

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
ORDER NO. PSC-07-0483-PCO-EU
ISSUED: June 8, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER GRANTING MOTION FOR LIMITED REOPENING OF THE RECORD
AND FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

BY THE COMMISSION:

BACKGROUND

On September 19, 2006, Florida Municipal Power Agency (FMPA), JEA, Reedy Creek Improvement District (RCID), and City of Tallahassee (collectively Applicants) filed a petition for a need determination for the proposed Taylor Energy Center (TEC), a 765 megawatt supercritical pulverized coal plant. The TEC is expected to be placed in service in May 2012, and will be located on a 3,000 acre greenfield site in Taylor County. The Applicants consist of three municipal electric utilities, JEA, RCID, and the City of Tallahassee, along with FMPA, a wholesale power company composed of 30 municipal electric utilities. All of TEC's 765 megawatt capacity will be fully subscribed by the Applicants, and will serve retail customers of the municipal utilities.

Intervention was granted to the Sierra Club, Inc., John Hedrick, Brian Lupiani, Rebecca J. Armstrong, and Anthony Viebesie (collectively, Sierra Club), the Natural Resources Defense Council, Inc. (NRDC), and John Carl Whitton, Jr. (Whitton).¹

A formal administrative hearing was held on January 10 through 12, and 18, 2007. We deferred our consideration of staff's posthearing recommendation from the February 13 to the March 13, 2007, Agenda Conference. On March 9, 2007, the Applicants filed a motion for limited reopening of the record and for leave to file supplemental testimony (motion), together

¹ Intervention was granted by Order No. PSC-06-0867-PCO-EU, issued October 20, 2006 with respect to Rebecca J. Armstrong; by Order No. PSC-06-0898-PCO-EU, issued October 26, 2006, with respect to the Sierra Club, John Hedrick, and Brian Lupiani; by Order No. PSC-06-0954-PCO-EU, issued November 15, 2006, with respect to Anthony Viebesie; by Order No. PSC-06-0957-PCO-EU, issued November 16, 2006, with respect to John Carl Whitton, Jr.; and by Order No. PSC-06-0971-PCO-EU, issued November 21, 2006, with respect to the NRDC.

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with supplemental prefiled testimony of Myron Rollins, and a cover letter waiving any applicable deadlines for this Commission to take action as established by Rule 25-22.080, Florida Administrative Code. Upon request of the Applicants, the posthearing recommendation was deferred to permit us an opportunity to address the Applicants' motion. On March 16, 2007, NRDC and Whitton separately filed responses in support of the Applicants' motion, provided certain requests are met.

We have jurisdiction pursuant to Section 403.519, Florida Statutes.

MOTION GRANTED FOR LIMITED REOPENING OF THE RECORD
AND FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

Applicants' Motion

The Applicants state that a few days prior to filing their motion, it came to their attention that certain revised assumptions should be incorporated in the production cost modeling used to determine the economic effect of the City of Tallahassee's participation in TEC. The Applicants contend that they have worked diligently to perform additional production cost modeling for the City of Tallahassee in order to incorporate the revised assumptions and to determine the resulting effect on the City's cost-effectiveness analyses. Changes were also made to the modeling of TEC for the other Applicants, and those results were likewise reviewed for any changes in cost-effectiveness. The Applicants request leave to file supplemental testimony and exhibits by witness Myron Rollins, explaining the revisions to the City of Tallahassee's modeling and the results of the revisions.

The Applicants contend that reopening the record to address these limited matters will ensure that we can base our final decision on the most accurate information available. Recognizing that this Commission, our staff, and the Intervenors will desire to review this additional information, the Applicants request that we defer our consideration of staff's posthearing recommendation, and request a further evidentiary hearing, if needed, for the limited purpose of taking testimony and evidence relative to the revised modeling.

The Applicants state in their motion that they have contacted counsel for all Intervenors, and that the Intervenors do not object to the relief requested provided that the Intervenors have the opportunity to conduct discovery and cross-examine Mr. Rollins under oath.

