FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 29, 2006

OFFICE OFTHE CHAIRMAN

The Honorable Henry A. Waxman
Ranking Member
Committee on Government Reform
U.S, House of Representatives
Washington, D.C. 20515

Dear Representative Waxman:

I am writing in response to your letter of March 27,2006, relating to a pending proceeding involving the Southern Companies (Southern) in Docket No. EL05-102-000. It appears that you and your staff may have been provided with false or incomplete information from which certain incorrect assumptions have been drawn. Your letter reflects a basic misunderstanding of the facts regarding the proceeding, the role of the individuals involved in ongoing settlement negotiations, and the nature of our settlement processes in general. I will address each of these points below.

Your letter implies that I do not support the investigation of Southern's practices under its Intercompany Interchange Contract (IIC). That is simply not true. This proceeding began last May 5, 2005, with a Commission order initiating an investigation as to whether the IIC was unduly discriminatory or preferential, whether any of the Southern Companies have violated or are violating the Commission's standards of conduct rules, and whether the Southern Companies' code of conduct is just and reasonable. 111 FERC ~ 61,146. I voted for the order. I did so because I had concerns that the IIC might be unduly discriminatory or preferential in its inclusion of Southern Power, a generating affiliate, as an operating company in the Southern pooling arrangement.

Your letter also suggests that my posture in the case differs from my predecessor, Chairman Pat Wood III. In point of fact, we both voted for the order that initiated the investigation. Similarly, your letter suggests that I have initiated a change in policy at the Commission that will not adequately protect consumers from affiliate abuse by electric utilities. I strongly disagree. Although some argue that the Commission should regulate an electric utility's *purchase* decisions on behalf of its retail customers, I do not believe we should do so as a general matter. As a matter oflegal authority, the Federal Power Act provides the Commission authority to regulate *sales* of electric power at wholesale. Although we have on limited occasions exercised authority over wholesale purchases (primarily in allocating the costs of power between holding company affiliates and prudence investigations), the purchase of electricity on behalf of retail customers is an area that has traditionally been regulated by the states. California, which has a state

authorized power procurement program in place, is a prime example. I respect the states' traditional authority in this area. The Commission's role is complementary in that we must ensure that wholesale *sales* are just, reasonable and not unduly discriminatory and, when there are allegations that affiliate *sales* do not meet this standard, as there were in the Southern case, I will, as I did in that case, act to ensure that customers are protected.

Your letter misstates the nature of the ongoing settlement negotiations in the Southern case. It implies that the only parties to this proceeding are Southern and Commission trial staff. In fact, there are multiple parties that have intervened in the case, including several traditional wholesale customers and several merchant generators. After starting with the false premise that the only parties are Southern and Commission trial staff, your letter raises the prospect that Commission trial staff may agree to a settlement that is "unusually favorable" to Southern. As indicated earlier, there are several parties to this proceeding other than Southern and Commission trial staff. These parties have the opportunity to participate in the settlement discussions and, if they disagree with any settlement proposed by Southern, to oppose that settlement in formal filings before the Commission.

Indeed, on March 28, 2006, Southern and Coral Power, a merchant generator, submitted a joint request to suspend the procedural schedule because they have "reached an agreement in principle."} This should dispel the unfortunate suggestion in your letter that a settlement was being negotiated by Commission staff to the exclusion of affected parties, as well as the suggestion that a settlement had already been filed with the Commission. As the record clearly indicates, the affected parties are in active settlement negotiations and n~ settlement agreement has yet been filed. If and when a settlement is submitted, the Commission will consider the settlement in the normal course, including any comments on that settlement by affected parties. Importantly, when the Commission considers settlements, the Commissioners and advisory staff are precluded from having any off-the-record discussions with non-decisional employees with respect to the merits of a settlement.

The procedural posture of this proceeding is in no way a departure from standard Commission practice. When the Commission initiates an investigation, that investigation may be suspended at the request of the parties on the grounds that the parties to the dispute are engaged in settlement negotiations. That is exactly what occurred in this instance. On November 17,2005, the parties to the proceeding requested suspension of the investigation in order to explore settlement negotiations. At the request of the parties, not the direction of Commission staff or management, the investigation was suspended, pending those negotiations. If any settlement negotiations ultimately fail or if a proposed settlement is rejected by the Commission, then the investigation would be resumed.

