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 Subject: Sierra Club revised prehearing statement
 Attachments: Sierra Prehearing Stmt - 2nd Rev.doc

Attached please find the Revised Prehearing Statement of the Sierra Club, Inc., John Hedrick and Brian Lupiani, which gives our current positions on all of the issues as finalized at the Prehearing Conference. Sierra Club agrees with the wording of Issue 5 as stated.

The Sierra Club is willing to stipulate to the testimony and exhibits of the following witnesses:
Heller, Breton, Nunes and Norfolk

The Sierra Club is unwilling to stipulate to the testimony and exhibits of Hale Powell.

Regards,
Leon Jacobs

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MOSES WILIAMS, ESQ.

E. LEON JACOBS, JR., ESQ.

December 26, 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 the revised prehearing statement for filing, consisting of thirteen pages. Please accept this filing in replacement of the prehearing statement filed on December 8, 2006. I thank you for your attention to this matter.

Sincerely,

/s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr.
Attorney for The Sierra Club, John Hedrick and Brian Lupiani

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: December 26, 2006

THE SIERRA CLUB, INC., JOHN HEDRICK, AND BRIAN LUPIANI
REVISED PREHEARING STATEMENT

Pursuant to Order No. PSC-06-0819-PCO-EU, issued on October 4, 2006, establishing the prehearing procedure in this docket, the Sierra Club, Inc., John Hedrick and Brian Lupiani hereby file their Prehearing Statement.

A. APPEARANCES

E. Leon Jacobs, Jr.
Williams & Jacobs, Jr.
1720 S. Gadsden Street, MS 14, Suite 201
Tallahassee, Florida 32301

B. WITNESSES

The Sierra Club, John Hedrick and Brian Lupiani prefiled the testimony of the following witness:

- (1) Hale Powell. Mr. Powell will address the appropriateness of inputs and assumptions in the economic analysis of the petition for need, and, the appropriate analysis of demand-side management in the application for determination of need. These include issues 1, 2, 3, 4 and 9.

C. PREFILED EXHIBITS

The Witness for The Sierra Club, John Hedrick and Brian Lupiani prefiled the following exhibits:

Hale Powell:

- (HP-1) - Excerpt of 2005 Annual Report of National Grid USA's DSM Programs
- (HP-2) - Navigant Consulting Report to City of Tallahassee
- (HP-3) - Resume of Mr. Powell
- (HP-4) - Resolutions by Board of Directors of the National Association of Regulatory Utility Commissioners Regarding Critical Infrastructure and Global Warming
- (HP-5) - Report of the American Council for an Energy Efficient Economy, "Aligning Utility Interests with Energy Efficiency Objectives: A Review of Recent Efforts at Decoupling and Performance Incentives"

The Sierra Club, John Hedrick and Brian Lupiani reserve the right to use other exhibits during cross examination of the Participant's witnesses, and will file a notice in accordance with the orders governing procedure identifying any documents the Participants claim to be confidential which the Sierra Club, John Hedrick and Brian Lupiani may use during cross examination.

D. STATEMENT OF BASIC POSITION

The Participants have not submitted adequate data upon which the Florida Public Service Commission ("Commission") can base its decision as to whether the proposed addition of the pulverized coal plant at the Taylor Energy Center is the most cost effective alternative available

to the Participants. The glaring absence of a probing analysis by the Participants, along with questionable inputs and assumptions into econometric models, pose fundamental obstacles. When coupled with volatility currently found in the costs to construct coal plants, in the commodity prices of coal, and in the transportation costs to deliver coal to Florida, the request for proposal procedure (“RFP”) cannot offer the Commission any assurance that this proposal is the most cost effective for each Participant, and the Participants’ initial economic analysis is rendered useless. The Commission must undertake its own cost effectiveness analysis in this case.

