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July 12, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way
Room 110, Betty Easley Conference Center
Tallahassee, Florida 32399

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Re: Docket No.: 020233-EI

Dear Ms. Bayo :

Please find enclosed for filing in the above-referenced docket the original and 15 copies of the Supplemental Post-Workshop Comments of Seminole Electric Cooperative, Inc. Regarding Market Design. Please stamp the duplicate copy of this letter to acknowledge receipt of the attached.

Thank you for your assistance.

Sincerely yours,

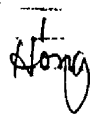


N. Wes Strickland

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Enclosures

cc: All Parties of Record in Docket 020233-EI (via U.S. Mail)



FOLEY & LARDNER
106 EAST COLLEGE AVENUE, SUITE 900
TALLAHASSEE, FLORIDA 32301-7732

TEL. 850 222 6100
FAX 850.224 3101
WWW.FOLEYLARDNER.COM

WRITER'S DIRECT LINE
850.513.3369

EMAIL ADDRESS
nstrickland@foleylaw.com

CLIENT/MATTER NUMBER
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JUL 12 2002
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of GridFlorida)
Regional Transmission) Docket No. 020233-EI
Organization (RTO) Proposal)

**SUPPLEMENTAL POST-WORKSHOP COMMENTS
OF SEMINOLE ELECTRIC COOPERATIVE, INC.
REGARDING MARKET DESIGN**

Pursuant to the “Second Order Revising Order Establishing Procedure, Granting Extension of Time To File Post-Workshop Comments, and Expansion of Page Limit” issued by the Florida Public Service Commission (“FPSC” or “Commission”) in this docket on June 25, 2002, Seminole Electric Cooperative, Inc. (“Seminole”) submits these Supplemental Post-Workshop Comments in response to the “Supplemental Post-Workshop Comments of Florida Power Corporation, Florida Power & Light Company, and Tampa Electric Company Addressing Market Design” filed on July 2, 2002 (“Applicants’ Supplemental Comments”). These comments are in addition to (and not in lieu of) the pre-workshop, workshop, and post-workshop comments previously submitted by Seminole.

I. Discussion

The Applicants have done a 180 degree turn on market design. Rather than complying with the Commission’s Order No. PSC-01-2489-FOF-EI issued December 20, 2001 (“December 20 Order”) on the issue market design, the Applicants have determined to abandon the physical rights model in their filing (and approved with modifications by the Commission) in favor of an LMP-based financial rights model. The Applicants are asking, based on a pleading that lacks any specifics and can only be described as skeletal, that the FPSC sign off on an LMP-based financial rights model (denominated “Revised GridFlorida Market Design”), so that the

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Applicants can draft a tariff for filing with the Federal Energy Regulatory Commission (“FERC”).^{1/}

The Applicants held a conference call on July 8 to answer questions regarding their new market design proposal, and while the Applicants were cooperative, the standard response to the vast majority of substantive questions was that they simply had not reached the necessary level of detail to be able to answer the questions. One area in which this was not the response was market power mitigation; as to those questions the Applicants made quite clear that they viewed market power mitigation as separate and distinct from market design, *i.e.*, while “narrowly tailored market power mitigation mechanisms” would be necessary, it was not necessary to address them at this time.^{2/} Several parties, including Seminole, took strong exception to this position.

The Applicants are calling for a further, face-to-face meeting on July 29 in Tampa ostensibly to provide more detail and to discuss the parties’ differences.

A. Seminole Has Already Indicated Its Position That, Whatever Market Design Model Is Adopted, It Must Satisfactorily Address Certain Overriding Concerns in Order To Protect Retail Consumers.

At the May 29 workshop, Seminole made it quite clear that it was not taking issue with the physical rights market design model filed by the Applicants and approved (with modifications) by the FPSC; Seminole noted, however, that there was a strong likelihood that the FERC would be favoring as its Standard Market Design (in pending FERC Docket No. RM01-

^{1/} Applicants’ Supplemental Comments at 19.