I Motion of Coral Power Services et at. at I (Mar. 28, 2006).

Your letter misrepresents the role of the individuals involved in the investigation and settlement of the Southern case. It contends that Mr. Larcamp overrode "career staff' in the case, such as Mr. Heidorn. Mr. Heidorn is not "career staff' in the sense of a long-term career employee. He has worked here for only a short time after a long career as a journalist. My Chief of Staff, Mr. Larcamp, is a dedicated public servant, having spent nearly his entire career at the Commission. For over 20 years, Mr. Larcamp has protected the public interest by serving in every role that was asked of him by the agency, including as an Assistant General Counsel and Director of the Office of Market, Tariffs and Rates. In fact, his services are so highly valued that he has been appointed to senior positions by each of the last three Chairmen of the Commission, including Chairman Hoecker who was appointed by President Clinton.

I strongly object to your representation of Mr. Larcamp's role in this proceeding. Although I have no reason to believe the "supporting documents" you disseminated in any way accurately portray Mr. Larcamp's statements, they actually serve to exonerate him from the charges in your letter. The December 5, 2005 email describes Mr. Larcamp as intensely interested in knowing whether Southern had violated Commission rules.2 Your documents also demonstrate that the Commission was fully prepared to resume the investigation if settlement discussions failed, consistent with standard Commission practice.3 Indeed, your documents describe Mr. Larcamp as instructing trial staff to prepare to resume the investigation.4 These documents make plain that whether a settlement is presented to the Commission is a matter for the parties to decide, not Commission staff or management.

Your letter also alleges that it was Mr. Larcamp that ordered Commission trial staff to halt taking depositions of Southern witnesses. This is not the case. The record shows that the taking of depositions was suspended at the request of the parties and by order of the Chief Judge. On November *17,2005,* a joint motion was filed at the Commission requesting that the procedural schedule be suspended to accommodate settlement discussions.5 The joint motion specifically noted that depositions of Southern witnesses were currently being taken in Birmingham and Atlanta and asked that depositions halt so that they could "devote [themselves] solely to settlement-related activities".6 It is important to note that trial staff supported the motion, as did several affected merchant generators, all of which requested expedited action on the motion "in light of the discovery currently being conducted by the participants."? The joint motion

2 Federal Energy Regulatory Commission email (Dec. 5, 2005) ("[Dan Larcamp] pressed us regarding whether we had found any clear violations against Southern.").
3/d. ("[Dan Larcamp] said that if it doesn't settle, and the parties were unwilling to make the required filing, it will be fully litigated.").
4 [d. ("[Dan Larcamp] suggested that with respect to the 206 Team, it might be good if we worked out a contingency plan with Southern to resume the case if settlement talks fai1.").
5 Joint Motion to Hold Procedural Schedule in Abeyance (Nov. 17,2005).
6/d.
7/d.

was approved by Chief Administrative Law Judge Wagner. In short, the taking of depositions was suspended at the request of all the active participants, including trial staff and merchant generators, not by the direction of Mr. Larcamp, and was granted by the order of our Chief Administrative Law Judge. I include a copy of the November 17, 2005 joint motion and the November 18, 2005 order of the Chief Administrative Law Judge for your convenience.

Mr. Larcamp's role in this case also was not a departure from past practice. In recognition of the high esteem that both my predecessor, Chairman Wood, and I have for Mr. Larcamp, we have both designated him as a nondecisional employee in past cases. For example, Chairman Wood designated Mr. Larcamp as nondecisional in certain important matters relating to the Midwest Independent Transmission System Operator, and I designated him as nondecisional in the Southern investigation. The use of senior employees as mediators in a settlement is an accepted procedure at the Commission. Settlements are an important tool in developing practical solutions to difficult issues, and the Commission often designates key employees, whether senior staff or an Administrative Law Judge, to act in a nondecisional capacity to assist the parties in developing a settlement. Our regulations specifically provide for this procedure. See 18 C.F.R. § 385.2201(c)(3). For example, with regard to the California electricity crisis, the Commission staff has facilitated settlements resulting in over $6 billion.

