

# ORIGINAL

Timolyn Henry

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**From:** ljacobs50@comcast.net  
**Sent:** Tuesday, October 31, 2006 4:41 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** Motion for Reconsideration - Docket No. 060635  
**Attachments:** motion to reconsider order on extension.doc

Please see the attached for filing.

Thanks.  
Leon Jacobs

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

10/31/2006

**ORIGINAL**

**WILLIAMS, JACOBS, & ASSOCIATES**

ATTORNEYS AT LAW  
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TALLAHASSEE, FL 32302

MOSES WILIAMS, ESQ.  
ESQ.

E. LEON JACOBS, JR.,

October 31, 2006

Blanca Bayo  
Director, Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, Florida 32399-0850

RE: Docket No. 060635-EU,  
Petition for determination of need for Electrical power plant in Taylor County  
By Florida Municipal Power Agency, JEA, Reedy Creek Improvement District,  
and City of Tallahassee.

Dear Ms. Bayo:

On behalf of the Sierra Club, Inc., John Hedrick and Bruce Lupiani, I have enclosed for filing a Motion for Reconsideration of the Prehearing Order Granting in Part and Denying in Part the Motion for Extension of these the Petitioners, consisting of four pages. I thank you for your attention to this matter.

Sincerely,

*/s/ E. Leon Jacobs, Jr.*

E. Leon Jacobs, Jr.  
Attorney for Joy Towles-Ezell

Enclosures

DOCUMENT NUMBER-DATE

10064 OCT 31 8

FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for  
Electrical power plant in Taylor County by  
Florida Municipal Power Agency, JEA, Reedy  
Creek Improvement District, and City of  
Tallahassee.

DOCKET NO.: 060635 EU

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Motion to Reconsider Order Granting in Part and Denying in Part Motion to Extend Discovery  
Schedule and Filing Date for Testimony and Exhibits of The Sierra Club, Inc., John Hedrick, and  
Brian Lupiani

Petitioners The Sierra Club, John Hedrick and Brian Lupiani (“Petitioners”), by and through their undersigned counsel, file this Motion to Reconsider the Order dated October 27, 2006, by Prehearing Officer Katrina Tew Granting in Part and Denying in Part Petitioners’ Motion to Extend Discovery Schedule and Filing Date for Petitioners’ Testimony & Exhibits and as grounds therefore state:

1. Intervention was granted to Petitioners by Order No. PSC-06-0898-PCO-EU on October 26, 2006. In Order No. PSC-06-0903-PCU-EU (hereinafter “Order”), the Prehearing Officer granted Petitioners a brief 10-day extension in the extremely expedited schedule of this proceeding, requiring intervenors to file their testimony and exhibits by November 2, 2006. Petitioners, while appreciative of the relief granted, find it insufficient to engage the intricate issues presented by the application in this docket. The Order granting the extension would not allow intervenors any meaningful opportunity to present independent review and analysis of the assumptions and inputs to the complex economic analysis the Florida Public Service Commission’s (“FPSC”) must conduct in this matter. The Order therefore places the FPSC in the position of relying primarily upon the existing record in reaching its decision.

2. The City of Tallahassee, the Jacksonville Electric Authority, the Florida Municipal Power Agency, and Reedy Creek Improvement District (hereinafter “Owners”) have filed voluminous testimony and exhibits in this proceeding, which under present circumstances

represent the essential support available to the FPSC's decision on the application by the Owners for a certificate of need for a coal-fired electric generation plant. The FPSC staff has found a fair level of uncertainty in these filings, as indicated by two sets of discovery to the Owners to gain additional insight on the filings. A cursory review of these filings by Petitioners has identified a number of issues vital to the economic analysis but lack reasonable or adequate support in the Owners' filings. These issues include, but are not limited to: (i) whether plant costs projected by the Owners effectively address the escalating capital costs to build pulverized coal plants; (ii) whether the projected costs by the Owners effectively address the volatility in coal commodity and transportation costs; (iii) whether the conclusion by the Owners that conservation, demand-side management and energy efficiency programs are not reasonably available to offset the need for this plant, properly consider the escalating capital and fuel costs, and adequately consider cost savings available from conservation, DSM and energy efficiency; and (iv) whether the Owners have adequately projected costs they will incur as a result of the regulation of emissions from the plant.

3. Petitioners and other intervenors represent an opportunity for the FPSC to gain important independent expertise, to supplement the inquiry of FPSC staff, and facilitate a thorough analysis of the complex data and issues in this docket. The Order fails to realize this opportunity in that it eliminates the opportunity for intervenors to provide any independent analysis. Petitioners assert that, given the present data available to the FPSC, this decision fundamentally misinterprets the requirements of section 403.519, Florida Statutes, relative to the issues cited herein.

4. The interests of Petitioners are directly and adversely affected by the failure to address these vital issues. Thus, due process requires that the Commission permit Petitioners a reasonable opportunity both to become informed about the utility filings and to complete their own technical analyses, testimony, and exhibits.

5. Petitioners, while recognizing and appreciating the exigency of time imposed upon the FPSC in this matter, assert that the intent of the statute is paramount is its decision.

6. Petitioners maintain that substantial additional time, at least sixty (60) days, is necessary in order for intervenors to conduct a complete and independent analysis of the issues before the FPSC in this docket. However, in the interest of complying with the concerns of the Prehearing Officer and moving the docket along, Petitioners request that the Prehearing Officer establish an amended discovery and testimony filing schedule that provides the following: (i) Petitioners and other intervenors will file basic testimony as presently provided; (ii) Owners will on the same date serve to intervenors copies of existing discovery responses to FPSC staff discovery; (iii) Intervenors will file first discovery requests to the Owners not later than five days after filing testimony. Every attempt will be made to consolidate and condense these requests; (iii) Owners will serve responses to intervenor discovery as soon as possible, but not later than thirty (30) days after receipt; (iv) Intervenors will be allowed to file supplemental testimony not later than ten (10) days after receipt of discovery responses and (v) Owners will be allowed to file rebuttal testimony to supplemental testimony not later than ten (10) days after receipt of supplemental. This requested schedule will allow Petitioners to conduct a reasonable level of review in order to present their positions and testimony in this case.

7. Pursuant to Rule 28-106.204, FAC, prior to filing this motion Petitioners conferred, or attempted to confer, with the other parties to this proceeding and states that the Owners reserve the right to object.

WHEREFORE, The Sierra Club, Inc., John Hedrick and Brian Lupiani request that the Commission Extend the Discovery Schedule and Filing Date for their Testimony by sixty days or, in the alternative, modify the schedule as herein requested.

DATED THIS 31<sup>st</sup> DAY OF OCTOBER, 2006.

Certificate of Service

I certify that a copy of this Motion to Reconsider Order Extending in Part and Denying in Part Extension of Time for Discovery and Filing of Testimony and Exhibits in Docket No. 060635-EU was provided this 31<sup>st</sup> day of October, 2006, by electronic service to the following:

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Respectfully submitted,

*/s/ E. Leon Jacobs*

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