

Matilda Sanders

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Sent: Friday, November 10, 2006 4:43 PM
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Subject: Docket Nol 060635-EU Sierra Response to Applicants Motion to Strike Issues in Petition to Intervene
Attachments: Sierra filed response to motion to strike.doc; NC Duke Notice of Higher Costs.pdf

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Please see the attached for filing in the above-referenced docket.

Thank You.

E. Leon Jacobs, Jr.
Attorney for the Sierra Club

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Response

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FPSC-COMMISSION CLERK

Attachment

DOCUMENT NUMBER-DATE
10370 NOV 13 06

FPSC-COMMISSION CLERK

11/13/2006

WILLIAMS, JACOBS, & ASSOCIATES

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ORIGINAL

MOSES WILIAMS, ESQ.

E. LEON JACOBS, JR., ESQ.

November 10, 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 Brian Lupiani, I have enclosed for filing the Response of the Sierra Club, Inc., John Hedrick and Brian Lupiani to Applicants Motion to Strike Certain issues of Disputed Fact Raised in the Petition to Intervene, consisting of six (6) 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

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

DATED: November 10, 2006

**RESPONSE OF THE SIERRA CLUB, INC., JOHN HEDRICK,
AND BRIAN LUPIANI TO
APPLICANT'S MOTION TO STRIKE CERTAIN ISSUES OF
DISPUTED FACT RAISED IN THE PETITION TO INTERVENE**

Petitioners The Sierra Club, John Hedrick, Barry and Brian Lupiani ("Petitioners"), by and through their undersigned counsel, file this Response to Applicants' Motion to Strike Certain Issues of Disputed Fact Raised in the Petition, and states as follows:

1. The Florida Public Service Commission ("FPSC" or "Commission") operates in this proceeding under express authority found in section 403.519, Florida Statutes. The FPSC has implemented this statutory authority in a series of administrative rules, most specifically Rules 25-22.080, 25-22.081 and 25-22.082, Florida Administrative Code ("FAC"). Applicants' motion correctly cites the applicable language in section 403.519. Under this statute, in assessing the need for the proposed electric plant, the FPSC is without discretion to ignore issues relating to system reliability and integrity, reasonableness of electricity costs, fuel diversity, fuel supply reliability, and the cost effectiveness of alternative means of addressing the electric demand which the proposed plant is intended to meet. Rule 25-22.082, FAC implements the FPSC's authority to assess the cost effectiveness of the proposed plant and alternative means of addressing the demand. Subsection 1 of Rule 25-22.082 declares the scope and intent of that rule and provides:

The intent of this rule is to provide the Commission information to evaluate a public utility's decision regarding the addition of generating capacity pursuant to Section 403.519, Florida Statutes. The use of a Request for Proposals (RFP) process is an appropriate means to ensure that a public utility's selection of a proposed generation addition is the most cost-effective alternative available.

2. As a matter of public policy, the FPSC has elected to rely on the Applicants' procurement process to determine if the proposed plant is the most cost-effective option for meeting the demand in question. Subsection 5 of Rule 25-22.082 sets out the specific data which Applicants are required to put before the FPSC in order to complete this analysis. It requires that the Applicants prove to the FPSC that their procurement processes include a host of inputs and calculations. Among these are: (i) an estimate of direct costs of the proposed plant; (ii) an estimate of annual revenue requirements of the proposed plant; (iii) an estimate of the annual economic value of deferring construction of the proposed plant; (iv) an estimate of the fixed and variable operation and maintenance expense of the proposed plant; (v) an estimate of the fuel costs of the proposed plant; (vi) a discussion of actions necessary to comply with environmental requirements, and (vii) *a summary of all major assumptions used in developing these estimates*. [emphasis added] Applicants are additionally required in 25-22.082(5)(d) to address how the vendors in the RFP process might address the ability of the utility to address its environmental compliance.

Applicants have submitted an extensive body of data, a part of which indicates their compliance with these RFP requirements. The RFP process did not produce a successful candidate, and now Applicants are before the FPSC proposing to build a plant using the projections used in the RFP, which in summary have estimated that the proposed plant will have a capital cost of \$1,713,399,000 in 2012 dollars.

3. Applicants have suggested in the motion to strike that consideration of environmental compliance by the proposed plant is a matter outside of the FPSC's jurisdiction in this proceeding. This is contrary to the law and the FPSC's rule. The FPSC is required to assess the cost-effectiveness of the proposed plant. The singular method elected by the FPSC to do that is the Applicants' procurement process. This process has been defined to require discussion and assessment of environmental compliance. This discussion necessarily requires the FPSC to assess the assumptions used by Applicants in arriving at conclusions regarding environmental compliance. This is exactly the nature of inquiry requested by Petitioners. The proposed plant is estimated to be in operation from 30 to 50 years. Petitioners question any discussion of environmental compliance issues which prohibits assessment of compliance issues that are imminent (i.e. virtually assured to occur before the plant begins construction), and allege that such a restricted discussion would be contrary to the requirements of the FPSC's rule. If the assumptions used in issuing the RFP did not consider these compliance issues, this necessarily brings into question the idea that any conclusions

from the RFP process should be conclusive evidence on which to decide the cost-effectiveness issue. The Intervenor in this proceeding have already submitted testimony which demonstrates that federal policy on this issue is in a process of change, which will be expedited as a result of prevailing political realities. The FPSC faces a critical paradigm shift in which public policy makers are looking squarely at the coal-producing electric industry to address a matter of vital public interest. This development is already resulting in increased financial risk costs for this industry. Dramatic increases in regulatory compliance costs for coal-fired electric generating plants are clearly set out in a range of policy proposals that will result in additional cost for the industry. Extremely conservative projections of environmental compliance costs call for major expansion as a result of proposals already under deliberation as policy.