It also is important to recognize the limited role of nondecisional staff in settlement negotiations. In that capacity, Commission staff serves only as a facilitator. They have no authority to require or compel parties to agree to a settlement that is against their interests. Moreover, once a Commission staff member becomes nondecisional, he or she can no longer participate in an advisory capacity in any later Commission deliberations on a proposed settlement. Separated nondecisional and advisory staffs are prohibited from communicating with one another concerning deliberations on any pertinent settlement offer. This too is set forth in our regulations. See 18 C.F.R. § 385.2201; see also 18 C.F.R. *§385.2202*.

I also must stress that settlement negotiations are confidential under Commission regulations. Thus, disclosing the contents of settlement negotiations violates our regulations and undermines the integrity of the settlement process itself. We could never have obtained more than $6 billion in settlements in the California crisis if disgruntled participants were free to disclose elements of draft settlements that they did not like. Moreover, these restrictions apply to all participants in a settlement, including the staff of the Commission. See 18 C.F.R. § 385.606(b). Mr. Larcamp takes this responsibility to maintain the confidentiality of settlement negotiations seriously, and has steadfastly honored Commission regulations. Since Mr. Larcamp was designated as nondecisional staff in this proceeding, we have had no discussions regarding any settlement negotiations.

You requested a briefing on the status of the Southern Companies proceeding and my role in negotiating a settlement. As I indicated earlier, I have had no involvement in any settlement discussions and no settlement is pending. The investigation has been suspended pending the submission of a settlement. If a settlement is presented to the Commission, that will be a matter for the Commission, not Commission staff, to decide. The Commission will rule on the merits of the settlement. It might approve, modify, or reject a proposed settlement, if one is presented. If, however, you would appreciate a briefing on the settlement process in general, our confidentiality rules, or the importance of settlements in exercising the Commission's regulatory responsibilities, please let me know.

At your request, I include a copy of communications I have received from representatives of the Southern Companies, involving a request, in accordance with Commission regulations, for a pre filing meeting regarding the proposed intracorporate merger of Savannah Electric into Georgia Power Company. I have had no oral communications with representatives of the Southern Companies regarding the instant proceeding, and so there are no communications to summarize.

Because of the rules governing nondecisional employees, Mr. Larcamp is limited in how he can respond to your request. Our regulations bar the disclosure of confidential settlement discussions. Disclosing these discussions would represent a breach of confidentiality that might forfeit a settlement in this proceeding that could be in the mutual advantage of all parties and make it more difficult for nondecisional staff to facilitate settlements in the future.

On broader issues, your letter misapprehends the Commission's policy direction with respect to electricity markets. Our policy has never been to "accelerate efforts to deregulate the nation's electricity infrastructure." Quite the contrary. The Commission has always relied on a mixture of competition and regulation. We have adjusted that mixture over time to reflect changes in electricity markets and our legal authority. As you recall, the California electricity crisis began under the prior Administration, and was eight months old when the Bush Administration took office. Since that time, the Commission has been engaged in a deliberate process of regulatory reform. In recent years, we have reformed our generation market power policies, raising the threshold for market based rate authority. We are now poised to reform our transmission access policies to eliminate the potential to engage in undue discrimination and preference in transmission service.

