

ORIGINAL

Matilda Sanders

From: Godwin, Angela [angela@ngn-tally.com]
Sent: Tuesday, September 26, 2006 2:13 PM
To: Filings@psc.state.fl.us
Cc: gperko@hgslaw.com; craepple@hgslaw.com; mcglothlin.joseph@leg.state.fl.us; Harold Mclean; Charles Beck; christensen.patty@leg.state.fl.us
Subject: Docket No. 060635-EU - Armstrong's Petition to Intervene
Attachments: Petition To Intervene_Docket No. 060635EU.doc

Dear Sir or Madam:

This is sent on behalf of Brian Armstrong:

1. Brian Armstrong, 7025 Lake Basin Road, Tallahassee, Florida, 32312, (850) 322-4097, is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060635-EU;
3. The filing is made on behalf of Rebecca J. Armstrong;
4. The total number of pages is 14; and
5. The attached document is a Petition to Intervene of Rebecca J. Armstrong.

Brian Armstrong
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need for)
an 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 September 25, 2006

PETITION TO INTERVENE

Rebecca J. Armstrong ("Armstrong"), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, and by and through her undersigned counsel, hereby petitions to intervene in the above-styled docket. Armstrong is a retail electric customer of the City of Tallahassee ("Tallahassee"), one of the Petitioners in this docket and a prospective recipient of more than 150 MW of electricity from the proposed coal plant. The interests of Armstrong as a customer of Tallahassee will be directly affected by the Commission's decisions in this case, and accordingly, Armstrong is entitled to intervene to protect her substantial interests. In further support of her Petition to Intervene, Armstrong states as follows:

1. The name, address, and telephone number of the Petitioner are as follows:

Rebecca J. Armstrong
7025 Lake Basin Road
Tallahassee, Florida 32312
Telephone: (850) 322-4097
Telecopier: (850) 668-1138

2. All pleadings, orders and correspondence should be directed to Petitioner's representative as follows:

Brian P. Armstrong, Esq.
7025 Lake Basin Road
Tallahassee, Florida 32312
Telephone: (850) 322-4097
Telecopier: (850) 668-1138

3. The agency affected by this Petition to Intervene is as follows:

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

4. Armstrong purchases electricity from Tallahassee pursuant to applicable rate schedules and Armstrong requires adequate, reasonably-priced electricity in a quantity consistent with her needs and the needs of her family.

5. Armstrong resides in Tallahassee, a city located approximately fifty (50) miles from the site of the proposed pulverized coal power plant. Emissions from the proposed plant will impact Armstrong, her family and the environment in which they live in and around Tallahassee.

6. Statement of Affected Interests. In this docket, the Commission will decide whether to approve a petition from Tallahassee, the Jacksonville Electric Authority ("JEA") the Reedy Creek Improvement District ("Disney") and the Florida Municipal Power Agency ("FMPA") requesting a determination of need for another pulverized coal fired power plant. Based on Commission precedent, the Commission necessarily will have to determine, at a minimum, whether there is a need for the power proposed to be generated by the plant, whether other alternatives exist to provide such power, whether the proposed pulverized coal plant will contribute to the reliability and integrity of the Petitioner's systems, whether the proposed plant is the most cost effective alternative available, whether the entities proposing the plant have taken such

conservation measures as are reasonably available to mitigate the need for the proposed plant and, according to Commission precedent, basically whether the power would be generated at a reasonable cost and with the least risk of the identified alternatives.

7. Armstrong's substantial interests are of sufficient immediacy to entitle her to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, Armstrong is a retail electric customer of Tallahassee, and her substantial interests will be directly affected by the Commission's decision whether to permit the proposed pulverized coal fired plant to be constructed as Tallahassee's participation in such construction will impact the rates Tallahassee will charge to Armstrong. Also, the plant, as proposed, is unlikely to be capable of being modified to eliminate carbon dioxide emissions, thus recipients of energy from the plant will be assessed a "carbon tax" or other such fees as and when implemented. Such assessments will increase the rates and charges that Armstrong will be forced to pay Tallahassee for her energy needs. Construction of the plant further will adversely affect the health of Armstrong and her family as well as the environment in which they live. Each of these factors denigrate the cost effectiveness of constructing the proposed

pulverized coal plant and create an unfair advantage for a pulverized coal plant when such plant is compared to other alternative power sources, the cost of which alternatives are not adversely impacted by these factors. Thus, the interests that Armstrong seeks to protect are of sufficient immediacy to warrant intervention.

