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Sent: Monday, October 23, 2006 9:12 AM
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Subject: Docket No. 060635-EU
Attachments: Response in Opposition.doc

ORIGINAL

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 to be made on behalf of Rebecca Armstrong.
4. The total number of pages is 9.
5. The attached document is the Reply to the Applicants' Response in Opposition to Emergency Motion for Extension of Time to File Testimony.

Brian P. Armstrong

Alissa Weiner

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FPSC-COMMISSION CLERK

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 October 23, 2006

ARMSTRONG'S REPLY TO APPLICANTS' RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE TESTIMONY

Rebecca J. Armstrong ("Armstrong"), by and through her undersigned attorney, hereby replies to the Applicant's Response in Opposition to Armstrong's Emergency Motion For Extension Of Time to File Testimony, and states as follows:

1. Applicants are attempting to foist upon Intervenor an unconscionably short period to review Applicants' multi-volume petition for a determination of need which includes nearly twenty expert witnesses and thousands of pages of data.

2. Applicants refer to several prior determination of need proceedings wherein intervention and submission of opposition testimony also was unconscionably short in violation of the interest of any potential intervenors in those proceedings. The fact that the public interest was denied in such cases as a result of the failure of any person or entity to point out the grave deprivation of due process resulting from such unconscionably short review periods is no basis to continue such unconscionable and unconstitutional methods in this proceeding.

3. It is similarly unconscionable for Applicants to suggest that a thirty-five day review period should be sufficient time to prepare Intervenor testimony responsive to the voluminous petition which includes data and testimony from many experts from three utility companies and an association representing many additional utility

companies that took them more than a year to prepare and file. It also is ludicrous for Applicants to suggest that the "extensive publicity" surrounding the anticipated filing of the application over the past year somehow provided Armstrong with the ability to review the reams of data and hundreds of pages of testimony which only were made public on September 19, 2006. The newspaper reports, public relations propaganda and other information which the Applicants have orchestrated for release to the public over the past year did little to provide any facts regarding the proposed pulverized coal plant. Rather, such information repeatedly indicated that it was unclear whether some of the Applicants even would be participating in the project. For instance, the City of Tallahassee has yet to decide whether it will remain a partner in the project. Also, there appears to be a legal question as to whether Reedy Creek Improvement District lawfully can participate as a partner in a project with the Florida Municipal Power Agency. Also, the formative documents establishing the partnership between the Applicants clearly states that all or any one of the partners may withdraw from the partnership at their sole discretion. These facts raise the issue of whether the application is even ripe for consideration. What is the Commission to do if any one of the partners withdraws from the partnership as permitted by the partnership documents? Any potential determination of need finding in this proceeding would be rendered moot and Armstrong's efforts as well as the time and expense of the Commission would be wasted.

4. Applicants further suggest that the Emergency Motion for Extension of Time to File Testimony is untimely. Armstrong points out that it took the Commission nearly one month to even accept Armstrong as a party to this proceeding (the order

acknowledging Armstrong as a party not having been received until October 22, 2006). It would be unconscionable for this Commission to impose an unrealistic and unattainable limitation of time upon Armstrong for the preparation and filing of competent opposition testimony when the Commission has spent nearly a month since the filing of Armstrong's petition to intervene without even informing Armstrong whether she is accepted as a party in this proceeding.

5. It is understandable that Applicants would be anxious to have the Commission enforce its unconscionable rule and the Procedural Order attempting to implement that rule; however, the notions of fairness and due process incorporated in the Federal and State Constitutions scream for Armstrong, at a minimum, to have the redress requested in the Emergency Motion for Extension of Time to File Testimony.

6. Armstrong points out that when utilities file applications for a rate increase, intervenors are provided a minimum of nine months to conduct their discovery, analyze the utility's case, present their positions in testimony and exhibits, file pre-hearing motions, prepare for hearing, file appropriate briefs, and otherwise take all steps consistent with due process to protect the intervenors' interests. The costs at issue in this proceeding likely will be more than \$2 billion. If the Applicants' petition is granted, significant rate impacts are likely, particularly for the City of Tallahassee. A decision concerning the potential construction of a coal plant in and of itself is an important decision with long-term impacts. Surely, these considerations require a more thorough examination than is possible in only ninety (90) days.

7. Finally, any assertion by an Applicant that there is a dire need to expedite the plant's construction to meet Applicants' energy needs rings hollow in light of the

facts that (a) Applicants' have taken more than one year to file the application and (b) Applicants have included within their partnership documents a term which allows any of the Applicants to withdraw from the partnership even subsequent to a Commission order in this proceeding. Surely, Applicants understand that the withdrawal of a partner subsequent to the Commission granting Applicants' request in this docket would render such Commission order moot and require a new petition to be filed so that the Commission could re-examine the need issue as applied to any substitute consumer of the power from the plant. In light of these facts, the fact that Applicants would permit such a term to appear in the partnership documents negates any allegation of a desperate need for the proposed coal plant.

