

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition for Determination)
of Need for Proposed Electrical)
Power Plant in Martin County of)
Florida Power & Light Company)

IN RE: Petition for Determination)
of Need for Proposed Electrical)
Power Plant in Manatee County of)
Florida Power & Light Company)

DOCKET NO. 020262-EI

DOCKET NO. 020263-EI

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MIRANT CORPORATION'S RESPONSE TO
MOTIONS FOR PROTECTIVE ORDER

Pursuant to Rule 28-106.204, Florida Administrative Code, Mirant Corporation (Mirant), files this Response to Motions For Protective Order filed by AES Coral (AES) and Tampa Electric Company (TECO) and in support thereof states as follows:

1. AES and TECO have each filed motions for protective orders in the above dockets¹ regarding information provided to Florida Power & Light Company (FPL) in response to its Request for Proposals (RFP) issued in August, 2001. In these motions AES and TECO are seeking to prohibit FPL from disclosing information classified by those entities as proprietary confidential business information to intervenors pursuant to a Confidentiality Agreement negotiated between FPL and the intervenors to this docket.

2. FPL and other intervenors to these dockets have by joint motion requested that an order be entered approving this Confidentiality Agreement as the mechanism for handling information asserted to be confidential in these proceedings. That motion is pending at this time.

¹ AES filed on April 23, 2002; TECO filed a virtually identical request on April 25, 2002.

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3. Mirant filed a petition for leave to intervene on April 10, 2002 which was granted by Order No. PSC-02-0552-PCO-EI on April 23, 2002.

4. By Emergency Motion to Hold Proceedings in Abeyance, FPL has indicated that it will issue a second RFP on April 26 and allow bidders who participated in the original RFP to resubmit their original bid or to submit a revised bid for the Martin Unit 8 and Manatee Unit 3 capacity which FPL has selected as its self-build option. On April 26, 2002, the prehearing officer issued an interim order suspending the current procedural schedule but allowing rulings to be made by the prehearing officer on outstanding motions. Order PSC-02-0572-PCO-EI at 2.

5. Mirant served both interrogatories and a request for production of documents in these proceedings on April 18, 2002. Mirant has executed both the Confidentiality Agreement tendered to the prehearing officer in the joint motion and the sublicense agreement negotiated between FPL and EPRI which will allow Mirant access to EPRI's EGEIS computer model. It is Mirant's understanding that upon entry by the prehearing officer of an order approving the Confidentiality Agreement, FPL will release a CDROM with the EGEIS model suitable for being run on a mainframe computer and a second CDROM with input data used by FPL in its evaluation of its own units and the original RFP bids. FPL has represented that this data can be edited such that AES' and TECO's bid information is deleted. Mirant's interest in the original bid data is for its usefulness in determining exactly how the EGEIS computer model

operates. FPL's edited bid data as stated above should be sufficient for Mirant to accomplish this task. For that reason, Mirant does not object to granting a protective order preventing disclosure of AES' and TECO's original bid data.

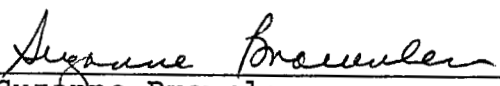
6. However, with regard to the bid data which will be associated with the second RFP, Mirant reserves the right to request that all such information be made available to it pursuant to the terms and conditions of the Confidentiality Agreement once it has had an opportunity to review the results of the second RFP. With regard to the second set of bid data, there is a very high probability access to all bid data submitted will be necessary in order to replicate the results relied upon by FPL and to evaluate the effect of modified parameters for both FPL's units and those of the winning bidder, should FPL not select its own option. For this reason, Mirant requests that the Commission require that FPL disclose the high probability of the disclosure of all bid data to its second RFP bidders now. Should such disclosure subsequently take place, all bidders will have bid with the knowledge their data would be shared with all intervenors; should disclosure not take place, there is no harm done.

7. Finally, Mirant would request that any protective order clearly state that it is issued pursuant solely to the authority granted to the Commission by §§ 366.093 and 120.569(2)(f), Florida Statutes, and Rules 28-106.206 and 25-22.006, Florida Administrative Code. With this statement of authority clearly enumerated, the Commission's order will clearly limit the appellate

right of both TECO and AES in these proceedings as a result of the prehearing officer's ruling on their motions for protective order solely to an appeal of the protective order.

WHEREFORE, for the reasons stated above, Mirant Corporation does not object to the entry of protective orders prohibiting the nondisclosure of AES' and TECO's original bid data and requests that FPL be required to inform all bidders in its second RFP that it is highly probable that their bid data will be revealed to signatories to the Confidentiality Agreement.

Respectfully submitted, this 30th day of April, 2002:


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail to all parties listed below and also by (*)e-mail and (**) hand delivery as indicated on this 30th day of April, 2002:

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