^{2/} *Id.* at 9; *see id.* at 10-11.

12) an LMP-based financial rights model, with which Seminole could also live.^{3/} Seminole emphasized that the key was not whether a physical rights or financial rights model was adopted; rather the key was to address certain overriding concerns so that those impacted by market design were not needlessly injured.^{4/} Those concerns are particularly apt at this time given the Applicants' abrupt reversal of position on the basis of a pleading wholly lacking in substantive detail.^{5/}

Seminole's *first* concern was that "markets not be permitted to function until the market power situation in the state has been fully assessed and market power mitigation rules are in place."^{6/} The Applicants have made quite clear in their Supplemental Comments and in the July 8 conference call that they view the situation quite differently - that the Commission should feel free to approve a market design without at the same time being assured that adequate market power mitigation rules are in place.^{7/}

One can, of course, appreciate the Applicants' position: markets that run amok benefit generators at the expense of retail customers (*see, e.g.,* California), and the Applicants are the dominant generators in the State. The Applicants will adamantly deny that they intend to profit

^{3/} Tr. 46-47.

^{4/} Tr. 47-49.

^{5/} The Applicants readily admit that "a great deal of work is required to go from general principles to the implementation of specific market rules and procedures" (Applicants' Supplemental Comments at 4), yet they seek FPSC approval of a dramatically incomplete proposal.

^{6/} Tr. 47.

^{7/} *See, e.g.,* Applicants' Supplemental Comments at 10-11.

from the new market design, but it would be naive to assume that they are not now, as always, looking at their bottom line. It is clear from the Commission's December 20 Order that it fully appreciates the market power problems in the Florida market, 8/ and thus the Commission surely appreciates the folly of proceeding without adopting adequate market power mitigation (and market monitoring) rules to prevent the type of market power abuses experienced elsewhere.

Seminole has suggested in its pre-workshop comments certain market power mitigation and market monitoring conditions that should be attached to whatever market design is adopted,9/ and it urges that the Commission either adopt these suggestions (along with any others that the Commission deems appropriate to protect retail consumers) or hold a hearing to adequately assess the matter. In no event should the Commission rubber stamp the Applicants' elliptical proposal that is missing many key ingredients, none more important than those addressing market power mitigation. The FERC in its March 15, 2002 Working Paper in Docket No. RM01-12 (at 6, 21-24) recognized the importance of market power mitigation as an integral part of market design.10/

Seminole's *second* concern was that market design, be it physical or financial, not be regarded as a substitute for an adequate regional transmission plan.11/ The advocates of the financial rights model are almost fanatical in their assertions that the market signals offered by

8/ See December 20 Order at 22-24.

9/ Seminole Pre-workshop Comments at 14-15 and Attachments II and III thereto.

10/ It is noteworthy that the most ardent advocates of LMP, the Joint Commenters (Calpine, Mirant, and Duke), "agree that the markets should not be permitted to function until market power has been addressed." (Joint Commenters Post-workshop Comments at 20.)

11/ Tr. 47-48; *see id.* at 51-53.

the LMP approach will resolve all problems regarding building of new transmission and generation. The Commission should take that with a grain of salt. While Seminole is willing to assume for sake of discussion that LMP may be superior to a physical rights approach in terms of sending appropriate market signals, there are reported transmission and generation location problems in the PJM and the New York ISO, both of which rely on LMP. Thus, the Commission, if it eventually endorses the LMP model, needs to be cautious that it not view such a market design as a substitute for a strong regional planning process.^{12/}

Seminole's *third* stated concern at the workshop was that there be no surprises.^{13/} What Seminole meant by that at the time was that load serving entities ("LSEs") that had not been experiencing congestion costs pre-RTO should not on Day 1 of the new market design be subject to congestion costs. Seminole suggested that the surest way to prevent such a result was to allocate transmission rights in such a fashion as to ensure that LSEs are protected from such cost exposure. Seminole also cautioned against using the auction approach for distributing transmission rights.^{14/}

In the Applicants' Supplemental Comments, in which they properly indicate a preference

^{12/} As the FERC noted in its March 15, 2002 Working Paper in Docket No. RM01-12 (at 6), "while price signals should support efficient decisions about consumption and new investment, they are not full substitutes for a transmission planning and expansion process that identifies and causes the construction of needed transmission and generation facilities or demand response."

