

LAW OFFICES
OF
LESLIE J. PAUGH, P.A.

LESLIE J. PAUGH
ELECTRONIC MAIL ADDRESS:
lpaugh@paugh-law.com

2473 CARE DRIVE, SUITE 3
TALLAHASSEE, FL 32308
TELEPHONE (850) 656-3411
FACSIMILE (850) 656-7040

MAILING ADDRESS:
POST OFFICE BOX 16069
TALLAHASSEE, FLORIDA 32317-6069

June 24, 2002

VIA HAND DELIVERY

Ms. Blanca S. Bayó, Director
Division of Commission Clerk and
Administrative Services
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

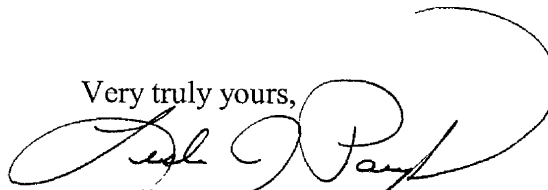
***Re: Docket No. 020233-EI; Response in Opposition of Mirant Americas
Development, Inc., Calpine Corporation, Duke Energy North America, LLC.***

Dear Ms. Bayó:

Enclosed for filing please find one (1) original and fifteen (15) copies of the Response in Opposition, submitted for filing in the above referenced docket. Please also find the enclosed diskette, containing an electronic version of the Filing in Word format.

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

Very truly yours,



Leslie J. Paugh

DOCUMENT NUMBER-DATE

06481 JUN 24 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 020233-EI
Filed June 24, 2002

RESPONSE IN OPPOSITION

Come now, Mirant Americas Development, Inc., Calpine Corporation, and Duke Energy North America, LLC (“Movants”) pursuant to 28-106.204, Florida Administrative Code (“FAC”) and hereby file their Joint Response in Opposition to Motion of Florida Power Corporation, Florida Power & Light Company and Tampa Electric Company (“Applicants”) for Extension of Time to File Post-Workshop Comments Addressing Market Design Issues and Expansion of Page Limit to Sixty (60) Pages for Post-Workshop Comments (“Applicants’ Motion”) and as grounds therefore state:

1. The Applicants’ Motion makes a mockery of fundamental procedural due process and is in clear violation of the rules of administrative procedure.

a. Applicants’ Motion fails to meet the rule requirement of conferring with parties. Applicants’ Motion, which was filed on the date post-workshop comments were due, June 21, 2002, states that the members of the GridFlorida Advisory Committee were informed by electronic mail on June 20, 2002, of the Applicants’ intent to file the Motion and that a copy of the Motion was faxed to certain “counsel for Intervenors who appeared and made presentations at the Commission’s May 29, 2002 Workshop.” (Applicants’ Motion, pg. 2) Rule 28-106.204(3), FAC requires that motions “shall

include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.” (Id.) Movants submit that a faxed copy of a motion received on the eve pleadings were due to be filed and an electronic notice of the intent to file received late in the afternoon of the day before pleadings were due do not constitute ‘conferring’ with other parties of record. First, ‘conferring’ expresses the rule’s requirement that Applicants discuss, consult with or talk about a proposed motion - not just notify. Second, not all parties of record are members of the GridFlorida Advisory Committee or may be included in the subset of “counsel for Intervenors who appeared and made presentations”. Applicants’ Motion is clearly procedurally infirm.

b. Applicants failure to state whether a party has an objection to the motion is in clear contravention of the rule requirement. Applicants do not allege whether parties have an objection to the motion, probably because they didn’t ask. Applicants properly filed their motion under the grant of authority of 28-106.204, FAC however they apparently expect that the rule requirements only selectively apply to them. Applicants’ use of the Rule 28-106.208, FAC without meeting its requirements makes a mockery of the intent rule to consult with parties and report the outcome of that consultation. If Movants had been asked whether they had an objection to the Motion, they would have stated that they do.

c. There is no justification for granting Applicants untimely motion. Applicants glibly allege that Intervenors requested and were granted a similar extension of time and additional pages in which to file pre-workshop comments. Applicants then state that this instant motion is “similarly reasonable and would not prejudice any party”.

(Id.) Applicants motion is not remotely similar to Intervenor's request for extension of time in terms of prejudice to parties and fundamental fairness. First, Intervenor's motion was filed on April 17, 2002 - a full ten days before comments were due to be filed. All parties had notice and an opportunity to respond according to the change of procedural requirements. Second, Intervenor attempted to contact all parties in the docket in order to confer on the motion and set forth with specificity in the motion the positions of the parties, including Applicants. All parties were treated equally and the results of the discussions were fully reported to the Public Service Commission. Third, there was an organic *reason* for Intervenor's motion. Intervenor needed additional time and space to respond to Staff's Preliminary List of Workshop Subjects filed April 12, 2002. There is no similar intervening circumstance in this stage of the proceedings. Applicants have known about the June 21st deadline for post-workshop comments for at least two and a half months and have known Intervenor's positions on market design since those comments were filed on May 8, 2002. There is no reason to grant Applicants this extraordinary relief requested pursuant to a defective motion which was filed out of time and severely prejudices Movants.

2. Applicants' Motion severely prejudices Movants in two significant ways.

a. First, pursuant to the Order Establishing Procedure, Order No. PSC-02-0459-PCO-EI, issued April 3, 2002 ("Order"), parties were given a date certain for filing post-workshop comments and a page limitation within which to do it. Movants were constrained to function within these parameters and, as such, made rational decisions on which issues to address in their post-workshop comments and which issues to temporarily forgo commenting upon. Because of the extreme importance of market

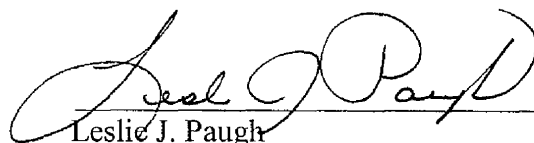
design, it was incumbent upon Movants to dedicate a disproportionately large section of their filed post-workshop comments to that single issue. Applicants' Motion is limited to additional time and pages for market design only. Granting the Motion will effectively provide Applicants with forty pages in which to address non-market design issues and a separate supplement in which to address market design - a luxury Movants do not share because they apportioned their comments under pre-existing procedural requirements.

b. Second, granting Applicants' Motion is tantamount to permitting unilateral rebuttal of Movants' market design comments. Movants filed their extensive market design comments in a timely manner on June 21st, pursuant to the Order. If Applicants are given an additional two weeks to submit market design comments, they will have had a substantial opportunity to review and rebut Movants' submission without Movants having a parallel right. This is in direct contravention of procedural due process rights and fundamental fairness.

WHEREFORE, for the foregoing reasons, Movants submit that the Applicants have demonstrated no basis for abrogating Movants fundamental due process rights and the Florida Public Service Commission is urged to deny the Applicants' Motion. Notwithstanding, Movants support the Applicants statement that they wish to provide opportunity for "resolution of [market design] issues." (Applicants' Motion, pg. 1) but submit that there is a better, procedurally just way to achieve that goal. Movants welcome the opportunity to engage in continuing dialogue with Applicants on standard market design and suggest that Commission staff and the parties meet in the sunshine to discuss an ongoing collaborative process to which all parties can agree. Thereafter, appropriate revisions to the Order Establishing Procedure can be made. However,

Movants again strongly urge the Commission not to permit the prejudicial, unilateral rebuttal contemplated by Applicants Motion and request that Applicants' Motion be denied.

Respectfully submitted this 24th day of June, 2002.

A handwritten signature in cursive script, reading "Leslie J. Paugh".

Leslie J. Paugh
Leslie J. Paugh, P.A.
2473 Care Drive, Suite 3, 32308
Post Office Box 16069, 32317-6069
Tallahassee, Florida
Telephone: 850-656-3411
Telecopier: 850-656-7040
lpugh@paugh-law.com

Attorney for: Mirant Americas Development, Inc.
Calpine Corporation
Duke Energy North America, LLC

**CERTIFICATE OF SERVICE
DOCKET NO. 020233**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand-delivery (*), facsimile and U.S. Mail (**), and U.S. Mail to the following parties on this 24th day of June, 2002.

William Keating, Esq. *
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Lee E. Barrett
Duke Energy North America
5400 Westheimer Court
Houston, TX 77056-5310

Mark Sundback, Esq.
Kenneth Wiseman, Esq.
Andrews & Kurth Law Firm
1701 Pennsylvania Ave., NW
Suite 300
Washington, DC 20006

David L. Cruthirds, Esq.
Attorney for Dynegy, Inc.
1000 Louisiana Street
Suite 5800
Houston, TX 77002-5050

Lee L. Willis, Esq. **
James D. Beasley, Esq.
Ausley & McMullen Law Firm
227 South Calhoun Street
Tallahassee, FL 32301

Michelle Hershel
Florida Electric Cooperatives
Association, Inc.
2916 Apalachee Parkway
Tallahassee, FL 32301

Thomas W. Kaslow
Calpine Corporation
The Pilot House, 2nd Floor
Lewis Wharf
Boston, MA 02110

Bruce May, Esq.
Holland & Knight Law Firm
Bank of America
315 South Calhoun Street
Tallahassee, FL 32302-0810

John W. McWhirter, Esq.
McWhirter Reeves
400 North Tampa Street
Suite 2450
Tampa, FL 33601-3350

David Owen, Esq.
Assistant County Attorney
Lee County, Florida
P.O. Box 398
Ft. Myers, FL 33902