Since I became chairman, the Commission has moved aggressively to guard the consumer. We have issued final rules to prevent manipulation of jurisdictional natural gas and electricity markets, swiftly deploying new regulatory tools granted the Commission by the Energy Policy Act of 2005, which you opposed. This authority puts the Commission in a much stronger position to prevent market manipulation. We have

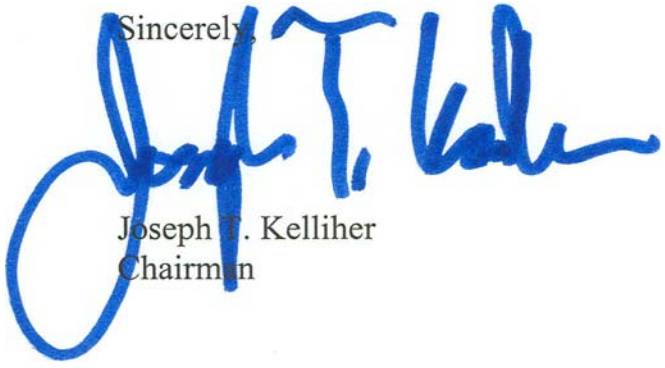
established a new enforcement policy, and strengthened the Commission's enforcement capabilities. We have improved our ability to detect market manipulation, by entering into an information sharing Memorandum of Understanding with the Commodity Futures Trading Commission and by conducting daily meetings of oversight staff that review market data over the preceding business day. Commission staff is authorized by the Commission to initiate nonpublic investigations in the event there are market developments and price movements that cannot be explained by market fundamentals. I am proud of what we have accomplished in recent months~

With respect to my participation in the development of the National Energy Policy, I make no apologies. The National Energy Policy laid out a sound energy policy for the nation, one that the Congress adopted when it enacted the Energy Policy Act of 2005. My only regret is that it was not adopted sooner. It is true that I solicited the views of Mr. Dana Contratto on natural gas policy issues that should be considered for inclusion. It is also true that none of his recommendations was included in the National Energy Policy. The allegation that the Administration supported development of a Caspian natural gas pipeline at the behest of Mr. Contratto is false. That much can be proven by the most cursory review of the brief email in which Mr. Contratto listed his policy recommendations. Notably absent is any reference to a Caspian natural gas pipeline. Falsehood does not become truth through mere repetition.

I consider it unremarkable that I should have consulted Mr. Contratto. He is an acknowledged expert on natural gas policy who was frequently consulted by the Democratic staff of the House Energy and Power Subcommittee when your former colleague, Rep. Phil Sharp (D-IN), chaired the panel. Mr. Contratto was not, as repeatedly characterized in your letter, a "natural gas industry lobbyist."

I hope this response is helpful in clarifying matters regarding this proceeding.

Sincerely,



Joseph T. Kelliher
Chairman

Enclosures

Joseph Kelliher

From: Yelverton, Todd W. [TWYELVER@southernco.com]
Sent: To: Tuesday, January 24, 2006 9:25 AM
Subject: Joseph Kelliher
Prefiling Meeting at FERC

Mr. Chairman, Good Morning,

Jim Miller, Georgia Power Company Senior VP and General Counsel, and I will be at FERC on February 7 for a pre-filing meeting to explain the Savannah Electric Merger into Georgia Power Company. Both are wholly owned subsidiaries of Southern Company. I doubt this merger is high on your radar screen but we are certainly happy to stop by to talk with you about it if you have questions or interest. We plan to file shortly
after the meeting on the 7th.

The meeting on the 7th is with Steve Rodgers and his staff. I also plan to deliver a courtesy invitation to the other Commissioners.

Thank you for your interest.

Todd W. Yelverton
Director, Federal Regulatory Affairs

Southern Company
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(202) 261-5000

Docket No. EL05-102

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc.
Alabama Power Company
Georgia Power Company **Docket No. EL05-102**
Gulf Power Company
Mississippi Power Company
Savannah Electric and Power Company
Southern Power Company

JOINT MOTION TO HOLD
PROCEDURAL SCHEDULE IN ABEYANCE,
SUSPENSION OF THE INITIAL DECISION DATE,
AND REQUEST FOR EXPEDITED RULING

To: The Honorable Curtis L. Wagner, Jr.
Chief Administrative Law Judge

The Honorable Edward M. Silverstein,
Presiding Administrative Law Judge

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.212, the active participants to this proceeding, Calpine Corporation, Coral Power, L.L.C., Southern Company Services, Inc. (for itself and as agent for the named operating companies), and Commission Trial Staff ("Movants") hereby request that the procedural schedule be held in abeyance for a 90-day period to accommodate settlement discussions among the participants, and that the date for the Initial Decision in this proceeding be suspended. Movants also request expedited action on this motion, in light of the discovery currently being conducted by the participants.