^{13/} Tr. 48-49.

^{14/} See Seminole Post-workshop Comments at 10-12.

for allocation (versus auctioning) of transmission rights,^{15/} they state that “[t]he GridFlorida Companies believe that it is imperative that existing users are protected *to the extent possible* against increased costs for the services they receive today.”^{16/} No detail accompanies their Supplemental Comments (nor could any concrete information be elicited during the July 8 conference call), so it is impossible to determine, for example, whether LSEs like Seminole (with load and resources spread throughout the State) would be treated equitably vis-a-vis the Applicants (whose loads and resources are primarily located within discrete control areas). It is this type of detail that must be presented before impacted parties (not to mention the Commission) can sign off on the Applicants’ new (and highly generalized) proposal. As the Applicants themselves perform concede: “a great deal of work is required to go from general principles to the implementation of specific market rules and procedures.”^{17/} Seminole believes that it is imperative to accomplish this work *before* the Commission is asked to determine whether the new proposal passes muster.

B. There Are Other Significant Problems with the Applicants’ New Proposal.

In addition to the problems discussed in Section A, above, related to Seminole’s previously noted overriding concerns that need to be addressed regardless of the type of market design model adopted, there are also other issues raised by the Applicants’ filing that require Commission attention.

^{15/} Applicants’ Supplemental Comments at 12-13; *see* Seminole Post-workshop Comments at 10-12.

^{16/} *Id.* at 12; emphasis added.

^{17/} *Id.* at 4.

1. Market-clearing prices versus pay-as-bid approach.

In its December 20 Order, the Commission observed that “[a] clearing price methodology is one method to self-regulate a market if there are sufficient market participants without market power.”^{18/} The Commission went on to observe that:

In response to the FERC’s concerns, the GridFlorida Companies have proposed two alternatives for the balancing energy/congestion pricing market. Alternative A would utilize a clearing price concept, but limit generators who had cost-based rates to only collect up to their cost-based rate. All other generators would receive the higher clearing price for energy balancing and congestion management. Alternative B would implement a “get what you bid” approach for all generators. Utilities with cost-based rates would be capped at their cost. ^[19/]

The Commission assessed the two alternatives in pertinent part as follows:

While Alternative A seems to solve the market power issue, it does not address the problem of having too few participants in the market to make a clearing price method valid. In addition, market power will likely re-emerge as market power can arise at any time with little notice. ... The GridFlorida Companies stated that the current proposal did not attempt to address local market power issues, such as must-run units.

* * *

Alternative B is a simple “get what you bid” approach. Regardless of whether the seller has market or cost-based rates, the bids are prioritized from lowest to highest bid until sufficient energy is committed. ... While this approach does not mitigate localized market power issues, it does limit the exposure of the buyer of balancing/congestion energy. [W]e think that the “get what you bid” alternative is preferable for all transactions until the GridFlorida Companies can demonstrate that sufficient participants exist and that localized market power has been adequately addressed. ^[20/]

There are several pertinent points to be made. First, unlike the proposal that the

^{18/} December 20 Order at 22.

^{19/} *Id.*

^{20/} *Id.* at 24.

Commission was reacting to in the December 20 Order, the subject one has *no* market power mitigation provisions; by contrast, Alternatives A and B both were committed to limiting generators without market-based rates (such as the Applicants) to receiving only their cost-based rates (versus the market-clearing price). On the July 8 conference call, the Applicants made it clear that their new proposal contained no such limitations - again, these were to be addressed at some other undisclosed future time.^{21/} Thus, the market-clearing proposal before the Commission now is less specific and even more objectionable than the one rejected by the Commission in the December 20 Order.

