FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 25, 2006

OFFICE OF THE 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 30, 2006. While I believe I fully responded to the questions posed in your March 27, 2006 letter, I am prepared to respond to the new questions presented in your second letter.

Your letter asks me to describe certain of my communications prior to the commencement of settlement negotiations in the Southern proceeding. As I indicated in my prior letter, the effort to facilitate a settlement in this case arose out of my desire to reduce the tension between the Commission and state regulators that had arisen in recent years. As Director of the Office of Markets, Tariffs and Rates under Chairman Wood, Mr. Larcamp understood this tension well and, consistent with my desire for a more constructive relationship with the states, approached Southern in mid-2005 to inquire whether it would consider entering into settlement discussions. Southern indicated in the affirmative and Mr. Larcamp approached me with a request to become nondecisional in the case. I approved that request. Your letter suggests that I may have, in approving this request, given Mr. Larcamp certain policy directions, but that is not the case. In approving Mr. Larcamp's request, I did not offer any views regarding the nature or substance of any potential settlement or otherwise instruct Mr. Larcamp how to proceed as a settlement facilitator. Furthermore, I did not have any subsequent discussions with Mr. Larcamp regarding the case once he became nondecisional.

Your letter suggests that I have not addressed the contents of the December 5, 2005 email, but that is not correct. I did address that email in my March 29, 2006 letter and I reiterate that I have no reason to believe that this document in any way accurately reflects Mr. Larcamp's statements. However, far from confirming the scenario that has been presented, the email contradicts it. The December 5, 2005 email states: "[Mr. Larcamp] pressed us regarding whether we had found any clear violations against Southern."[1] That shows Mr. Larcamp as intensely interested in knowing from Commission trial staff whether Southern had violated Commission rules. The email

[1] Federal Energy Regulatory Commission email (Dec. 5, 2005).

further states "[Mr. Larcamp] said that if it doesn't settle, and the parties were unwilling to make the required filing, it will be fully litigated."[2] That demonstrates a determination on the part of Mr. Larcamp to resume the investigation if a settlement were not reached. The email also states "[Mr. 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 fail."[3] That shows resolve by Mr. Larcamp to continue the investigation.

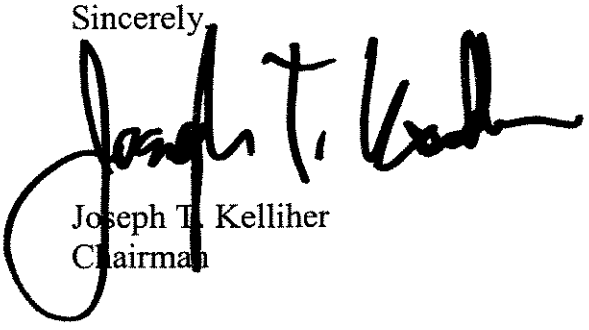
You should be aware that the active parties to the Southern proceeding, including both merchant generators and traditional wholesale customers, have now reached a settlement that has been filed with the Commission for approval. This settlement will be processed according to our normal procedures. Interested parties will have an opportunity for comments, including trial staff, which is an independent division within the Commission. Mr. Larcamp will have no role in this process because his function as a settlement facilitator is over. Any settlement will be reviewed by an independent Administrative Law Judge (ALJ). If the ALJ determines that the settlement meets the standards in our regulations, it will be certified to the Commission for its review. The entire process is designed to protect the public interest.

I must be careful not to address the merits of any proposed settlement before the Commission takes final action, in order to avoid adversely affecting or otherwise prejudging the settlement process.

With respect to the release of a version of the letter that varied from the response sent to you, that was an error on the part of Commission staff. What was initially sent to the media was a draft I had rejected. I stand by the language in the final letter that I signed and sent to you.

I hope this response satisfies your interest in this matter.

Sincerely,



Joseph T. Kelliher
Chairman

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[2] *Id.*
[3] *Id.*