8. Disputed Issues of Material Fact. Armstrong believes that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the following:

Issue 1: Has JEA proven that construction of the proposed pulverized coal plant is more cost effective than conservation and efficiency alternatives?

Issue 2: Has the FMPA proven that construction of the proposed pulverized coal plant is more cost effective for each of the proposed municipal recipients of the power than conservation and energy efficiency alternatives?

Issue 3: Has Tallahassee proven that construction of the proposed pulverized coal plant is more cost effective than conservation and energy efficiency alternatives?

Issue 4: Has Disney proven that construction of the proposed pulverized coal plant is more cost effective than conservation and energy efficiency alternatives?

Issue 5: Recently, utilities and utility management in other states have found that their projections of the cost to construct pulverized coal plants were significantly below the actual or current cost of construction. Plans to construct at least one such plant have been abandoned. Is the Petitioners' projected cost of the proposed pulverized coal plant reasonable in light of the increased construction costs after Hurricane Katrina?

Issue 6: Have the Petitioners conducted an apples to apples comparison of the Pre-Katrina projected cost of the proposed pulverized coal plant compared to other alternative sources of power including conservation and efficiency alternatives?

Issue 7: Have the Petitioners' appropriately considered the additional cost of a carbon tax in their projected cost of operating the proposed pulverized coal plant?

Issue 8: Have the Petitioners appropriately considered the ability of the proposed pulverized coal plant to comply with the proposed more stringent particulate standards of the Environmental Protection Agency?

Issue 9: Have the Petitioners appropriately considered the cost effectiveness of constructing another pulverized coal plant allegedly modeled on the JEA's Northside generation plant which plant is reported to be, along with another JEA coal plant, the two highest polluters of mercury in the State of Florida?

Issue 10: Has the FMPA proven that the proposed pulverized coal plant is the most cost effective source of power in light of the testimony presented to the Commission only one year ago by FMPA witnesses that a natural gas fired plant is more cost effective than coal plant alternatives?

Issue 11: Given the Commission's paramount responsibility to protect the consumers of the State of Florida, is the construction of the proposed pulverized coal plant, and its detrimental effect on the public health and the environment of our State, a cost effective, least risky alternative to other sources of power, as well as conservation and efficiency alternatives?

Issue 12: Given the adverse health effect of emissions from the proposed pulverized coal plant, the adverse effects of which are most egregiously felt by the

African American population of our State, is the proposed pulverized coal plant the most cost effective and least risky alternative to other sources of power, as well as conservation and efficiency alternatives?

Issue 13: Does the 40.6% of coal generated power currently included in JEA's Net Summer Generation Capacity constitute a sufficient level of fuel diversity?

Issue 14: Does the 38.3% of coal generated power currently included in FMPA's Net Summer Generating Capacity constitute sufficient levels of fuel diversity?

Issue 15: Have Petitioner's proven the ability to obtain transportation of coal supplies to the proposed pulverized coal plant at reasonable cost and on a cost effective basis such that Petitioners can prove that construction of the proposed pulverized coal plant is the most cost effective and least risky alternative to other sources of power, including conservation and efficiency alternatives?

Issue 16: Do Disney and FMPA possess legal authority to partner with each other in the construction of the proposed pulverized coal plant?

Issue 17: Have the Petitioners provided a reasonable projection of the cost of the emission control equipment which purportedly will be used on the proposed pulverized coal plant?

Issue 18: Given the scientific certainty that emissions from pulverized coal plants like the proposed pulverized coal plant are among the most significant contributors to global warming, and the current pressure being placed on Exxon Mobil and others by the Royal Academy of Sciences to cease the funding of bogus enterprises attempting to cloud scientific fact, can the Commission abdicate its paramount responsibility to protect the welfare of the customers of utility providers in the State of Florida by granting

Petitioner's request for a determination of need to construct the proposed pulverized coal plant?

Issue 19: Have the Petitioners accurately identified the level of carbon dioxide emissions projected to be emitted from the proposed pulverized coal plant such that the Commission may reach a determination as to whether the construction of the plant will be the most cost effective and least risky source of power among the alternatives available, including conservation and efficiency alternatives?