Next, the Applicants make no attempt to address the concerns expressed by the Commission in the December 20 Order as to why Alternative B was superior to Alternative A, namely that there are insufficient participants and that localized market power has not been adequately addressed. So, not only have the Applicants removed the market power mitigation aspects of Alternatives A and B, they have also ignored the requirements of the Commission's December 20 Order.

Instead, the Applicants (which did not seek rehearing of the December 20 Order as to this issue) attempt to convince the Commission that its choice of Alternative B was wrong. The Applicants argue primarily that they "do not believe that, under a pay as bid approach, a supplier will base its bids on cost."^{22/} There are two answers to this. As to those without the FERC

^{21/} In their Supplemental Comments addressing this matter (at 11), the Applicants state only that "narrowly tailored market power mitigation mechanisms should be developed to address market power concerns."

^{22/} Applicants' Supplemental Comments at 9; *see id.* at 10-11.

authorization to charge market-based rates, they must bid cost. As to the others (of which there are precious few), Seminole has recommended that a key aspect of the market monitoring regime be reliance on the Lerner Index, *i.e.*, that it be assumed that any generator that does not bid its marginal cost (plus a reasonable margin or “deadband”) is exercising market power since in a truly competitive market, sellers offer their products at marginal cost.^{23/} Thus, the problem postulated by the Applicants is easily overcome.

The Applicants’ failure to address in any manner the market power issues inherent in both Alternatives underscores the inappropriateness of attempting to address market design in a vacuum, especially in a state like Florida where, due to its unique configuration, market power issues are arguably more pressing than in any other state in the continental United States.

2. The Applicants’ effort to split the “ICE” responsibilities between the FPSC and GridFlorida should be rejected.

All parties seem agreed that long-term generation adequacy in the State is important and all parties also seem agreed that the proper agency to determine long-term generation adequacy standards is the FPSC.^{24/} However, unlike Seminole and a number of other parties, the Applicants want to deprive the FPSC of its enforcement powers.^{25/} They are seeking to maintain their ICE proposal under which “(i) each LSE would be obligated *to demonstrate to GridFlorida* that it has adequate rights to generation owned by the LSE, qualified demand resources, and /or qualified purchase contracts; (ii) each LSE will be required to show that it has

^{23/} This concept is fully explained in Attachment III to Seminole’s Pre-workshop Comments.

^{24/} See Applicants’ Supplemental Comments at 14-15.

^{25/} *Id.*

rights to energy from the generation resources at a specified energy purchase price; and (iii) the generation resource must satisfy deliverability requirements.”^{26/} In fact, the Applicants go so far as to urge that “[t]he Commission ...should specifically find that under the GridFlorida market design LSEs will be required to satisfy LSE-specific capacity requirements through an ICE market established consistent with the GridFlorida ICE proposal included in the March 20 filing.”^{27/}

Seminole suggests that the Commission is the better qualified entity to oversee the implementation of the reserve standards to be set by it. If third parties want to establish markets for qualifying capacity, that is fine; but Seminole very strongly resists the notion that GridFlorida should be using the FPSC reserve standards as the basis for declaring utilities in the State to be in violation thereof and thus forced to rely on market-driven remedies (which markets will undoubtedly be dominated by the Applicants themselves for the foreseeable future). The Commission has a proven track record in the State, and there is no basis for the type of dramatic change being advocated by the Applicants.^{28/} In addition, the FERC appears to be inviting state agencies to become more active in this area. ^{29/}

If after a period of time GridFlorida (versus the Applicants) believes that there is the need for change in this area of long-term generation adequacy, it could approach the Commission; and

^{26/} *Id.* at 14; emphasis added.

^{27/} *Id.* at 16.

^{28/} Seminole is not here addressing whether the Applicants’ attempt to deprive the FPSC of its enforcement powers is legal under State law, as the Commission is best suited to make such assessment on its own.

^{29/} *See* April 10, 2002 Options Paper in Docket No. RM01-12 at 13-16.

failing agreement between the two entities as to how best to proceed, GridFlorida could always seek change by way of a Section 205 filing at FERC. Seminole does not believe that such an outcome is likely, but there exists a safety valve if problems do arise. The Commission should specifically reject the Applicants' proposal and also should inform the FERC of its willingness to perform the functions related to long-term generation adequacy.

3. The proposal for imbalance penalties italicizes all that is wrong with the Applicants' filing.

The Applicants express a concern that there will exist a real time market where bids are mitigated and thus in order to prevent over-reliance on such a market, there will be a need for penalties for imbalances in the real-time market that exceed certain specified thresholds.^{30/} The flaws in this aspect of the Applicants' market design proposal mirror the flaws in their overall proposal.

First, because market mitigation has not been addressed simultaneously with market design, there is no basis for even knowing if the Applicants' predicate, namely whether "bids are limited in the real-time market,"^{31/} is factually valid. If not, then the entire ensuing discussion is moot. The Applicants themselves concede that where bids by suppliers are not mitigated, LSEs have an incentive to enter into arrangements prior to real-time operations to serve their loads.^{32/}

Second, assuming *arguendo* that there is some sort of mitigation in the real-time market (a subject that needs to be aired now, not later), the Applicants are urging that "[t]o discourage an

^{30/} Applicants' Supplemental Comments at 16-19.

^{31/} *Id.* at 16.

^{32/} *Id.*

LSE from unduly relying on the real-time market to serve its load, rather than using the opportunities available to make arrangements prior to that time, the GridFlorida market design should include penalties for imbalances in the real-time market that exceed certain specified thresholds.”^{33/} But what penalty regime are they proposing that will differentiate between the LSE that is purposefully leaning on the real-time market to acquire cheap energy (which the Applicants believe should be discouraged) and the LSE that for any of a variety of reasons is forced to rely on the real-time market due to circumstances beyond its reasonable control (for example, good faith load forecast error)?

The answer to that question appears at first blush to be Section 13.2.3 of Attachment P, since that section is referenced in the Applicants’ Supplemental Comments (at 17). But upon questioning about this during the July 8 conference call, the Applicants were quite clear that they were not proposing that section but rather were using it as exemplary only. Thus, parties like Seminole have no basis for knowing whether the concept being proposed by the Applicants has any merit, both because the predicate for the proposal is speculative and because the remedy being suggested is missing. How can the Commission possibly approve a concept as full of questions and unknowns as this? And yet the Applicants request the Commission to “specifically find that under the GridFlorida market design LSEs that unduly lean on the real-time market will be subject to settlements penalties.”^{34/} Seminole respectfully submits that the Commission is not in the position to prudently make such a finding.

^{33/} *Id.* at 17.

^{34/} *Id.* at 18.

C. The Applicants Are Noticeably Silent Regarding the Relationship Between Their Proposal and the FERC's Standard Market Design.

The Applicants, on the basis of a filing totally lacking in detail and missing many of the concepts that are integral to market design (*e.g.*, market power mitigation), request the Commission “to approve the Revised GridFlorida Market Design,” following which “[t]he GridFlorida Companies will develop tariff language to implement that market design structure and file it at FERC following Commission approval of the Revised GridFlorida Market Design.”^{35/} Putting to one side that the Applicants are requesting the Commission to approve a proposal (i) that flies in the face of the proposal that was before this Commission in the proceeding below and that (with modifications) was approved by it and (ii) that for the most part is so lacking in detail that it defies meaningful comment, the question must be asked, what are the Applicants attempting to achieve by this dramatic change in direction.

