

ORIGINAL

November 2, 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:

Please find enclosed the Natural Resources Defense Council's Petition to Intervene in the above referenced proceeding, consisting of ten pages. I thank you for your attention to this matter.

Sincerely,

/s/ Patrice L Simms

Patrice L. Simms
Senior Project Attorney
Natural Resources Defense Council
1200 New York Ave., NW
Suite 400
Washington, D.C. 20005

CMP _____

COM _____

CTR _____

ECR _____

GCL _____

OPC _____

RCA _____

SCR _____

SGA _____

SEC 1

OTH Kim P

DOCUMENT NUMBER-DATE

10168 NOV-28

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) Docket No. 060635EU
Creek Improvement District, and City of)
Tallahassee.)

PETITION TO INTERVENE

Petitioner Natural Resources Defense Council, Inc., ("NRDC") hereby files this Petition to Intervene in the above-captioned docket, pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code. NRDC is a national non-profit organization with 526,778 members across the United States, and 29,422 NRDC members in the state of Florida, dedicated to the protection of the environment, human health, and natural resources. There are hundreds of NRDC members living in the service areas that will be affected by this FPSC proceeding – specifically, areas serviced by Jacksonville Electric Authority, the City of Tallahassee, the Reedy Creek Improvement District, and the municipally owned utilities who are members of and purchase wholesale energy from the Florida Municipal Power Agency. NRDC is intervening in this proceeding on its own behalf and on behalf of its members.

The Commission will decide in this docket whether it should certify the need for a 765 MW pulverized coal and petroleum coke electric generating plant located in Taylor County, Florida, and called the Taylor Energy Center ("TEC"). The TEC will be owned by the Jacksonville Electric Authority ("JEA"), Florida Municipal Power Agency ("FMPPA"), City of Tallahassee (Tallahassee), and Reedy Creek Improvement District

(“RCID”) (hereinafter “Owners”). Under Florida law and Florida Public Service Commission (“FPSC”) precedent, the FPSC must assess: (i) the need for the power proposed in this docket; (ii) whether other cost-effective alternatives exist to provide power; (iii) whether the proposed plant is the most cost-effective alternative available; (iv) whether conservation and other demand-side management (“DSM”) measures are reasonably available to mitigate the need for the proposed plant, and (v) whether the power generated by the proposed plant can be produced with the least risk of all alternatives.

The interests of NRDC and its members will be directly affected by the Commission’s decisions in this docket, thus entitling Petitioner to intervene to protect its substantial interests. In further support of its Petition, Petitioner states:

1. The name and addresses of Petitioner is:

Natural Resources Defense Council, Inc.
1200 New York Ave., NW,
Suite 400
Washington, D.C. 20005

2. All pleadings, correspondence, orders and testimony should be directed to:

Patrice L. Simms
Natural Resources Defense Council, Inc.
1200 New York Ave., NW,
Suite 400
Washington, D.C. 20005
(202) 289-2437 telephone
(202) 289-1060 fax
psimms@nrdc.org

3. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

4. The NRDC is a national non-profit organization, incorporated under the law of New York, committed to the protecting public health and the environment. NRDC represents the interests of its members in state and federal litigation, public policy advocacy, administrative proceedings, and before state, local, and federal lawmakers. Among other issues, NRDC is deeply involved in advocacy around issues related to responsible energy policy – including the adoption, implementation, and enforcement of meaningful requirements to evaluate the appropriateness of new electricity capacity (especially new capacity that would use dirty fuels, such as coal, to generate electricity). This work is a core element of NRDC's portfolio, and NRDC experts have (among other things) provided testimony in numerous instances before state public utility commissions on issues such as the consideration of costs associated with carbon regulation and the importance of thoroughly evaluating efficiency, conservation, and other demand-side options.