Over the past several weeks, certain participants have engaged in discussions directed at settling the issues in this case. Significant progress toward that end has been made, and an initial framework has been developed that may serve as a basis for resolving the matters involved in this proceeding. At this juncture, they are continuing to confer among themselves, and hence additional time is needed to explore a settlement.

The testimony of the Trial Staff and the Intervenors in this proceeding is due to be filed by December 14, 2005. In anticipation of that deadline, the Movants are actively engaged in discovery efforts, including written data requests, document production, and depositions. Movants are currently taking depositions of Southern Company Services, Inc. personnel in Birmingham and Atlanta. Further depositions are scheduled for November 18, 21, 29 and 30. Responses to extensive outstanding discovery requests are due over the next several weeks. The Movants agreed that it would be difficult to continue settlement negotiations while, at the same time, finalizing the currently outstanding discovery items and preparing testimony for submission by December 14, 2005. Attempting to complete these activities and conduct settlement talks will be more difficult in light of the upcoming holiday season. As a result, Movants are submitting this joint request for a 90-day suspension of the procedural schedule and a suspension of the Initial Decision date to allow the settlement discussions to continue. It is the intent of the Movants to devote the 90-day period, if granted, solely to settlement-related activities, and they have agreed that, during this time period, they will postpone action on outstanding discovery, including the noticed depositions and the discovery requests previously served. They also propose to inform the Presiding Judge as to their progress toward settlement in a status report to be filed with the Presiding Judge by January 10,

2006, or in such other manner as the Presiding Judge may deem appropriate. At this time, the Movants do not request the appointment of a Settlement Judge.

For the foregoing reasons, Calpine Corporation, Coral Power, L.L.C., Southern Company Services, Inc., and Trial Staff request that their motion to hold the procedural schedule in abeyance be granted. Movants further request that expedited action be taken on this motion, including waiver of the period for answers to motion, in order to avoid incurrence of additional costs of completing the previously scheduled depositions and responses to outstanding discovery requests

Respectfully submitted,

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Docket No. EL05-102

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November 2005, the foregoing document has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Jennifer M. Buettner
Jennifer M. Buettner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc. Docket No. EL05-102-000
Alabama Power Company
Georgia Power Company
Gulf Power Company
Mississippi Power Company
Savannah Electric and Power Company
Southern Power Company

ORDER OF CHIEF JUDGE
SUSPENDING TRACK II PROCEDURAL TIME STANDARDS

(Issued November 18, 2005)

1. On November 17, 2005, counsel for Calpine Corporation, Coral Power, L.L.C., Southern Company Services, Inc. (for itself and as agent for the named operating companies), and the Commission Trial Staff (Movants) requested to hold the procedural schedule in abeyance in this case for 90 days and a suspension of the Initial Decision deadline to accommodate settlement discussions among the participants. Movants request expedited action and that the Chief Judge waive the period for answers to the motion.

2. As grounds for the request Movants state that certain participants have engaged in settlement discussions over the past several weeks and that they have made significant progress toward settlement. Movants believe that it would be difficult to continue settlement negotiations while, at the same time, finalizing the currently outstanding discovery items and preparing testimony for submission in the next few weeks.

3. In view of the fact that all active participants support the instant motion and the further fact that depositions are scheduled to take place on November 18, 21, 29 and 30, the Chief Judge hereby waives answers to the motion.

4. The Chief Judge agrees with Movants that it will be very difficult for participants to continue settlement discussions in parallel with the current hearing schedule. Accordingly, for good cause shown, the procedural schedule herein is suspended for 90 days. The hearing scheduled to convene on June 5, 2006, and the September 18, 2006, Initial Decision deadline are also suspended. Participants are directed to report the progress of their settlement discussions to Presiding Judge Silverstein and to the Chief Judge at the end of the 90-day suspension period.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge