate Members and Adjunct Members may appoint a non-voting representative to serve on the Market Interface Committee. Quorum and Voting Rights shall be as defined in Sections 5.6 and 5.7. The Market Interface Committee shall report directly to the Board and is charged with the responsibility for ensuring that the impacts of the electric industry's reliability standards are addressed from the commercial electric wholesale market perspective and that the impacts of the new and evolving market practices on electric system reliability are addressed. The Market Interface Committee shall establish subcommittees and task forces as deemed necessary by its membership.

Section 5.5 Rules of Procedure. Each Standing Committee shall set its rules of procedure, provided that quorum, voting rights and voting shall be on the same basis as specified in Sections 5.6 and 5.7. Such Rules of Procedure shall be approved by the Board. All action by any Standing Committee shall be reported as prescribed herein and shall be subject to revision, alteration and approval by the Board.

Section 5.6 Quorum. Representation at any meeting of the Standing Committee of at least two-thirds (2/3rds) or more of the total voting strength of the representatives, provided, however, that at least four (4) Sectors are represented, shall constitute a quorum for the transaction of business at such meeting.

Section 5.7 Voting. Voting is by Sector. Each voting representative within a Sector has one (1) non-divisible vote. Each Sector has a "Sector Vote", as provided in Section 5.7 (a) which is to be split into an affirmative and a negative component, in direct proportion to the votes of the representatives within that Sector. Action by the Standing Committee shall require an affirmative vote equal to or greater than two-thirds (2/3rds) of the total voting strength of the Standing Committee.

(a) **Sector Votes**

(1) Power Marketer Sector	2 Votes
(2) Generator Sector	2 Votes
(3) Non-Investor Owned Utility Wholesale Sector	2 Votes
(4) Load Serving Entity Sector	
Municipal	1/2 Vote
Cooperative	1/2 Vote
(5) Generating Load Serving Entity Sector	2 Votes
(6) Investor Owned Utility Sector	3 Votes
Total	12 Votes

Section 5.8 Meetings. Regular meetings of the Standing Committees shall be held at such times and places, within or outside the State of Florida, as may be determined by the Standing Committees. Special meetings of the Standing Committees may be called by the Chair or upon the request of representatives from four (4) different Sectors. Regular or Special Meetings may be held by telephone conferencing, video conferencing, or by other means enabling all participants in the meeting to communicate with each other. The meetings of the Standing Committees shall be open to all Members, and such other invitees as the Board may deem appropriate.

ARTICLE VI

General Provisions

Section 6.1 Budget. The Board shall annually adopt a budget for the FRCC for administrative expenses of the FRCC, including salaries, and for the costs associated with the various committees, subcommittees, professional services, projects and studies. The funding for special projects approved by the Board may be based on a special funding, equitable allocation for the special project as approved by the Board. The budget may be amended from time to time during the fiscal year as determined by the Board.

Section 6.2 Funding. The funding of FRCC shall be allocated to all Members in accordance with the following.

(a) **Voting Members.** The allocation for Voting Members shall be based on the following calculation; however, in no event shall the allocation be less than \$20,000 per annum.

$$\text{Voting Member Allocation} = 0.25 (1/N) + 0.25 (B/C) + 0.25 (D/E) + 0.25 (F/G)$$

- N Total number of Voting Members
- B Voting Member's previous-year Full Requirements Energy for Load (FREL) within the FRCC
- C Total of factor B for all Voting Members
- D Voting Member's Net Summer Generating Capacity within the FRCC Region as of December 31 of the previous year, as defined in the FRCC Load and Resource Plan
- E Total of factor D for all Voting Members
- F Sum of Circuit Miles of Transmission Facilities (69kV and above) within the FRCC Region times the respective operating voltage as of December 31 of the previous year
- G Total of factor F for all Voting Members

Full Requirements Energy for Load (FREL) The net electrical energy requirements of the Voting Member's electric system, and the net electric energy requirements of all full requirements customers of the Voting Member, except if a full requirements customer of a Voting Member joins FRCC. In such case, the electrical energy requirements of such full requirements customer will only be counted for the funding calculation for that Voting Member, who is the full requirements customer, and not for the Voting Member, who is the supplier of the full requirements. There should be no double counting of FREL between Voting Members.

Net Summer Generating Capacity The maximum summer rated capacity, modified for ambient limitations, that a generating unit can sustain over a specified period, less the capacity used to supply the demand of station service or auxiliary needs. For jointly owned units, the Net Capacity will be allocated based on the ownership share of each Voting Member who is a joint owner, unless otherwise mutually agreed by the joint owner Voting Members.

Circuit Miles of Transmission Facilities The distance (following the path of transmission facility) in miles between substations or switching stations times the number of circuits at the same voltage level. For jointly owned transmission facilities, the Circuit Miles of Transmission Facilities will be allocated based on the ownership share of each Voting Member who is a joint owner, unless otherwise mutually agreed by the joint owner Voting Members.

- (b) **Affiliate Members.** The fee for Affiliate Members shall be \$5,000 per annum.
- (c) **Adjunct Members.** The fees for Adjunct Members shall be \$5,000 per annum.

Section 6.3 Fees. The membership fee shall be due and payable concurrent with the submission of the written application for membership. The initial membership fee will be prorated on an annual basis depending upon the quarter in which a Member joins. Thereafter, membership fees shall be due and payable on or before January 1st of each year or in installments as determined by the Board. The CEO of FRCC shall notify, in writing, any Member who is delinquent in the payment of its membership fee. The notice shall provide a time certain, not to exceed thirty days (30) days from the date of the written notice, during which any such delinquency may be cured. Failure to cure a delinquency within the stated time will result in the loss of all membership rights and designations. In the event of an uncured lapse in the payment of a fee, membership in the FRCC shall be terminated.