4. The FPSC has traditionally exercised broad discretion in its analysis for need determinations and cost-effectiveness to address dynamic issues.¹ It would seem unnecessary and arbitrary to restrict the Commission's inquiry and its analysis in these proceedings on such a vital and critical matter affecting the development of coal plants for the first time in this state after more than thirty (30) years. This discussion is particularly vital in these circumstances because should it not take place at this time, it is virtually assured that these costs will be incurred as the plant is built, with the full responsibility being placed upon Applicants' ratepayers, with no opportunity for ex post facto review as to the true cost-effectiveness.

5. Applicants further assert that the FPSC should not consider risk in its analysis of the need for this proposed plant. Rule 25-22.082(5), FAC, expressly requires Applicants to submit all assumptions and

¹ In re Petition for Determination of Need for the Osprey Energy Center in Polk County by Seminole Electric Cooperative and Calpine Construction Finance Company, L.P., 01 F.P.S.C. 2:443, 446 (2001) (PSC certified a 529-megawatt combined cycle exempt wholesale generation plant in 2003 when only 350 megawatts was contractually committed to provide 88 megawatts of the retail needs of Seminole Electric Cooperative in 2004); In re Petition to Determine Need for Proposed Electrical Power Plant in St. Marks, Wakulla County, by City of Tallahassee, No. 961512EM (June 9, 1997) (order no. PSC-97-0659-FOF-EM) (explaining that the PSC has previously recognized that "it is not unusual for a utility to grow into the capacity of a large generating unit"); In re Petition to Determine Need for Proposed Capital Expansion Project of the Dade County Resources Recovery Facility, an Existing Solid Waste Facility, by Metropolitan Dade County, 93 F.P.S.C. 11:375, 381 (1993) ("Although the expanded facility will not contribute to the reliability and integrity of the state's electric system, the energy is cost-effective and will displace fossil fuels."); In re JEA/FPL's Application of Need for St. John's River Power Park Units 1 and 2 and Related Facilities, 81 F.P.S.C. 6:220, 221-22 (1981) ("We construe the 'need for power' issue to encompass several aspects of need . . . the electrical need for additional capacity . . . the economic need of providing this bulk power and energy at the lowest possible cost . . . the socioeconomic need of reducing the consumption of imported oil in the State . . ."); In re Petition for Certification of Need for Orlando Utilities Commission, Curtis H. Stanton Energy Center Unit 1, and Related Facilities, 81 F.P.S.C. 10:18 (1981) (PSC approved 415-megawatt coal plant that was not needed for reliability purposes by any utility involved in the application until 1991, which was five years after the in-service date of the plant).

inputs used in deriving the estimates used in its RFP, and as the basis for its cost projections. Virtually every estimate submitted by Applicants in this proceeding is derived from econometric models. Petitioners have not as yet gained details on the formulae used in these models, but in order for the results of these models to be reliable they must include variables that address risk in assumptions and input data. Additionally, Applicants have asserted to the FPSC that the projected capital costs of the plant will exceed \$1.7 billion, in 2012 dollars. Again, Petitioners have not as yet gained details on the formulae used in this projection, however, in order to be reliable, the financial models must include some variables for market risk. Apparently Applicants now assert that the FPSC ignore these models, and violate its rule that these assumptions and inputs be analyzed in the application for need. It would be highly irregular and arbitrary should the FPSC follow this suggestion.

6. Petitioners are only interested in risk in so far as it deals with an assessment of the assumptions and inputs put forward by the Applicants. Petitioners assert that should the Commission fail to engage in this discussion, it stands a strong chance of finding itself in the shoes of the North Carolina Utilities Commission (“NCUC”). The NCUC has recently completed hearings in Docket No. E-7, Sub 790, In Re: Application of Duke Energy Carolinas, LLC, for Approval of an Electrical Generating Certificate of Public Convenience and Necessity to Construct Two 800 MW State of the Art Coal Units for Cliffside Project. During the course of the deliberations in this proceeding, the applicants provided initial cost projections which were revised upward by the time hearings commenced. After the completion of hearings, the NCUC received from the applicant a Notice of Updated Cost Information (see Exhibit A), informing decision-makers that applicants wished to revise the projected costs yet again, to a level of increase that is confidential.

7. Finally, Applicants assert that the FPSC should not assess the adequacy of the assumptions and inputs used to reach their bold conclusion that “[t]here are no reasonably available conservation or demand-side (DSM) measures that would mitigate the need for TEC.” As enunciated herein, Petitioners assert that the FPSC’s own rule and the authorizing statute require just such an analysis. Applicants wish to morph this requirement into full regulation of their operations. It is not. Its is a clear requirement by the Legislature that “cost-effectiveness” for addition of new electric generating units must assess cost as compared to all possible options for meeting electric demand.

WHEREFORE, The Sierra Club, Inc., John Hedrick, and Brian Lupiani request that the Commission deny Applicants' Motion to Strike for the reasons contained herein.

Respectfully submitted this 10th day of November, 2006.

Certificate of Service

I certify that a copy of this Response to Applicants' Motion to Strike Certain Issues of Disputed Fact Raised in the Petition to Intervene in Docket No. 060635-EU was provided this 10th day of November, 2006, by electronic service to the following:

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Respectfully submitted,

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