

ORIGINAL

Dorothy Menasco

From: ljacobs50@comcast.net
 Sent: Friday, October 20, 2006 4:49 PM
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 Cc: GPerko@hgslaw.com; CRAepple@hgslaw.com; Jennifer Brubaker; Katherine Fleming; barmstrong@ngn-tally.com; Harold Mclean
 Subject: Docket No. 060635 - Petition to Intervene
 Attachments: Petition cvr letter.doc; Petition to Intervene_DN060635.doc; motion to extend discovery.doc

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October 20, 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, Brian Lupiani, and Barry Parsons I have enclosed for filing the Petition for Intervention, consisting of eight pages, and a Motion to Extend Discovery Schedule and Filing Date for Testimony and Exhibits, consisting of four pages. I thank you for your attention to this matter.

Sincerely,

/s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr.
 Attorney for Intervenors

Enclosures

Mot. to Extend Disc. Sch.
 DOCUMENT NUMBER-DATE
 09686 OCT 20 08
 FPSC-COMMISSION CLERK

Pet. to Intervene
 DOCUMENT NUMBER-DATE
 09685 OCT 20 08

FPSC-COMMISSION CLERK

10/20/2006

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Attorney for Intervenors

- CMP _____
- COM _____
- CTR _____
- ECR _____ Enclosures
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH Kind

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

PETITION TO INTERVENE

Petitioners The Sierra Club, Inc., John Hedrick, Barry Parsons and Brian Lupiani, pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, and, by and through their undersigned counsel, hereby file this Petition to Intervene in the above-styled docket. The Sierra Club consists of members living throughout the state, and around the nation. There are substantial numbers of Sierra Club members who are customers of Jacksonville Electric Authority, the City of Tallahassee, the Reedy Creek Improvement District, and of the municipally owned utilities who are members of and purchase wholesale energy from the Florida Municipal Power Agency. The interests of each of the individual Petitioners and the interests of Sierra Club of Florida will be directly affected by the Commission's decisions in this docket, thus entitling Petitioners to intervene to protect their substantial interests. In further support of their Petition, Petitioners state:

1. The name and addresses of Petitioners are:

The Sierra Club, Inc.
85 Second Street, 2nd Floor
San Francisco, CA 94105

John Hedrick
P.O. Box 6683
Tallahassee, Florida 32314

DOCUMENT NUMBER-DATE

09685 OCT 20 98

Brian Lupiani
607 McDaniel Street
Tallahassee, Florida 32303

Barry Parsons
1011 Bob White Terrace
Madison, Florida 32340

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

E. Leon Jacobs, Jr., Esq.
Williams & Jacobs
1720 S. Gadsden Street, MS 14, Suite 201
P.O. Box 1101
Tallahassee, Florida 32302
850-222-1246 telephone
850-599-9079 fax
Email: ljacobs50@comcast.net

3. The name and address of the affected agency is:

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

4. The Sierra Club, Inc., is a non-profit corporation with approximately 700,000 members in chapters and groups in all 50 states, including approximately 30,042 members in Florida. Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth and to educate and enlist humanity to protect and restore the quality of the natural and human environment. The Sierra Club members are Florida residents, receiving electricity service in Florida, specifically from Jacksonville Electric Authority, from the City of Tallahassee, and from the various members of the Florida Municipal Power Agency. Petitioners John Hedrick and Brian Lupiani reside in Tallahassee, and take electric service from the City of Tallahassee. The cost of electricity makes up a significant and growing portion of the household income of Sierra Club members, and of

Petitioners John Hedrick and Brian Lupiani. As consumers, Sierra Club members and Petitioners Hedrick and Lupiani bear virtually all of the risk of energy price volatility, now such a prominent factor in electric generation. One important, new risk in providing electricity is the cost to mitigate the adverse emissions that the plant produces. There is a growing likelihood that electric generators will be required to incur substantial costs to mitigate greenhouse gases and reduce mercury produced by electric plants. Consumers, again, must bear the major share of this risk as these costs will likely be passed directly through to their bills once the plant is approved. Petitioner Parsons lives in relatively close proximity to the proposed electric plant. Because the proposed plant offers minimal measures to mitigate emissions, Petitioner Parsons will incur additional and substantial costs to address the health and property issues related to the adverse emissions from a large electric plant such as proposed in this proceeding. Sierra Club, through its members, takes the position that energy efficiency, renewable energy, demand-side management and conservation are grossly underutilized in Florida's energy portfolio, and as a result, ratepayers in Florida pay unnecessary premiums for fossil fuel generation as it rises in cost. While these Petitioners and all consumers require a reliable supply of electricity, it is vitally important that they be shielded from as much of this risk and receive reasonably priced, affordable electricity.

5. Statement of Affected Interests. Petitioners' interests are of the type that this 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), reh. denied, 415 So. 2d 1359 (Fla. 1982); Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982).

The Commission will decide in this docket whether it should certify the need for a 765 MW pulverized coal and petroleum coke electric generating plant, located in Taylor County, Florida, and called the Taylor Energy Center (“TEC”). The TEC will be owned by the Jacksonville Electric Authority (“JEA”), Florida Municipal Power Agency (“FMPA”), City of Tallahassee (Tallahassee), and Reedy Creek Improvement District (“RCID”). (hereinafter “Owners”) Under Florida law and Florida Public Service Commission (“FPSC”) precedent, the FPSC must assess: (i) the need for the power proposed in this docket; (ii) whether other cost-effective alternatives exist to provide power; (iii) whether the proposed plant is the most cost-effective alternative available; (iv) whether conservation and other demand-side management (“DSM”) measures are reasonably available to mitigate the need for the proposed plant, and (v) whether the power generated by the proposed plant can be produced with the least risk of all alternatives.

6. Disputed Issues of Fact.¹ Petitioners oppose the relief sought by the Owners and ask that the FPSC conduct a full and complete analysis as contemplated in paragraph 5 above. Petitioners assert that that the material issues of fact in this proceeding should include, but not be limited to, the following:

- a. *Whether the plant construction costs and delivered fuel costs have been completely analyzed to account for serious recent industry and market disruptions?* There are growing discrepancies in the projections for constructing pulverized coal plants, versus actual realized costs. These discrepancies must be resolved if consumers are to avoid undue risk in this docket. The Owners acknowledge that uncertainty exists in the projections for fuel costs associated with this plant, due to recent escalation in coal markets. This trend has caused market prices to approach historic highs. No

¹ Petitioners reserve the right to rephrase the issues presented herein, and to raise additional issues pursuant to FPSC rule, procedural order or CASR.

mechanisms are apparent which shield Petitioners, and consumers generally from this risk.

- b. *Whether the Owners' assessment of the proposed plant as the most cost-effective alternative adequately accounts for capital and external costs, such as environmental mitigation costs?* The Owners proposed compliance with existing environmental regulations appear to understate true costs, in the face of a fast-moving public debate over emissions mitigation for coal power plants. Additional costs may be imposed on the Owners much earlier than presently anticipated.

- c. *Whether conservation and DSM measures have been adequately valued and assessed in order to mitigate the need for a pulverized coal plant or mitigate the possibility of additional costs of emissions?* When all of the additional costs and risks of constructing a pulverized coal plant are calculated, conservation and DSM measures would appear to take on increased value. The Owners have asserted in their filing that there are no reasonably available conservation or DSM measures, which would mitigate the proposed plant.

- d. *Whether the proposed plant is consistent with emerging state and federal energy policy favoring integrated, diverse electric supply options?* In recognition of the growing risks in energy policy, particularly with respect to coal-fired electric plants, state and federal agencies are actively encouraging more diverse and environmentally friendly electric supply options, including demand-side options. There appears to be little if any consistency with these initiatives in this proposed plant.

The Petitioners are deeply concerned that in a very dynamic energy policy environment, where shifts in policy and technology are quickly emerging, this proposed plant is completely out of step, relying on prior standards, minimal innovation, and uncertain assumptions to develop an exceptionally large facility anticipated to be in operation in excess of thirty (30) years.

7. Statement of Ultimate Facts Alleged. The Owners must meet the requirements of Rules 25-22.080, and 25-22.081, Florida Administrative Code. Before

certifying the need for the TEC as proposed by the Owners, and ultimately, the FPSC must ensure that the plant is a prudent plant addition. The analysis proposed by the Owners does not adequately assess important issues and costs that will affect this plant over its life. The proposal further lacks safeguards, which would properly insulate ratepayers from the risk associated with the plant. The FPSC must closely scrutinize the best projections of costs, the full valuation of alternatives, an integrated assessment of other energy options, and the protection of consumers from the risks imposed by the proposed plant in the present regulatory environment. The FPSC should reserve authority to ensure that the Owners are properly managing the investment to construct this plant that will ultimately come from ratepayers. The FPSC should ensure consistency with emerging state and federal energy policy initiatives by promoting in this proceeding an integrated energy plan. This particularly requires that an integrated analysis be conducted using proper values for alternative sources of supply, for DSM, and particularly for conservation. Throughout the state, the nation and world, policy makers are clear that the costs of energy must be better managed. The FPSC must ensure a positive first step in managing electric generation costs with the approval of truly prudent, affordable costs for new power.

8. Statutes and Rules that Require the Relief Requested. Statutes and rules that require the relief requested by Petitioners include, but are not limited to, Chapter 120, and section 403.519, Florida Statutes, and Rules 25-22.039, 28-106.205, 25-22.080, and 25-22.081, Florida Administrative Code.

9. Statement Explaining How the Facts Alleged by Petitioners 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, F.A.C., 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. A substantial number of the Sierra Club's members are retail customers of the Owners, and accordingly, their substantial interests are subject to determination in and will be affected by the FPSC's decision whether to certify the need for the proposed plant. Petitioners Hedrick and Lupiani are retail customers of the City of Tallahassee and have similar, substantial interests to be determined. Petitioner Parsons will have property and health interests adversely affected by the placement of the proposed plant as proposed by the Owners. Accordingly, the Sierra Club and Petitioners Hedrick, Parsons and Lupiani are entitled to intervene herein.

WHEREFORE, Petitioners request that the FPSC enter an order granting Petitioners petition to intervene.

DATED THIS 20th DAY OF OCTOBER, 2006.

Respectfully submitted,

/s/ E. Leon Jacobs

E. Leon Jacobs, Jr.
Williams, Jacobs & Associates, LLC
P.O. Box 1101
Tallahassee, Florida 32302
(850) 222-1246
Fla. Bar ID. 0714682
Attorney for Petitioners

Certificate of Service

I certify that a copy of this Petition to Intervene in Docket No. 060635-EU was provided this 20th day of October, 2006, by electronic service and by regular mail to the following:

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