Section 6.4 Staff. The FRCC shall employ a staff, including the Chief Executive Officer, to carry out the objectives of the organization. The Chief Executive Officer shall be a non-voting Director of the Board. The duties of the Chief Executive Officer are as defined in Article V, Section 4.1.

Section 6.5 Expenses. The personal expenses of each Member and Directors participating in the activities of the FRCC and its committees and subcommittees, shall be borne by the Member by whom such person is regularly employed, unless determined otherwise by the Board.

Section 6.6 Minimum Sector Membership. If the number of Voting Members of a Sector is not greater than one (1), such Sector shall not be entitled to a vote at the Voting Members meetings, Board of Directors meetings, or the Standing Committee meetings.

Section 6.7 Indemnification. The FRCC shall indemnify and hold harmless, to the maximum extent permitted by law, any Member, Director of the Board, Voting Member delegate, Member representative, agent, officer or employee of the FRCC and the heirs, estates, successors or assigns of any of them, from any and all claims or liabilities, including costs or attorneys' fees for defending against assertion of any such claim or liability, arising from any act or failure to act of such person for, on behalf of, or at the direction of the FRCC, unless such act or failure to act constituted a willful violation of state, federal or local law, willful misconduct, or gross negligence. With the approval of the Board, the FRCC may reimburse costs, attorneys fees, and other expenses for defending against assertions of any such claims or liabilities prior to the final disposition of any such proceeding. The foregoing rights to be indemnified, held harmless, or reimbursed shall not operate in derogation or prohibition of any other rights which the person indemnified, held harmless or reimbursed may have. The FRCC, by vote of the Board, shall purchase insurance against all or any part of the liabilities which may be incurred by the FRCC and may cause the FRCC to indemnify and hold harmless as and to the extent it may deem appropriate such other person or persons as it may deem appropriate.

Section 6.8 Fiscal Year. The fiscal year of the FRCC shall be the twelve (12) month period of January 1st through December 31st.

Section 6.9 Depositories. All funds of the FRCC shall be deposited in the name of the FRCC in such bank, banks or other financial institutions as the CEO shall from time to time designate and shall be drawn out on checks, drafts or other orders signed on behalf of the FRCC by such person or persons as the Board shall from time to time designate.

ARTICLE VII

Amendments

Section 7.1 Amendments. Subject to the provision that no amendment to these Bylaws may limit the rights of a Member to resign from Membership, these Bylaws may be amended, altered, or repealed through the following procedure:

(a) Any Voting Member, or Director, may suggest amendments to these Bylaws. Such suggestions must include a proposal of the amendment, and any necessary supporting documents. They should be sent to the CEO of FRCC for placement on the agenda for a Board meeting in the time and manner prescribed by the Board.

(b) If the proposal is approved by two-thirds (2/3rds) or more of the total voting strength of the Directors, the Board shall place the proposal on the agenda of either the next Annual Meeting of the Voting Members, or pursuant to Board discretion, at a Special Meeting of the Voting Members called for that purpose.

(c) Voting Members must vote to enact the Board-approved amendment in accordance with Sections 2.5 and 2.6 of the Bylaws.

Section 7.2 Review of Governance. The Board shall appoint a task force to review these Bylaws, and to submit recommendations to the Board on necessary amendments, if any, if

any one of the following events occurs. Such task force shall be populated in a manner so as to provide for representation from each Sector.

- (a) The number of Voting Members in a Sector is not greater than one (1).
- (b) A Regional Transmission Organization of any type is approved by the Federal Energy Regulatory Commission (FERC) to operate in the FRCC Region.
- (c) Any federal or state legislation or regulatory action that significantly alters the functions of the FRCC.

ARTICLE VIII

Observers of the Board

Section 8.1 Observers of the Board. The Chairman of the Florida Public Service Commission, or designee, shall be invited to attend meetings of the Board. The Board shall invite other Observers as the Board deems appropriate.

ARTICLE IX

Audit

Section 9.1 Audit. The Board shall engage a certified public accounting firm to make an audit of the books and accounts of the FRCC for each fiscal year.

ARTICLE X

Miscellaneous Provisions

Section 10.1 Headings. The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

Section 10.2 Number and Gender. All singular words include the plural, and all plural words include the singular. All pronouns of one gender include reference to the other gender.

Section 10.3 Parties Bound. These Bylaws will bind and inure to the benefit of any Members, Director of the Board, Voting Member delegate, Member representative, agent, officer, or employee of the FRCC and their respective administrators, legal representatives, successors, and assigns except as these Bylaws otherwise provide.

Section 10.4 Minority Positions. Any Voting Member or Standing Committee Representative who has a minority opinion on any significant issue may present the minority opinion to the Board in a manner as prescribed by the Board.

Amended: December 19, 2001

APPENDIX A

Voting Member Agreement

_____, hereby agrees to comply with and be bound by, and to

(Voting Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Voting Member taken or entered into in accordance with the foregoing documents.

(Name)

DATE: _____

WITNESS:

APPENDIX A

Affiliate Member Agreement

_____, hereby agrees to comply with and be bound by, and to

(Affiliate Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Affiliate Member taken or entered into in accordance with the foregoing documents.

(Name)

DATE: _____

WITNESS:

APPENDIX A

Adjunct Member Agreement

_____, hereby agrees to comply with and be bound by, and
to

(Adjunct Member)

promote and support, the Florida Reliability Coordinating Council Articles of Incorporation and Bylaws, and all acts, decisions or obligations of the Florida Reliability Coordinating Council applicable to Adjunct Member taken or entered into in accordance with the foregoing documents.

(Name)

DATE: _____

WITNESS:
