

**ORIGINAL**



**Jody Lamar Finklea**  
Attorney

P.O. Box 3209  
Tallahassee, Florida 32315-3209  
2061 - 2 Delta Way  
Tallahassee, Florida 32303  
Tel. (850) 297-2011 1 877 297-2012  
Fax (850) 297-2014 www.fmpa.com  
jody.lamar.finklea@fmpa.com

September 18, 2002

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

Re: Docket 020233-EI  
Motion for Clarification or Reconsideration of Florida Municipal Power Agency  
Regarding Order Part R

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen copies of a Motion for Reconsideration of Florida Municipal Power Agency. Also enclosed is a diskette containing an electronic version of the filing in Adobe Acrobat format.

Sincerely yours,

  
Jody Lamar Finklea

JLF/taf

Enclosures

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP 5 cc: as noted on Certificate of Service
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC 1
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

F L O R I D A M U N I C I P A L P O W E R 09968 SEP 18 2002 C Y

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 020233-EI

MOTION FOR CLARIFICATION OR RECONSIDERATION OF  
FLORIDA MUNICIPAL POWER AGENCY  
REGARDING ORDER PART R

Pursuant to Rule 25-22.060, Florida Municipal Power Agency (“FMPA”) hereby asks that the Commission return its attention to one aspect of its Order No. PSC-02-1199-PAA-EI entered in this docket on September 3, 2002 (the “Order”), namely the demarcation date for defining new facilities. A thoroughly confused series of Applicant and Staff presentations on this issue, in which Applicants misstated the date used in their prior filing, and staff’s written memorandum and Agenda Conference oral presentation replicated that error and directly contradicted both each other and the actual record, has led to an enigmatic Commission Order. Read one way — in accordance with its written text and stated rationale — the Order reaches the right result, while using some erroneous labels that should be clarified to prevent confusion. Read another way — in accordance with Staff’s oral presentation and subsequent actions — the Order stumbles into a misinformed and plainly indefensible result. This mess demands attention.

At issue is the in-service demarcation date that determines cost responsibility allocations for newer transmission facilities. Older facilities’ costs are treated as if those facilities were useful only for loads in the zones where they are located, *i.e.*, the statewide sharing of their costs is delayed until years 6-10 of GridFlorida operations. For newer facilities, it is recognized that they were completed with a view to GridFlorida operating them for statewide use, and their costs are therefore shared statewide as soon as GridFlorida begins operating. There is another demarcation date for defining new contracts, but this Motion concerns the **new facilities demarcation date.**

DOCUMENT NUMBER 020233-EI

09968 SEP 18 2002

FPSC-COMMISSION CLERK

The Commission ruling on this issue, at Part R, pages 51-54, begins by stating: “In their compliance filing, the Applicants modified language in Attachment T concerning the demarcation date for new facilities.” It proceeds to discuss that date change, and a related change to the date for defining new contracts, as if they represented a single date change— as if the date for both had been December 15<sup>th</sup>, 2000— when in fact the new facilities and new contracts dates had been a pair of millennial dates two weeks apart. That is, the Order accurately described the new contracts demarcation date as it stood before the Applicants’ filing on compliance (that date was December 15, 2000, and located in OATT Attachment T in the Applicants’ prior and still-pending FERC filings), but it did not accurately describe the pre-revision new facilities demarcation date. That date was a date certain of January 1, 2001 (*i.e.*, December 31, 2000 was the last date for “old” facilities to have entered service), and was stated in several tariff locations other than Attachment T.<sup>1</sup> In the Applicants’ filing on compliance, that date was changed to a floating future date, defined as January 1 of the year during which GridFlorida begins operations,

This error in characterizing the Applicants’ prior proposal had appeared in the Staff memorandum, and ultimately traces back to an error made by Applicants’ representative at the May 29, 2002 Workshop, Tr. 30-31:

So the question is ... [w]hat is the date for deciding what is a new facility, and what is the date for deciding what is an old grandfathered contract as opposed to a new contract. We previously had set these dates to coincide with the start-up date, the anticipated start-up date for GridFlorida, which was initially .

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<sup>1</sup> Accordingly, the struck-through definition of “New Transmission Investment” in § 1.26A of the redlined OATT filed in this docket is “The revenue requirement associated with transmission facilities placed into service on or after January 1, 2001.” See also OATT Attachment I-1, Section B.1.a ( “New Transmission Plant” was defined as the “Simple average of beginning-of-year and end-of-year amounts in Accounts 350-359 placed into service after January 1, 2001.”).

December 15th, 2000. That was the day specified in Order 2000 by which we had to be up and running. So we used those as the dates for those two definitions. It now is clear that we are not going to meet that date, so we have revised these deadlines to comply with the future start-up date, and we are going to use December 31st, which is a convenient time for accounting periods and it will be the year of commercial operations for GridFlorida.

As explained below, this description was factually erroneous, and the Applicants' error continues to befuddle the Commission's Order. Nonetheless, specific references to the "new transmission investment" definition as part of the matter at issue appear throughout the Commission's discussion, Order at 51-54. For example, the Order recites (at 53, and ultimately rejects, at 54) an argument that "if the threshold date for including new transmission facilities in the system-wide RTO rate is not moved up, there would be more pre-implementation facilities." Thus, the Order treats the issue as if there were a single demarcation date, which was changed so as to alter the definition of both new facilities and new contracts. The Order proceeds to reject that date change in its entirety, and thus is most fairly read as rejecting both the new contracts date change and the new facilities date change.

Furthermore, the Commission's supporting reasoning is equally applicable to both changes. Below we reprint in italics each passage in the Commission's key paragraph, and demonstrate that it applies to the new facilities date.

*"We perceive the critical question to be whether the change in the date was necessitated by Order No. PSC-01-2489-FOF-EI and the change from a for-profit Transco to a not-for-profit ISO. The Applicants have not argued this to be the case even though interveners have taken the position that it was not necessary."* Nothing about the RTO's changed corporate structure dictates delaying the new facilities demarcation date. If anything, the fact that POs will no longer have the option to sell their recently completed facilities to GridFlorida, and thus

immediately recoup the costs of recently completed facilities being put to statewide use, argues for bringing the rate treatment of such facilities immediately into line with their statewide use.

*“The main argument made by the Applicants, i.e., that the relationship in time of the commercial date and the demarcation date should be maintained, is not persuasive. First, as Seminole noted, there were opportunities in the past where the Applicants could either have discussed or made a filing which was consistent with this precept, and notably, they did not.”*

Again, the referenced argument by Applicants was that the new investment date and new contract date were interrelated, and should both be tied to the implementation date. See page 2 above, quoting May 29, 2002 Workshop, Tr. 30-31. Thus, it went to both the new contracts and the new facilities date, equally. But it was factually erroneous on both counts.

Applicants left both the new contracts demarcation date and the new facilities demarcation date in place even after it became evident that GridFlorida’s start-up would be delayed. The demarcation date (more precisely, the two slightly different demarcation dates) were deliberately set to be fixed and retrospective, with full knowledge that they would predate GridFlorida operations. The original end-of-2000 date for defining new facilities was filed in FERC Docket No. RT01-67 on December 15, 2000, as part of a filing in which the Applicants stated that “it will not be possible to complete the process of selecting an independent board and employees until the third quarter of 2001,” and that they sought to enable GridFlorida “to assume its functions by December 15, 2001.”<sup>2</sup> It was reiterated in the Applicants’ May 29, 2001 FERC

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<sup>2</sup> Supplemental Compliance Filing of FPL, FPC, and TECo, at 9, *GridFlorida*, FERC Docket No. RT01-67 (Dec. 15, 2000).

filing.<sup>3</sup> Thus, until the Applicants' March 19, 2002 filing in this proceeding, the new facilities demarcation date had always significantly preceded the anticipated GridFlorida operational date.