Issue 20: Have Petitioners included all capital and operating costs likely to be incurred to complete construction of the proposed pulverized coal plant and operate such plant, including transmission interconnects, rail transportation, payments to entities in Taylor County, plant site remediation costs and other costs which should be known to Petitioners?

Issue 21: Given Tallahassee's identification of at least 192 MW of power from conservation, efficiency and biomass alternatives, all of which were identified subsequent to November, 2005, has Tallahassee proven a need for the 154 MW of power from the proposed pulverized coal plant?

Issue 22: Have each of the Petitioners, and each of the municipal members of FMPA, secured an analysis of available conservation and efficiency programs by an independent, objective consultant or consultants in the manner conducted by Tallahassee?

Issue 23: Have the Petitioners complied with the mandate of the Resolution passed by the Board of County Commissioners on October 3, 2005, which states as follows:

THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Taylor County, Florida inform JEA that, if a coal generated power plant is to be located in Taylor County, that JEA request funding from the U.S. Department of Energy for this plant so that it will be built using only the very latest and cleanest technology available, such as the coal gasification process.

Issue 24: Have the appropriate governing bodies of each of the FMPA members approved of the FMPA's participation in this proceeding?

Issue 25: Do Petitioners' plans provide for the operation of the selective catalytic reduction (SCR) equipment for nitrous oxide control on a year round basis and not just from May to October?

Issue 26: Do Petitioners' plans provide for all 800 MW of flue gas to be passed through the wet electrostatic precipitators ("Wet ESP") for 365 days a year, twenty-four hours a day?

Issue 27: What is the efficiency of the proposed pulverized coal fired plant? In other words, how much coal will Petitioners be required to burn to produce a standard measure of electricity, and how does that efficiency compare with the efficiency of a coal gasification plant ("IGCC")?

Issue 28: What equipment has been included on the proposed pulverized coal plant for carbon dioxide control?

Issue 29: Is the site selected by Petitioners for a pulverized coal plant reasonable or are Petitioners assuming unnecessary risks given the potential water quality, sinkhole, and toxic substances issues at the site?

Issue 30: When analyzing comparative costs, independently, Tallahassee included a projected carbon cost. Have Petitioners included projected carbon costs in their projections of the cost to construct the proposed pulverized coal plant?

Issue 31: Have Petitioners included projected costs associated with more stringent Clean Air Interstate Rule ("CAIR") standards in their projections of the cost to construct the proposed pulverized coal plant?

Issue 32: Have Petitioners included projected costs associated with changes to the environment in the projected cost to construct the proposed pulverized coal plant?

Issue 33: Florida's inland and shoreline water bodies are currently subject to high mercury warnings, and coal-fired plants are among the most significant contributors to high mercury levels in Florida's water resources. Have Petitioners included the cost of further mercury pollution of Florida's water resources in their projected cost of building the proposed pulverized coal plant?

Armstrong reserves all rights to restate or rephrase the above issues as well as raise additional issues in accordance with the Commission's rules and any orders establishing the procedure to be followed in this case.

9. Statement of Ultimate Facts Alleged. Petitioner, individually, and each member of Petitioner, FMPA, must prove that the proposed pulverized coal plant is needed, that other alternatives do not exist at reasonable cost, that the proposed pulverized coal plant contributes to system reliability and integrity, that the pulverized coal plant is the most cost effective alternative, that every Petitioner and each member of Petitioner has taken such conservation measures as are reasonably available to mitigate the need for the proposed plant and that construction of the proposed

pulverized coal plant is the least risky alternative available considering all relevant factors.

Tallahassee, a Petitioner in this proceeding, conducted a referendum of its citizens in November, 2005, requesting citizen authorization to be a partner in the North Florida Power Project, now known as the Taylor Energy Center, which is the subject of this Commission proceeding. Tallahassee informed its residents, among other things, that: (1) the City required an additional 150 MW of power by 2012 to adequately meet the needs of customers; (2) based on Tallahassee's current costs, the City could save approximately \$67 million a year if the City were buying 150 MW of power from a coal fired plant, like the proposed pulverized coal plant; and (3) the proposed pulverized coal plant would be state of the art.