5. More than 2,200 NRDC members are Florida residents who live in the service areas that will be affected by the Florida Public Services Commission's (FPSC) decision in this case – specifically areas serviced by Jacksonville Electric Authority, the City of Tallahassee, and various members of the Florida Municipal Power Agency (collectively

“the Owners”). In particular, NRDC members live in the following locations in the following numbers:

Tallahassee – 594;
Lake Worth – 435;
Key West – 117;
Fort Pierce – 380;
Jacksonville – 709.¹

6. Statement of Affected Interests. Petitioner’s interests are of the type that this proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So. 2d 473 (Fla. 1997); *Amico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So. 2d 1359 (Fla. 1982); *Florida Home Builders Ass’n v. Dep’t of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982). As consumers, NRDC members bear significant risk associated with the FPSC’s decision in this case, in particular related to energy price volatility resulting from regulatory decisions that are made based on incorrect and/or inadequate factual information reflecting a narrow and short-sighted energy strategy. In particular, NRDC members will be directly affected by the cost impacts of future carbon regulation (which is at this point a virtual certainty), the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand-side alternatives, and the health and environmental consequences of energy decisions that disproportionately rely on dirty sources of energy such as coal. NRDC believes that before taking any action on the proposed Taylor Energy Center, the Owners should be required to meaningfully evaluate alternatives such as energy efficiency, renewable energy, demand-

¹ This list is based on membership data for more than 100 zip codes in Tallahassee, Lake Worth, Key West, Fort Pierce and Jacksonville. This may not be an exhaustive list of NRDC members in relevant service areas.

side management and conservation – strategies that are grossly underutilized in Florida’s energy portfolio – and that the FPSC and the interested public should have the opportunity to examine and provide testimony on the Owners’ evaluation of these strategies. Failure to require a robust assessment of such strategies will result in unnecessary premiums for fossil fuel generation for Florida’s ratepayers, including NRDC members, and will subject NRDC members and other Floridians to the harmful effects of increased pollution (including toxics like mercury, and criteria pollutants like smog, SO₂, volatile organic compounds, and soot). While the availability of an adequate, affordable, and reliable supply of electricity is vitally important, an irresponsibly one-sided strategy for accomplishing this goal is not in the best interest of Florida’s electricity consumers.

7. Disputed Issues of Fact.² Petitioner disputes whether any of the Owner has demonstrated the need for a new 765 MW pulverized coal and petroleum coke electric generating plant to be located in Taylor County, Florida, under 403.519, Florida Statutes. We specifically raise the following disputed issues as of the date of this Petition:

- a. Whether JEA, the City of Tallahassee, FMPA, or RCID, independently or collectively, have adequately demonstrated a need for additional generating capacity in the area(s) that will be served by the proposed plant.

² Petitioner reserves the right to rephrase or reorganize its issues, and to raise additional issues as permitted by FPSC rule, procedural order, or other authority, as they become apparent through the course of investigation and discovery.

- b. Whether JEA, the City of Tallahassee, FMPPA, or RCID, independently or collectively, have adequately demonstrated that the proposed TEC is the most cost-effective and lowest risk alternative to provide needed capacity in each area that will be served by the proposed plant.

- c. Whether the Owners erroneously conclude in their filing that there are no reasonably available conservation or DSM measures, which would mitigate the need for the proposed plant.

- d. Whether conservation and DSM measures have been adequately valued and examined in connection with assessing the need for and appropriateness of a new 765 MW pulverized coal and petroleum coke electric generating plant to be located in Taylor County, Florida. In light of all the costs and risks associated with construction of a pulverized coal plant (including costs related to complying with future CO₂ regulations), efficiency, conservation and other DSM measures are likely to offer the significant comparative benefits.

- e. Whether the regulation of CO₂ is sufficiently likely to warrant formal consideration in the needs determination for the TEC.

- f. Whether the Owners' assessment of the proposed plant as the most cost-effective alternative adequately and appropriately accounts for the cost of complying with future CO₂ regulation.

- g. Whether the failure to consider CO₂ in connection with the needs determination for the TEC is a material breach of the Owners' regulatory obligations and of the obligation of the FPSC to protect the interests of Florida's electricity consumers.
- h. Whether the Owners adequately and appropriately considered alternative new capacity options such as renewable energy sources, natural gas, and IGCC.
- i. Whether the proposed plant is consistent with general principles of good integrated resource planning and portfolio management.

