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 Subject: Docket 060635-EU

Attachments: Docket 060635 - Applicants' Response in Opposition to NRDC's Motion for Extension of Time to File Testimony.pdf



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 5 - Applicants
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a. Person responsible for this electronic filing:

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b. Docket No. 060635-EU

In re: Petition To Determine Need For an Electrical Power Plant in Taylor County

c. Document being filed on behalf of Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and City of Tallahassee

d. There are a total of 6 pages.

e. The document attached for electronic filing is Applicants' Response in Opposition to The Natural Resources Defense Council's Motion for Extension of Time to File Testimony

Thank you for your cooperation.

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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BEFORE THE FLORIDA 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
FILED: November 9, 2006

**APPLICANTS' RESPONSE IN OPPOSITION TO
THE NATURAL RESOURCES DEFENSE COUNCIL'S
MOTION FOR EXTENSION OF TIME TO FILE TESTIMONY**

Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and City of Tallahassee ("Applicants" or "Participants"), by and through their undersigned attorneys, hereby respond in opposition to the "Motion for Extension of Time to File Testimony" filed by The Natural Resources Defense Council ("NRDC") on November 2, 2006. As discussed below, the NRDC's motion fails to establish good cause for an extension of the current schedule. Accordingly, the motion must be denied.

Background

1. On September 19, 2006, the Applicants filed their Need for Power Application requesting the Commission to determine need for the Taylor Energy Center, along with pre-filed direct testimony in support of the application.

2. On October 4, 2006, the Pre-Hearing Officer issued an Order Establishing Procedure ("OEP") which, among other things, required intervenors to file testimony and exhibits by October 24, 2006; *i.e.*, 35 days from the filing of the Application and supporting testimony. The OEP also sets the hearing in this matter for January 10, 2007. *See* Order No. 06-0819-PCO-EU.

3. On September 26, 2006, Rebecca J. Armstrong filed a Petition to Intervene.

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4. On October 20, 2006, the Sierra Club, Inc., John Hedrick, Brian Lupiani, and Barry Parsons (the "Sierra Club") filed a Petition to Intervene in this proceeding. Both Armstrong and the Sierra Club filed motions for extension of the schedule for testimony and discovery established in the OEP, on October 18, and October 20, respectively.

5. The Pre-Hearing Officer issued an Order granting the intervenors a seven-day extension in the schedule for filing testimony, as requested by Armstrong and the Sierra Club, but maintaining the overall schedule established in the OEP. *See* Order No. PSC-06-0899-PCO-EU (ruling on Armstrong motion); Order No. PSC-06-0903-PCO-EU (ruling on Sierra Club motion). Pursuant to the revised schedule, the deadline for intervenor testimony was moved from October 24, 2006 to November 2, 2006, giving Intervenors 42 days (a full six weeks) from the filing of the Application to prepare and file testimony.

6. On October 31, 2006, Intervenors Armstrong and Sierra Club filed a motion to reconsider the Pre-Hearing Officers' scheduling orders which denied the forty-five day extension of time requested by the Intervenors but granted the Intervenors a seven-day extension for the filing of testimony. On November 2, 2006, the Applicants filed a Response in Opposition to the Intervenors' Motion to Reconsider. This request is still pending before the Pre-Hearing Officer; however, the Commission's Staff has issued a recommendation that the Intervenors' Motion for Reconsideration be denied. *See* Memorandum to Director, Division of the Commission Clerk & Administrative Services (Bayó) from the Office of the General Counsel (Brubaker, Fleming) dated November 8, 2006.

7. On November 2, 2006, more than six weeks after the Applicants filed the Petition for a Determination of Need and one week after the original deadline for filing of intervenor testimony, the NRDC filed a Petition to Intervene in this proceeding, and simultaneously filed the "Motion for Extension of Time to File Testimony" that is the subject of this pleading. On the

same day, the NRDC filed the direct testimony of Daniel Lashof (including approximately 100 pages with seven exhibits) and Dale Bryk (including more than 300 pages with three exhibits).

Discussion

8. NRDC provides no factual or legal support for its assertion that the OEP violates NRDC's rights to "due process." While NRDC complains that Intervenors have had "only" six weeks after the filing of the Application to file their testimony in response, the Pre-Hearing Officer in this case has ruled that such a schedule is by no means unusual and is clearly designed to ensure compliance with the Commission's Rule 22-25.080, F.A.C., which establishes specific time-frames for the hearing and final action in need for power proceedings. *See* Order Nos. PSC-06-0903-PCO-EU and PSC-06-0899-PCO-EU (each order cites seven PSC cases in which similar schedules were adopted). Indeed, like the OEP in this proceeding, most of the OEPs cited by the Pre-Hearing Officer required Intervenors to file testimony within 42 days (or less) after the filing of Petitioner's testimony.

9. Other than conclusory allegations about the Applicants' preparation for this proceeding, NRDC provides no factual basis to conclude that more time is needed to prepare Intervenor testimony than what has been provided in prior Commission orders. NRDC can provide no basis for these allegations because the proposed power plant has been extensively discussed in the local communities for over a year, including a public referendum in the City of Tallahassee. Thus, NRDC has had ample time to engage potential witnesses. Indeed, the NRDC has engaged witnesses and has already submitted more than 400 pages of testimony and supporting exhibits.

10. Rule 28-106.211, F.A.C., gives the Pre-Hearing Officer broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy,

and inexpensive determination of all aspects of the case[.]” The Florida Supreme Court has recognized this broad authority by reviewing procedural orders by the Commission under the highly deferential abuse of discretion standard. *Panda Energy v. Jacobs, et al, as the Public Service Commission*, 813 So.2d 46, 49 (Fla. 2002) (citations omitted). NRDC’s motion provides no basis to conclude that the Pre-Hearing Officer’s October 4, October 26, and October 27 orders constitute an abuse of discretion or somehow fail to provide “due process.” Indeed, NRDC cites no cases whatsoever in support of its claim that “due process” somehow warrants extension of the procedural schedule. Accordingly, NRDC’s motion must be denied.

11. Although the NRDC’s pleading is labeled a “Motion for Extension of Time to File Testimony,” it essentially seeks reconsideration of the time-frames established in the OEP. To the extent that NRDC’s motion is deemed to constitute a motion for reconsideration, it must be dismissed for the same reasons outlined in the Applicants’ Response Opposing the Intervenors’ Motion for Reconsideration, discussed above. Accordingly, the motion must be denied.

Conclusion

WHEREFORE, for the reasons discussed above, Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and City of Tallahassee respectfully request entry of an order denying the “Motion for an Extension of Time to File Testimony” filed by the Natural Resources Defense Council on November 2, 2006.

Respectfully submitted, this 9th day of November, 2006.

/s/Gary V. Perko

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