Given the uncertainties of building new coal plants, these public owners, who are funding this project with public funds, are accepting imprudent risk to build large, capital intensive units which largely foreclose the integration of innovative, cost effective energy resources in the near term. An especially important omission is the absence of a meaningful assessment of demand-side management, energy efficiency and conservation resources as alternatives to the coal plant. The City of Tallahassee’s course of action is noteworthy. While still supporting the petition as a Participant, Tallahassee has explored and opened prospects for a host of cost effective energy alternatives that diversity the risk inherent in the coal plant.

Moreover, these Participants are electing to take on the clear risk that the operating costs of this coal plant will double due to a restructured regulatory regime. The Participants have chosen to ignore the virtual certainty that the regulatory environment for coal plants will change drastically in the short term, and that this plant, should it be constructed, will be affected by these changes. Even if the Participants are willing to undertake this risk for their taxpayers, the Commission is foreclosed from approving it under the provisions of section 403.519, Florida

Statutes, which requires that this plant be the most cost effective alternative, as actually implemented, not as proposed.

Thus, the Commission should deny this petition because the need for this plant has not been demonstrated. Alternatively, the Commission can only consider this petition with a true and accurate definition of the costs this facility will impose, and a true and accurate analysis of cost effective alternatives.

E. STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Is there a need for the proposed Taylor Energy Center (TEC) generating unit, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. While the individual Participants do evidence demand growth and the need for additional capacity, they have elected to meet their needs by the addition of a large, base-load, coal-fired plant which brings with it substantial economic and operational risk. The application fails to demonstrate adequate measures to manage this risk over the life of the proposed plant addition, instead asserting that pulverized coal plants generically manage the risk of volatility in global fossil fuel markets.

The City of Tallahassee has benefited from expert advice which demonstrates that with the implementation of a well-managed portfolio of energy resources, it can reliably serve its growth in energy needs without the risk and cost of TEC.

Additionally, FMPA is dramatically affected by transmission constraints in Florida in serving its dispersed members. The addition of TEC will require FMPA to take energy from North Florida and distribute to several of its members in Central Florida and South Florida, thereby increasing its operating costs, and complicating its ability to meet growth in demand reliably.

ISSUE 2: Is there a need for the proposed TEC generating unit, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. Section 403.519, Florida Statutes, clearly discusses the physical need for capacity in the context of cost effectiveness. Each of the Participants is electing to invest in a large, base-load coal-fired plant essentially as an economic hedge in

volatile fossil fuel markets. These Participants are presently facing the reality of escalating capital costs, of uncertain operating and maintenance costs, and of shifting financing costs. Until the full impact of these cost increases are known, the Participants cannot understand if they are reasonable, or if there are reasonable alternatives.

The Participants have grossly miscalculated the risk of adverse economic impact caused by shifts in air quality regulation for coal-fired electric power plants. The Participants, with one noteworthy exception, apparently intend to forego this important opportunity to implement demand-side alternatives to address growth in demand, and to insulate themselves from the risk of more stringent air quality regulation.

ISSUE 3: Is there a need for the proposed TEC generating unit, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: The Sierra Club, John Hedrick and Brian Lupiani (“Intervenors”) note that there is a need for a formal definition of the term “fuel diversity” as used in Section 403.519, Florida Statutes. It is acknowledged that cost effective fuel diversity has value in the state’s current generation mix. However, cost effective fuel diversity would be better served by an appropriate portfolio of energy efficiency measures, conservation, demand-side management (DSM) and renewables.

ISSUE 4: Are there any energy efficiency measures, conservation measures or DSM measures taken by or reasonably available to the Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee (Participants) which might mitigate the need for the proposed TEC generating unit?

POSITION: Yes. The Participants generally have undervalued the economic benefits of energy efficiency, conservation and DSM opportunities, especially when it is considered that these directives insulate them from the risk of more stringent air quality regulation.

ISSUE 5: Have the Applicants appropriately evaluated the cost of CO2 emission mitigation costs in their economic analyses?

