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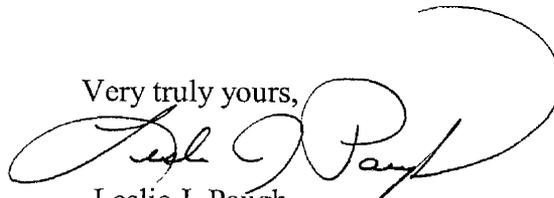
***Re: Docket No. 020233-EI; Response in Opposition of Mirant Americas
Development, Inc., Calpine Corporation, Duke Energy North America, LLC.***

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 Intervenors' request for extension of time in terms of prejudice to parties and fundamental fairness. First, Intervenors 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, Intervenors 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 Intervenors motion. Intervenors 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 Intervenors 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 black ink, appearing to read "Leslie J. Paugh", written over a horizontal line.

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**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.

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