Under the current schedule, the Commission staff will make its recommendations to the Commission in August, and the Commission will act in September. In the meantime, the FERC is scheduled to issue its notice of proposed rulemaking regarding a Standard Market Design (“SMD”) by the end of July, and while the contents of the proposed SMD are not certain, what is certain is that it will be detailed and will cover the areas touched on by the Applicants as well as the areas omitted by the Applicants. The question that must be asked is whether retail customers in Florida are advantaged by having the Commission prematurely approve a market design (the Revised GridFlorida Market Design set forth in its entirety in the Applicants’ Supplemental Comments) that is so lacking in specifics that the Applicants themselves cannot answer the most

^{35/} *Id.* at 19.

fundamental of questions about it.

Seminole understands and appreciates that the FPSC wants to do what is best for Floridians, which is Seminole's goal as well. But Seminole does not believe that buying a "pig in a poke," which is what the Applicants are suggesting, is good policy. Seminole submits that what makes sense is for the Commission, based on input from all stakeholders in Florida (which might be elicited in a second workshop on the subject of market design), to make its views known to the FERC in response to the proposed SMD. The Commission could defer ruling on market design until after a FERC final rule issues on SMD, at which point the Commission would be in a much better position to judge which, if any, aspects of the SMD are inappropriate for a Florida RTO.^{36/}

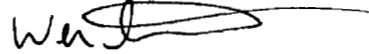
By contrast, following the path suggested by the Applicants appears sure to (i) cause substantial additional lawyering (the Applicants indicate that once the Commission approves its "Revised GridFlorida Market Design," they will put it into tariff form for filing at FERC, an arduous and time-consuming task); (ii) cause substantial additional delay (the FERC at some point would have to deal with the Applicants' filing and its inevitable inconsistencies with the SMD); and (iii) cause potentially needless federal/state conflict (the Applicants are seeking to pit the FPSC against the FERC without even having seen the SMD, whereas the course suggested by Seminole permits the FPSC to determine what aspects of the SMD, if any, it believes are

^{36/} The Applicants try to sell their approach as being most conducive to a Florida-only RTO because it would reduce seams issues (Applicants' Supplemental Comments at 5, 7, 8-9). But in fact their approach is likely to have the opposite effect since neighboring RTOs are likely to be implementing the FERC-approved SMD, which the Applicants seem hell-bent on avoiding without even having seen it.

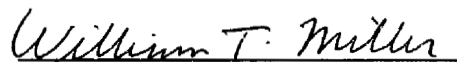
inappropriate for Florida).

II. Conclusion

Seminole respectfully requests that the Commission (i) deny the relief requested in the Applicants' Supplemental Comments and (ii) defer consideration of market design issues until after the issuance of the FERC's SMD in Docket No. RM01-12.



N. Wes Strickland
Foley & Lardner Law Firm
106 East College Avenue, Suite 900
Tallahassee, FL 32301-7732
Phone: 850-222-6100
Fax: 850-224-3101
Email: tmaida@foleylaw.com



William T. Miller
Miller, Balis & O'Neil, P.C.
1140 19th Street, N.W.
Suite 700
Washington, D.C. 20036
Phone: 202-296-2960
Fax: 202-296-0166
Email: wmiller@mbolaw.com

July 12, 2002

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CERTIFICATE OF SERVICE
Docket 020233

I hereby certify that a true and correct copy of the Supplemental Post-Workshop Comments of Seminole Electric Cooperative, Inc. Regarding Market Design has been served via first class U.S. Mail, this 12th day of July 2002, upon each of the following persons:

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

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

Ausley Law Firm
James Beasley/Lee Willis
P.O. Box 391
Tallahassee, FL 32302

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

CPV Atlantic, Ltd.
145 NW Central Park Plaza, Suite 101
Port Saint Lucie, FL 34986

Enron Corporation
Marchris Robinson
1400 Smith Street
Houston, TX 77002-7361

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

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

Carlton, Fields Law Firm
Gary L. Sasso/James M. Walls
P.O. Box 2861
Saint Petersburg, FL 33731

Florida Industrial Power Users Group
c/o McWhirter Law Firm
Vicki Kaufman/Joseph McGlothlin
117 S. Gadsden St.
Tallahassee, FL 32301

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

Florida Municipal Power Agency
Frederick M. Bryant/Jody Lamar Finklea
2061-2 Delta Way
Tallahassee, FL 32303

Dick Basford & Associates, Inc.
5616 Fort Sumter Road
Jacksonville, FL 32210

Florida Municipal Power Agency(Orl)
Robert C. Williams
8553 Commodity Circle
Orlando, FL 32819-9002

Florida Power & Light Company
Mr. Bill Walker
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

Florida Power & Light Company
Mr. R. Wade Litchfield
P.O. Box 1400
Juno Beach, FL 33408

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

Florida Retail Federation
100 E. Jefferson St.
Tallahassee, FL 32301

Gainesville Regional Util./City of
Gainesville
Mr. Ed Regan
P. O. Box 147117, Station A136
Gainesville, FL 32614-7117

Gray, Harris & Robinson, P.A. (Orl)
Thomas Cloud/W.C. Browder/P. Antonacci
301 East Pine Street, Suite 1400
Orlando, FL 32801

Greenberg, Traurig Law Firm (Tall)
Ron LaFace/Seann M. Frazier
101 E. College Ave.
Tallahassee, FL 32301

JEA
P.G. Para
21 West Church Street
Jacksonville, FL 32202-3139

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

Katz, Kutter Law Firm
Bill Bryant, Jr./Natalie Futch
12th Floor
106 East College Avenue
Tallahassee, FL 32301

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

Lakeland Electric
Paul Elwing
501 E. Lemon St.
Lakeland, FL 33801-5079

Landers Law Firm
Wright/LaVia
310 West College Avenue
Tallahassee, FL 32301

LeBoeuf Law Firm
1875 Connecticut Ave., NW, Suite 1200
Washington, DC 20009

Leslie J. Paugh, P.A.
P.O. Box 16069
Tallahassee, FL 32317-6069

McWhirter Law Firm
Joseph McGlothlin/Vicki Kaufman/Perry
117 S. Gadsden St.
Tallahassee, FL 32301

McWhirter Law Firm (Tampa)
John McWhirter
P.O. Box 3350
Tampa, FL 33601-3350

Michael Twomey, Esq.
Post Office Box 5256
Tallahassee, FL 32314-5256

Michael Wedner
117 West Duval Street
Suite 480
Jacksonville, FL 32202

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

Moyle Law Firm
Jon Moyle/Cathy Sellers/Dan Doorakian
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Office of Public Counsel
Jack Shreve/Charles Beck/John Howe
c/o The Florida Legislature
111 W. Madison St., #812
Tallahassee, FL 32399-1400

Orlando Utilities Commission
Wayne Morris/Thomas Washburn
P. O. Box 3193
Orlando, FL 32802-3193

PG&E National Energy Group Company
Melissa Lavinson
7500 Old Georgetown Road
Bethesda, MD 20814

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

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

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

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

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

Seminole Member Systems
William T. Miller
c/o Miller Law Firm
1140 19th St. N.W., Suite 700
Washington, DC 20036

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

Spiegel & McDiarmid
Cynthia Bogorad/David Pomper/J.Schwarz
1350 New York Ave., NW, Suite 1100
Washington, DC 20005-4798

Sutherland Asbill & Brennan LLP
Russell S. Kent
2282 Killearn Center Blvd.
Tallahassee, FL 32308-3561


Sutherland Asbill & Brennan LLP (DC)
Daniel Frank
1275 Pennsylvania Ave. NW
Washington, DC 20004-2415

Suzanne Brownless, P.A.
1975 Buford Blvd.
Tallahassee, FL 32308

Tampa Electric Company
Ms. Angela Llewellyn
Regulatory Affairs
P. O. Box 111
Tampa, FL 33601-0111

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

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



N. Wes Strickland, Esq.
Foley & Lardner
106 E. College Avenue, Suite 900
Tallahassee, Florida 32301
(850) 222-6100