POSITION: No. In the face of existing best practices, of standing carbon trading markets and clear public policy initiatives, the sensitivity analyses submitted by Participants consistently underestimate the costs that would be incurred to operate TEC in the more stringent air quality regulatory structure that will certainly be in place before TEC becomes operational.

ISSUE 6: Does the proposed TEC generating unit include the costs for the environmental controls necessary to meet current state and federal environmental requirements, requirements including mercury (Hg), NO₂, SO₂ and particulate emissions?

POSITION: No.

ISSUE 7: Have the Participants requested available funding from DOE to construct an IGCC unit or other cleaner coal technology?

POSITION: No.

ISSUE 8: Has each Participant secured final approval of its respective governing body for the construction of the proposed TEC generating unit?

POSITION: No. All Applicants have the contractual right to withdraw once all permitting has been secured necessary to construct the TEC generating unit and the final construction costs are known. At this time the Applicants predict that this "go or no go" vote will occur in 2008.

ISSUE 9: Is the proposed TEC generating unit the most cost effective alternative available, as this criterion is used in Section 403.519, Florida Statutes?

POSITION: No. In the present market for electricity, the Participants could effectively meet their needs using cost effective alternatives to diversify away from fossil fuels until these markets demonstrate a period of stability. Economic and technological advances surrounding demand-side management measures, including energy efficiency and conservation measures, along with renewables, present Participants with an excellent opportunity to manage the cost of their capacity needs in this period.

ISSUE 10: Based on the resolution of the foregoing issues, should the Commission grant the Participants' petition to determine the need for the proposed TEC generating unit?

POSITION: No.

ISSUE 11: Should this docket be closed?

POSITION: This docket should be closed when the Commission has issued its final order and all motions for reconsideration have been disposed of.

F. STIPULATED ISSUES

The Sierra Club, John Hedrick and Brian Lupiani have not stipulated to any issues at this time.

G. PENDING MOTIONS OR OTHER MATTERS

The Sierra Club, John Hedrick and Brian Lupiani have no pending motions or other matters.

Applicants' have filed the following motions:

- A. Motion to Strike Portions of Testimony and Exhibits filed by the Natural Resources Defense Council dated December 20, 2006;
- B. Applicants' Motion to Strike Portions of Testimony and Exhibits filed by John Carl Whitton, Jr. (Dian Deevey), dated December 20, 2006;
- C. Applicants' Motion to Strike Portions of Testimony and Exhibits filed by the Sierra Club, Inc., John Hedrick and Brian Lupiani. (Hale Powell), dated December 20, 2006;

NOTE: The Applicants also filed Requests for Oral Argument before the full Commission on each of the above stated motions.

H. PENDING REQUESTS OR CLAIMS OF CONFIDENTIALITY

The Sierra Club, John Hedrick and Brian Lupiani have no pending confidentiality requests or claims.

Applicants have filed Notice of Intent to Request Confidential Classification of its Response to Staff Production of Documents Request No. 9. The Sierra Club, John Hedrick and Brian Lupiani have no objection to this request for confidentiality as long as they can have access to the documents upon the execution of a reasonable confidentiality agreement. At the Prehearing Conference it was understood that the Applicants agreed to provide all parties access under these conditions.

I. OBJECTIONS TO WITNESS' QUALIFICATIONS AS AN EXPERT

None at this time.

J. COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

The Sierra Club, John Hedrick and Brian Lupiani have complied with all applicable requirements of the order establishing procedure in this docket. It is acknowledged that intervenors Anthony Viegbiesie and Rebecca J. Armstrong are authorized to raise only those issues identified at the prehearing conference in this matter, and may not independently sponsor testimony or exhibits at hearing.

Respectfully submitted this 26th day of December, 2006 .

/s/ E. Leon Jacobs

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Certificate of Service

I certify that a copy of this Prehearing Statement in Docket No. 060635-EU was provided this 8th day of December, 2006, by electronic service to the following:

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Respectfully submitted,

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