NRDC and Whitton's Responses

In its response, NRDC states that it does not object to granting the Applicants' motion on the following grounds: (1) that NRDC, and all other Intervenors, would have an adequate opportunity to conduct discovery including written interrogatories, requests for production of documents and oral depositions; (2) that a prehearing order would be issued by the Commission which set discovery, rebuttal testimony, prehearing statements, trial, and posthearing brief dates; and (3) that a reasonable amount of time be given to accomplish all of the above. NRDC further requests that the Intervenors be consulted before we develop the hearing schedule and set procedural deadlines; further, NRDC requests that the hearing date be set no sooner than 60 days

from March 16, 2007, the date its response was filed. NRDC contends that the modeling errors identified by the Applicants are significant, and agrees with the Applicants that it is appropriate for us to consider the limited matters raised in the Applicants' motion and supplemental testimony and exhibits.

Whitton states in his response that he does not oppose granting the Applicants' motion, and supports this Commission basing its ultimate decision on the most accurate available information. However, Whitton requests that in granting the motion, we provide adequate opportunity and time for limited discovery. Whitton supports the timeframe proposed in NRDC's response as being reasonable.

Decision

The supplemental testimony filed with the Applicants' motion indicates that the modeling results presented at hearing for the City of Tallahassee overestimated the amount of savings associated with the City of Tallahassee's participation in the TEC by approximately \$53.9 million. The City only became aware of this discrepancy in the modeling as part of its internal evaluations of a potential new project. Neither the City nor the firm that prepared the need filing realized that the modeling assumptions underlying the results presented at the hearing were incorrect until after we deferred our consideration of staff's posthearing recommendation at the February 13, 2007, Agenda Conference.

Although we are generally hesitant to reopen the record of any proceeding, we may do so when new evidentiary proceedings are warranted based on changed circumstances.² In order to reopen the record of a case, there must be a significant change of circumstances not present at the time of the proceedings, or a demonstration that a great public interest will be served.³

The discrepancy in the City of Tallahassee's production cost modeling was discovered after the record had closed. In this instance, the Applicants and Intervenors agree that the revised information provides new evidence that may be material to our decision in this matter. If the new evidence is competent and relevant, we find that it would be appropriate to admit it into the

² See Order No. PSC-00-1777-PCO-TP, issued September 28, 2000, in Docket No. 980119-TP, In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; and petition for emergency relief; see also Order No. PSC-99-0093-FOF-WS, issued January 15, 1999, in Docket No. 950495-WS, In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties; Order No. PSC-98-0509-PCO-SU, issued April 14, 1998, in Docket No. 950387-SU, In re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company - Lee County Division.

³ See McCaw Communications of Florida, Inc. v. Clark, 679 So. 2d 1177 (Fla. 1996); Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679 (Fla. 1979); Peoples Gas System v. Mason, 187 So. 2d 335 (Fla. 1966); see also Order No. PSC-00-1511-FOF-TP, issued August 21, 2000, in Docket No. 991267-TP, In re: Complaint and/or petition for arbitration by Global NAPS, Inc. for enforcement of Section VI(B) of its interconnection agreement with BellSouth Telecommunications, Inc., and request for relief.

record and consider it. We also find that examination of this new evidence shall involve a reasonable opportunity to conduct discovery and a hearing, and to file testimony, prehearing statements, and posthearing briefs. The 60-day time frame suggested by NRDC and Whitton will reasonably accommodate the interests of all parties; however, the time shall run from the date of our vote on this matter at the May 22, 2007, Agenda Conference.

In the interest of allowing this Commission to make a fully informed decision, we therefore find that the record shall be reopened for the limited purpose of taking evidence on the revised production cost modeling for the City of Tallahassee and its effect on the Applicants' petition for determination of need, and that leave is given for filing Mr. Rollins' supplemental testimony and exhibits. We shall defer our consideration of the posthearing recommendation until additional proceedings are conducted on this limited matter. Additional procedures and controlling dates shall be established by separate order of the Prehearing Officer, allowing discovery and hearing on the limited matters raised in the Applicants' motion and supplemental testimony and exhibits.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that the record shall be reopened for the limited purpose of taking evidence on the revised production cost modeling for the City of Tallahassee and its effect on the Applicants' petition for determination of need. It is further

ORDERED that leave is granted for filing the supplemental testimony and exhibits filed with the Applicants' motion. It is further

ORDERED that additional procedures and controlling dates shall be established by separate order of the Prehearing Officer, allowing discovery and hearing on the limited matters raised in the Applicants' motion and supplemental testimony and exhibits. It is further

ORDERED that this docket shall remain open to conduct the limited reopening of the record as set forth herein, and to thereafter allow final disposition of the Applicants' need petition.

By ORDER of the Florida Public Service Commission this 8th day of June, 2007.



ANN COLE
Commission Clerk

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.