Since November, 2005, Tallahassee independently has analyzed the alternative sources of power available to it and the comparative costs of such alternatives. This analysis has revealed that: (1) there is no \$67 annual cost savings if Tallahassee participated in the proposed pulverized coal plant (in fact, the latest projected cost difference between natural gas fired plants and a pulverized coal plant was characterized as "statistically insignificant"); (2) there are conservation and energy efficiency programs currently being used by other power providers which, when implemented by Tallahassee, could save up to 162 MW of power; (3) a private biomass firm is in the process of contracting with the City to provide 30 MW of power (and the provider anticipates that expansion to at least 75 MW is feasible), at no capital cost to Tallahassee; and (4) with the implementation of the conservation and efficiency programs (approved by Tallahassee this month) and the power to be supplied by the

biomass plant, Tallahassee will possess adequate power supplies to serve customer needs through at least 2016.

It is incumbent on each Petitioner, and each member of Petitioner, to prove that a similar independent investigation of available alternatives has been pursued to justify the Commission's granting the requested determination of need.

Petitioners' assertion that the proposed pulverized coal plant is "state of the art" is dubious in light of the existence of coal gasification plants and a cursory review of the 1960 text edition of "Power Station Engineering and Economy" which reveals that turbulent burners, cyclonic separators, electrostatic precipitators and wet electrostatic precipitators, flue gas desulphurization and supercritical steam plants each existed as early as 1960.

Further, Petitioner, FMPA, only a year ago, presented witnesses to the Commission who swore that a natural gas fired plant proposed by FMPA for construction in St. Lucie County was the most cost effective, least cost, and least risky alternative to other alternative sources of power, including coal fired plants. Petitioners' testimony in this proceeding must be analyzed in light of the clear discrepancies which Petitioner, FMPA, must explain between its witnesses' positions taken in Docket No. 050256-EM and the pre-filed testimony of its witnesses in this docket.

10. Statutes and Rules That Entitle Armstrong To Relief. The applicable statutes and rules that entitle Armstrong to relief include, but are not limited to, sections 120.569, 120.57(1), and 403.519, Florida Statutes, and Rules 25-22.080, 25-22.081, and 28-106.205, Florida Administrative Code.

11. Statement Explaining How the Facts Alleged By Armstrong Relate to the Above-Cited Rules and Statutes in Compliance With Section 120.54(5)(b)(4)(f), Florida Statutes. Rules 25-22.039 and 28-106.205, Florida Administrative Code, 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. Armstrong is a Tallahassee customer, and accordingly, her substantial interests are subject to determination in and will be affected by the Commission's decisions in this docket. Accordingly, Armstrong is entitled to intervene herein. The above-cited sections of Chapter 366, Florida Statutes, relate to the Commission's jurisdiction over the determination of the need of any provider of power to residents in this State to construct power generating facilities in this State, and the Commission's statutory mandate to ensure that new generating facilities are needed and, if needed, whether such facilities are the most cost effective option, the least cost alternative and the least risky alternative. The facts alleged here by Armstrong demonstrate that: (a) if the Commission grants the Petition herein there will be a significant impact on Tallahassee's rates and charges; (b) Armstrong will be directly impacted by the Commission's decisions; and (c) accordingly, these statutes and rules provide the basis for the relief requested by Armstrong herein.

CONCLUSION AND RELIEF REQUESTED

Armstrong is an electric retail customer of the City of Tallahassee, one of the Petitioners in this docket. Armstrong wishes to protect her interests under the Commission's statutes, rules, and others, and thus seeks to intervene in this docket to protect her substantial interests in having the Commission be presented all of the facts

relevant to the determination of whether the proposed pulverized coal plant is needed. Armstrong's interests that she seeks to protect via her intervention and participation in this proceeding are immediate and of the type to be protected by this proceeding.

WHEREFORE, Armstrong respectfully requests the Florida Public Service Commission to enter its order granting this Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on Armstrong's representative indicated in Paragraph 2 above.

Respectfully submitted this 26th day of September, 2006.

s/ Brian P. Armstrong

Brian P. Armstrong, Esq.
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(850) 322-4097: Telephone
(850) 668-1138: Telecopier

ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Petition to Intervene has been furnished by electronic Mail and U.S. Mail this 26th day of September, 2006, to the following:

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s/ Brian P. Armstrong

Brian P. Armstrong, Esq.