Frederick M. Bryant
FMPA
2061-2 Delta Way
Tallahassee, FL 32303

Joseph A. McGlothlin, Esq.
McWhirter Reeves
117 S. Gadsden Street
Tallahassee, FL 32301

Michael B. Twomey, Esq.
P.O. Box 5256
Tallahassee, FL 32314-5256

Natalie B. Futch
Bill Bryant, Jr.
Katz, Kutter
106 E. College Avenue
12th Floor
Tallahassee, FL 32301

Pete Koikos
City of Tallahassee
100 West Virginia Street
Fifth Floor
Tallahassee, FL 32301

Ed Regan
Gainesville Regional Utility Authority
P.O. Box 147117, Station A136
Gainesville, FL 32614-7117

Douglas John
Matthew Rick
John & Hengerer
1200 17th Street, N.W.
Suite 600
Washington, DC 20036-3013

Reedy Creek Improvement District
P.O. Box 10170
Lake Buena Vista, FL 32830

Ron LaFace/Seann M. Fraizer
Greenberg, Traurig Law Firm
101 E. College Avenue
Tallahassee, FL 32301

Wade Litchfield
Office of General Counsel
700 Universe Boulevard
Juno Beach, FL 33408-0420

John Attaway
Publix Supermarkets, Inc.
P.O. Box 32015
Lakeland, FL 33802-2018

Marchris Robinson
Manager, State Government Affairs
Enron Corporation
1400 Smith Street
Houston, TX 77002-7361

Florida Retail Federation
100 E. Jefferson Street, Suite 900
Tallahassee, FL 32301

Daniel Frank, Esq.
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., N.W.
Washington, DC 20004-2415

Robert Miller
Kissimmee Utility Authority
1701 West Carroll Street
Kissimmee, FL 32746

Paul Elwing
Lakeland Electric
501 East Lemon Street
Lakeland, FL 33801-5079

Alan J. Statman
General Counsel
Trans-Elect, Inc.
1200 G. Street, N.W., Suite 600
Washington, DC 20005

Thomas J. Maida
N. Wes Strickland
Foley & Lardner Law Firm
106 E. College Avenue, Suite 900
Tallahassee, FL 32301

Paul Lewis, Jr.
Florida Power Corporation
106 E. College Avenue, Suite 800
Tallahassee, FL 32301-7740

Jack Shreve
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, FL 32399-1400

James A. McGee, Esq. **
Florida Power Corporation
P. O. Box 14042
St. Petersburg, FL 33733-4042

Matthew M. Childs, Esq. **
Steel Hector & Davis
215 South Monroe Street, Suite 601
Tallahassee, FL 32301

Kenneth Hoffman, Esq. **
Rutledge Law Firm
P. O. Box 551
Tallahassee, FL 32302

Lee Schmudde
Walt Disney World Co.
1375 Lake Buena Drive
Fourth Floor North
Lake Buena Vista, FL 32830

Suzanne Brownless, Esq.
1975 Buford Boulevard
Tallahassee, FL 32308

Steven H. McElhaney, Esq.
2448 Tommy's Turn
Oviedo, FL 32766

Harry W. Long
Angela Llewellyn
Tampa Electric Company
P. O. Box 111
Tampa, FL 33601

Michael Briggs
Reliant Energy Power
Generation, Inc
801 Pennsylvania Avenue, Suite 620
Washington, DC 20004

Timothy Woodbury
Seminole Electric Cooperative, Inc.
16313 North Dale Mabry Highway
Tampa, FL 33688-2000

Linda Quick
South Florida Hospital
and Healthcare
6363 Taft Street
Hollywood, FL 33024

John T. Butler, Esq.
Steel, Hector & Davis, LLP
200 South Biscayne Boulevard
Suite 4000
Miami, FL 33131-2398

Beth Bradley
Mirant Americas Development, Inc.
1155 Perimeter Center West
Atlanta, GA 30338-5416

Jon C. Moyle, Esq.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Thomas A. Cloud, Esq.
W. Christopher Browder, Esq.
Gray, Harris & Robinson, P.A.
P. O. Box 3068
Orlando, FL 32802-3068

David E. Goroff, Esq.
Peter K. Matt, Esq.
Bruder, Gentile & Marcoux, LLP
1100 New York Avenue, N.W.
Suite 510 East
Washington, DC 20005

Michael B. Wedner
Assistant General Counsel
117 W. Duvall Street, Suite 480
Jacksonville, FL 32202

William T. Miller, Esq.
Miller, Balis & O'Neil, P.C.
1140 Nineteenth Street, N.W.,
Suite 700
Washington, DC 20036-6600

William G. Walker
Florida Power & Light Company
215 S. Monroe Street, Suite 810
Tallahassee, FL 32301

P. G. Para
Director of Legislative Affairs
JEA
21 West Church Street
Jacksonville, FL 32202



Leslie J. Paugh