*“Secondly, the argument made by the Applicants regarding the possible exacerbation of cost shifting is likewise not persuasive. All else being equal, if the RTO had come into being when originally expected, the costs now referred to as ‘extra’ would be the same as if the demarcation date were held to the December 15, 2000, date.”* With a minor correction to correctly state the original date at issue, this point is fully applicable to new facilities. Had GridFlorida started operations in late 2000 as intended, the facilities whose status as “new” facilities is now in question (e.g., those which have entered service during 2002) would have entered service as GridFlorida-operated regional grid transmission facilities from day 1 of their useful life. In that event, it is difficult to believe that anyone would even be suggesting that their costs be assigned to load within a particular zone. But even though GridFlorida's start-up has been delayed, it remains true that facilities are now being planned and completed with the expectation that GridFlorida will use them for its statewide service. Moreover, a retrospective date prevents gaming harmful to Florida rate-payers and potentially harmful to reliability, in which needed upgrades are deferred so that their costs will be spread throughout GridFlorida.

The oral comments by Staff at the August 20, 2002, Agenda Conference (Tr. 83) seemed to agree with this reasoning:

I looked at the date for the demarcation for the transmission agreement as being more a date that went into the business decisions of the entities who were deciding to build, because it gave them information regarding the cost of transmission, and that in fact, their decision to build, because of the length of time that a build takes, needed to have some information in order to make a

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<sup>3</sup> See the OATT included in that filing, in the same locations cited in note 1 above.

good decision. So to me, the date of the implementation of the RTO is not as important as the idea that the RTO was going to come about, and that the entities who are making the build decision had to go with the best information available, which was at the time, I believe, what was approved at the FERC, tentatively approved at the FERC.

Significantly, nothing in the Commission's Order follows those oral comments or otherwise indicates that the facilities date change would be accepted even though the contract date change was rejected.<sup>4</sup> Moreover, the only basis for Staff's oral comments was a clearly erroneous belief that no intervenor had identified the change in the new facilities date as problematic:

Commissioner Baez, the date that was changed, the subsequent date, the other date that we're talking about for existing facilities, was included in the compliance filing, and it was filed, and there was no one who expressed a concern with that date being changed. And a lot of the change that we keyed off of or that we identified, we keyed from people who had concerns with the dates that had proposed them. Either we were concerned with the change that was made or the intervenors were concerned with the date, and there was no concern expressed with the change of that date, which was changed to January 1 of the year of the commercial operation of the RTO. That was only -- this came up subsequent to all of that.

Tr. 86-87; *see also* Tr. 94 ("That change was not identified by any intervenors as being a problem date, that there was a concern about the change to that date."). In fact, FMPA (for one) clearly identified the new facilities demarcation date change as problematic. *See, e.g.*, FMPA Post-Workshop Comments at 31-34 ("until the Applicants made their March 19, 2002 filing in this proceeding, the new facilities demarcation date had always significantly preceded the anticipated GridFlorida operational date. That was and remains appropriate . . . . The

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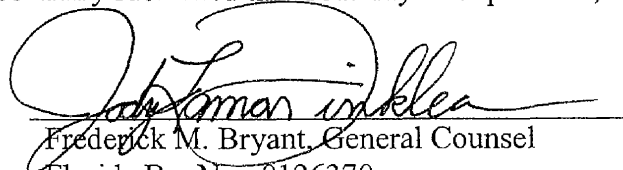
<sup>4</sup> The Staff oral presentation conceded that Staff's written recommendation did not include disparate treatment of the two dates, because Staff did not recognize in writing its recommendation that there were two distinct dates. Tr. 85-

Commission should make clear that it is not approving Applicants' proposed shift of demarcation dates.").