8. Statement of Ultimate Facts Alleged. The Owners must meet the requirements of Rules 25-22.080, and 25-22.081, Florida Administrative Code. Before certifying the need for the TEC as proposed by the Owners the FPSC must ensure that the proposed plant is needed and that it is the most appropriate alternative considering all available options. The analysis proposed by the Owners does not fully evaluate important alternatives, does not adequately assess costs that will affect this plant over its life, and does not analyze important risks associated with the operation of a new coal-fired power plant. Each of these elements is necessary to protect the interests of affected consumers as required by Florida law. The FPSC must closely scrutinize the TEC proposal, including cost projections, evaluation of alternatives, evaluation of risks (including consideration of carbon-related costs), and the conclusion that new capacity totaling 765 MW is needed, collectively in independently, in the areas to be served by the proposed

source. The FPSC must require additional analysis where any of these evaluations are found lacking, and should decline to certify the need for the proposed facility unless the Owners can affirmatively demonstrate that the proposed plant is the best available alternative.

9. Statutes and Rules that Require the Relief Requested. Statutes and rules that require the relief requested by Petitioner include, but are not limited to, Chapter 120, and sections 403.519 and 366.80-366.85 Florida Statutes, and Rules 25-22.039, 28-106.205, 25-22.080, and 25-22.081, Florida Administrative Code.

10. Statement Explaining How the Facts Alleged by Petitioner Relate to the Above-Cited Rules and Statutes in Compliance with Section 120.54(5)(b), Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. The Florida Energy Efficiency and Conservation Act, 366.80-366.85 and 403.519, Fla. Stat., provides the Commission jurisdiction over need determinations for any provider of electric energy in the State and directs the Commission to ensure that new generating facilities are needed and, if needed, reflect the most cost-effective, least costly, and least risky alternative. A substantial number of NRDC members are residential electricity customers in areas served by the Owners of the proposed TEC, and accordingly, their substantial interests are subject to determination in, and will be affected by, the FPSC's decision whether to certify the need for the proposed plant. Accordingly, NRDC is entitled to intervene herein.

11. Relief Sought. For the reasons outlined above Petitioner requests that the FPSC enter an order granting Petitioner's petition to intervene.

DATED THIS 2nd DAY OF NOVEMBER,
2006.

Respectfully submitted,

/s/ Patrice L Simms

Patrice L. Simms
Senior Project Attorney
Natural Resources Defense Council
1200 New York Ave., NW
Suite 400
Washington, D.C. 20005
(202) 289-2437

CERTIFICATE OF SERVICE

I certify that a copy of this Petition to Intervene in Docket No. 060635-EU was provided this 2nd day of November, 2006, by electronic service and by regular mail to the following:

City of Tallahassee
Ms. Mazie R. Crumbie
Accounting Services
300 South Adams Street, A-29
Tallahassee, FL 32301-1731
crumbiem@talgov.com

Gary V. Perko
Carolyn S. Raepple
Hopping Law Firm
P.O. Box 6526
Tallahassee, FL 32314
GPerko@hgslaw.com
CRaepple@ggslaw.com

Brian P. Armstrong, Esq.
7025 Lake Basin Road
Tallahassee, FL 32312
barmstrong@ngn-tally.com

E. Leon Jacobs, Jr.
Williams Law Firm
P.O. Box 1101
Tallahassee, FL 32302-1101
ljacobs50@comcast.net

Jeanne Zokovitch Paben, Senior Staff
Attorney
Brett M. Paben, Senior Staff Attorney
WildLaw
1415 Devils Dip
Tallahassee, Florida 32308-5140

Telephone: (850) 878-6895
Facsimile: (850) 878-6895

Valerie Hubbard, Director
Department of Community Affairs
Division of Community Planning
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
Valerie.Hubbard@dca.state.fl.us

Hamilton "Buck" Oven
Michael P. Halpin
Department of Environmental Protection
Siting Coordination Office
2600 Blirstone Road MS 48
Tallahassee, FL 32301
Hamilton.Oven@dep.state.fl.us
Michael.Halpin@dep.state.fl.us

Harold A. McLean
Office of the Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399
hallmc@earthlink.net

Jennifer Brubaker, Esq.
Katherine Fleming, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Patrice L. Simms