### CONCLUSION

For the reasons stated above, disparate treatment of the new facilities and new contracts date changes would be clear error. Given that the Commission has addressed GridFlorida's rate structure,<sup>5</sup> both of the opposed demarcation date changes should have been treated alike. The proposed delay in the new facilities demarcation date should have been rejected clearly, just as the proposed delay in the new contracts demarcation date was rejected. The Commission should promptly clarify that that was its intent.<sup>6</sup>

Respectfully submitted this 18th day of September, 2002,



Frederick M. Bryant, General Counsel  
Florida Bar No. 0126370  
Jody Lamar Finklea, Esq.  
Florida Bar No. 0336970  
FLORIDA MUNICIPAL POWER AGENCY  
2061-2 Delta Way, Post Office Box 3209  
Tallahassee, FL 32303  
(850) 297-2011

Cynthia S. Bogorad  
David E. Pomper  
Jeffrey A. Schwarz  
SPIEGEL & MCDIARMID  
1350 New York Ave., NW, Suite 1100  
Washington, D.C. 20005-4798  
(202) 879-4000

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86. The Order tracks that written recommendation, and thus treats both dates alike.

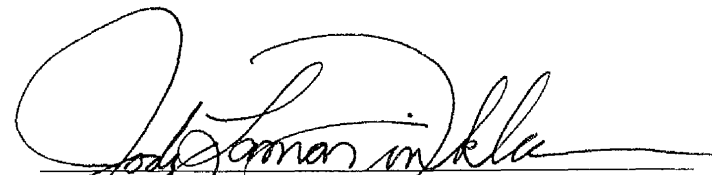
<sup>5</sup> FMPA's primary position on these transmission rate matters is that they are FERC-jurisdictional, especially as they affect GridFlorida's rates for service to wholesale-level entities like FMPA, and should be left to FERC.

<sup>6</sup> FMPA notes that Seminole and Calpine have filed (on September 13, 2002) a motion for reconsideration that seeks final order rather than PAA treatment for the Order's ruling rejecting the Applicants' proposed change of demarcation date(s). FMPA would support a ruling that both date changes (the new facilities date and new contract date) are rejected as a final (not PAA) action.



CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing MOTION FOR CLARIFICATION OR RECONSIDERATION OF FLORIDA MUNICIPAL POWER AGENCY REGARDING ORDER PART R was furnished to the parties on the attached Service List, via hand-delivery, electronic mail, facsimile, or overnight courier (as indicated), on this 18th day of September, 2002.

  
\_\_\_\_\_  
Jody Lanyar Finklea, Esq.  
FLORIDA MUNICIPAL POWER AGENCY

Andrews & Kurth Law Firm  
Mark Sundback/Kenneth Wiseman  
1701 Pennsylvania Ave, NW, Suite 300  
Washington, DC 20006-5805  
*FAX: (202) 662-2739*

Ausley Law Firm  
James Beasley/Lee Willis  
P.O. Box 391  
Tallahassee, FL 32302  
*EMAIL: lwillis@ausley.com*

CPV Atlantic, Ltd.  
145 NW Central Park Plaza Ste 101  
Port Saint Lucie FL 34896  
*FAX: (561) 873-4540*

Calpine Corporation  
Thomas W. Kaslow *FAX: (671) 557-5353*  
The Pilot House, 2nd Floor  
Lewis Wharf  
Boston, MA 02110

Carlton, Fields Law Firm  
Gary L. Sasso/James M. Walls  
PO Box 2861  
Saint Petersburg, FL 33731  
*FAX: (727) 822-3768*

City of Tallahassee  
Pete Koikos  
100 West Virginia Street, Fifth Floor  
Tallahassee, FL 32301  
*EMAIL: koikosp@talgov.com*

Dick Basford & Associates, Inc.  
5616 Fort Sumter Road  
Jacksonville, FL 32210  
*EMAIL: dbsford@attbi.com*

Duke Energy North America, LLC  
Lee E. Barrett  
5400 Westheimer Court  
Houston, TX 77056-5310  
*FAX: (713) 627-6566*

Dynegy Inc.  
David L. Cruthirds  
1000 Louisiana Street, Suite 5800  
Houston, TX 77002-5050  
*FAX: (713) 507-6834*

Enron Corporation  
Marchris Robinson  
1400 Smith Street  
Houston, TX 77002-7361  
*FAX: (713) 646-8160*

Florida Electric Cooperatives Association, Inc.  
Michelle Hershel  
2916 Apalachee Parkway  
Tallahassee, FL 32301  
*FAX: (850) 656-5485*

Florida Industrial Cogeneration Assoc.  
c/o Richard Zambo, Esq.  
598 SW Hidden River Ave.  
Palm City, FL 34990  
*EMAIL: richzambo@aol.com*

Florida Industrial Power Users Group  
c/o McWhirter Reeves et al.  
Vicki Kaufman/Joseph McGlothlin  
117 S Gadsden St. *EMAIL: vkaufman@mac-law.com*  
Tallahassee, FL 32301

Florida Municipal Power Agency(Orl)  
Robert C. Williams  
8553 Commodity Circle  
Orlando, FL 32819-9002  
*EMAIL: bob.williams@fmpa.com*

Florida Phosphate Council  
1435 East Piedmont Drive  
Suite 211  
Tallahassee, FL 32308  
*FAX: (850) 222-8061*

Florida Power & Light Company  
Mr. R. Wade Litchfield  
P.O. Box 14000  
Juno Beach, FL 33408  
*EMAIL: Wade\_Litchfield@fpl.com*

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

Gainesville Regional Util./City of Gainesville  
Mr. Ed Regan  
P. O. Box 147117, Station A136  
Gainesville, FL 32614-7117  
*FAX: (352) 334-3151*

Greenberg, Traurig Law Firm (Tall)  
Ron LaFace/Seann M. Frazier  
101 E. College Ave.  
Tallahassee, FL 32301  
*FAX: (850) 681-0207*

John & Hengerer Law Firm  
Douglas John/Matthew Rick  
1200 17th Street, N.W. Ste 600  
Washington, DC 20036-3013  
*EMAIL: djohn@jhenergy.com*

Kissimmee Utility Authority  
Mr. Robert Miller  
1701 West Carroll Street  
Kissimmee, FL 32746  
*FAX: (407) 847-0787*

Florida Power & Light Company  
Mr. Bill Walker  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1859  
*FAX: (850) 521-3939s*

Florida Power Corporation  
Mr. Paul Lewis, Jr.  
106 East College Avenue, Suite 800  
Tallahassee, FL 32301-7740  
*EMAIL: paul.lewisjr@pgnmail.com*

Foley & Lardner Law Firm  
Thomas J. Maida/N. Wes Strickland  
106 East College Avenue, Suite 900  
Tallahassee, FL 32301-7732  
*EMAIL: tmaida@foleylaw.com*

Gray, Harris & Robinson, P.A. (Orl)  
Thomas Cloud/W.C. Browder/Peter Antonacci  
301 East Pine Street, Suite 1400  
Orlando, FL 32801  
*EMAIL: tcloud@grayharris.com*

JEA  
P.G. Para  
21 West Church Street  
Jacksonville, FL 32202-3139  
*EMAIL: parag@jea.com*

Katz, Kutter Law Firm  
Bill Bryant, Jr./Natalie Futch  
106 East College Avenue, 12<sup>th</sup> Floor  
Tallahassee, FL 32301  
*EMAIL: natalif@katzlaw.com*

Lakeland Electric  
Paul Elwing  
501 E Lemon St  
Lakeland, FL 33801-5079  
*EMAIL: paul.elwing@lakelandgov.net*

Landers Parsons  
R. Sheffel Wright/John LaVia  
310 West College Avenue  
Tallahassee, FL 32301  
*FAX: (850) 224-5595*

Leslie J. Paugh, P.A.  
PO Box 16069  
Tallahassee, FL 32317-6069  
*EMAIL: lpaugh@paugh-law.com*

Michael Twomey, Esq.  
Post Office Box 5256  
Tallahassee, FL 32314-5256  
*EMAIL: miketwomey@talstar.com*

Mirant Americas Development, Inc.  
Beth Bradley  
1155 Perimeter Center West  
Atlanta, GA 30338-5416  
*FAX: (678) 579-5918*

Office of Public Counsel  
Jack Shreve/Charles Beck/John Howe  
111 W. Madison St., #812  
Tallahassee, FL 32399-1400  
*FAX: (850) 488-4491*

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

Reedy Creek Improvement District  
P.O. Box 10170  
Lake Buena Vista, FL 32830  
*FAX: (407) 824-5396*

LeBoeuf Law Firm  
1875 Connecticut Ave., NW, Suite 1200  
Washington, DC 20009  
*FAX: (202) 986-8102*

McWhirter Law Firm (Tampa)  
John McWhirter  
PO Box 3350  
Tampa, FL 33601-3350  
*EMAIL: jmcwhirter@mac-law.com*

Michael Wedner  
City of Jacksonville  
117 West Duval Street, Suite 480  
Jacksonville, FL 32202  
*EMAIL: mwedner@coj.net*

Moyle Law Firm (Tall)  
Jon Moyle/Cathy Sellers/Dan Doorakian  
118 North Gadsden Street  
Tallahassee, FL 32301  
*EMAIL: jmoylejr@moylelaw.com*

Orlando Utilities Commission  
Wayne Morris/Thomas Washburn  
PO Box 3193  
Orlando, FL 32802-3193  
*FAX: (407) 423-9198*

Publix Super Markets, Inc.  
John Attaway  
PO Box 32015  
Lakeland, FL 33802-2018  
*U.S. EXPRESS MAIL*

Reliant Energy Power Generation, Inc.  
Michael Briggs  
801 Pennsylvania Avenue, Suite 620  
Washington, DC 20004  
*EMAIL: mbriggs@reliant.com*

Rutledge Encina, et al.  
Kenneth Hoffman  
PO Box 551  
Tallahassee, FL 32302-0551  
*EMAIL: ken@reuplaw.com*

Seminole Member Systems  
William T. Miller  
c/o Miller Law Firm *EMAIL: wmiller@mbolaw.com*  
1140 19th St. N.W., Suite 700  
Washington, DC 20036

South Florida Hospital and Healthcare Association  
Linda Quick  
6363 Taft Street  
Hollywood, FL 33024  
*FAX: (954) 962-1260*

Sutherland Asbill & Brennan LLP  
Russell S. Kent  
2282 Killearn Center Blvd.  
Tallahassee, FL 32308-3561  
*FAX: (850) 894-0030*

Suzanne Brownless, P.A.  
1975 Buford Blvd.  
Tallahassee, FL 32308-4466  
*EMAIL: sbrownless@comcast.com*

Trans-Elect, Inc.  
Alan J. Statman, General Counsel  
1200 G Street NW, Suite 600  
Washington, DC 20005  
*FAX: (202) 393-1240*

Seminole Electric Cooperative, Inc.  
Mr. Timothy Woodbury  
16313 North Dale Mabry Highway  
Tampa, FL 33688-2000  
*EMAIL: TWOODBURY@seminole-electric.com*

Solid Waste Authority  
Dr. Marc C. Bruner  
7501 North Jog Road  
West Palm Beach, FL 33412  
*FAX: (561) 640-3400*

Spiegel & McDiarmid  
Cynthia Bogorad/David Pomper/J.Schwarz  
1350 New York Ave NW, Suite 1100  
Washington, DC 20005-4798  
*EMAIL: cynthia.bogorad@spiegelmc.com*

Sutherland Asbill & Brennan LLP (DC)  
Daniel Frank  
1275 Pennsylvania Ave. NW  
Washington, DC 20004-2415  
*EMAIL: dfrank@sablaw.com*

Tampa Electric Company  
Ms. Angela Llewellyn  
Regulatory Affairs  
PO Box 111 *EMAIL: RegDept@tecoenergy.com*  
Tampa, FL 33601-0111

Walt Disney World Co.  
Lee Schmudde  
1375 Lake Buena Drive, Fourth Floor North  
Lake Buena Vista, FL 32830  
*FAX: (407) 828-4311*