Additional Background for Motion

8. Armstrong's motion asks that the Commission provide a reasonable opportunity to secure information needed to develop testimony, and a reasonable opportunity for Armstrong to prepare testimony and exhibits.

9. There are three utilities and an association of many utilities operating as partners whose supply needs are to be analyzed in this proceeding.

10. As a potential intervenor, Armstrong should have an opportunity to file testimony in this proceeding which addresses the facts and assumptions presented by each partner. Before Armstrong's testimony can be prepared, the following events must occur: First, Armstrong must have a reasonable opportunity to review and become informed about the substance and assumptions of the testimony and data filed by each of the four partners. Second, Armstrong must complete the technical analyses upon which Armstrong's testimony is to be based, e.g., Armstrong needs a reasonable

opportunity to complete the number crunching to show why the Commission should reject Applicants' petition. Third, Armstrong must prepare its testimony and exhibits.

11. Each of the four utilities have had over a year to develop its case. Due process requires that the Commission permit Armstrong a reasonable opportunity both to become informed about the utility filings and to complete her own analyses, testimony, and exhibits.

12. Becoming informed about the utility filings and completing the necessary technical analyses, testimony, and exhibits are no simple matter. It is clear that the current schedule does not provide a reasonable opportunity for Armstrong to conduct the following necessary activities prior to filing testimony. In addition to the four partners' needs, the Commission must make determinations concerning costs, alternative energy supplies, reliability issues, demand side management related issues, cost transportation issues, transmission system issues, and a host of other issues, some of which are identified in Armstrong's Petition to Intervene.

a. Reviewing the filings will take time.

Each of the four partners has filed extensive utility specific data and analyses that vary for each utility. Each of every partner's facts and assumptions must be reviewed to see what was provided and what must be ascertained through discovery.

b. Conducting discovery to secure relevant information that is necessary to develop Armstrong's position and testimony will take time.

As an example, discovering the bases for each partners' conclusions regarding DSM cost effectiveness is likely to involve many complex matters. For example: Are the utilities' projected cost for the pulverized coal plant alternative reasonable or

understated?; What specific costs and benefits did each utility assume for each measure whose cost effectiveness was tested?; How did each utility determine what generation, transmission, and distribution resources were needed?; How did each utility calculate avoided generation, transmission and distribution costs?; What DSM benefits were included and how were they calculated? Discovery of such matters typically takes numerous rounds of interrogatories and depositions.

Discovery is further complicated in the area of DSM analysis since the Applicants' have used three different methods for analyzing DSM cost effectiveness. For example, it will be necessary to discover things like: What savings measures did each utility test for cost-effectiveness?; What cost-effectiveness test(s) did each utility use on each measure?; If a utility did not test the cost-effectiveness of a savings measure that offers reasonably achievable savings, what was the utility's rationale for **not** testing the measure's cost effectiveness?; Did any utility bundle measures together before testing for cost effectiveness, and if so, how and why?

c. Completing the computer based technical analyses that could form the basis for Armstrong's testimony and exhibits will take time.

Armstrong testimony and exhibits may be based on technical analyses. These analyses are dependent on information that forms the bases for each partners' filings (e.g., analyses could include critiquing and developing alternative estimates of costs and benefits used in the utility-run cost effectiveness tests or testing measures that were not tested by the utility using the utility's own avoided cost assumptions). They cannot be conducted until the substance and bases of the utility filings are known. Unless the utility filings contain the relevant information necessary to conduct these

technical analyses, which is unlikely, discovery must be completed before the analyses are conducted. After the necessary information is secured, time is needed to input the data, review the output, and complete the analyses. Four weeks is insufficient time to even analyze Applicant's information in sufficient detail to identify the additional data required.

d. Preparing and distributing Armstrong's testimony and exhibits will take time.

After the underlying analyses are completed, it will take time to prepare Armstrong's testimony and exhibits for filing and distribution.

The aforesaid activities are each essential parts of presenting Armstrong's position and testimony in this case. The current schedule should be modified to provide a reasonable opportunity for these essential activities to take place.

13. Given the matters at issue, Armstrong anticipates that: 1) five weeks will be needed to review the separate data from the four separate partners and prepare written discovery; b) for each partner, two rounds of interrogatories, followed by two depositions, will be needed to develop the information needed to conduct the technical analyses upon which Armstrong's testimony will be based (this could be quickened by requiring either hand or overnight delivery and expediting response times to written discovery); c) two months will be needed to complete the technical analyses; and d) three weeks will be needed to finalize Armstrong's testimony and exhibits. Armstrong has condensed these time frames by requesting only an additional three months to file her testimony.

14. Therefore, the Commission should establish a discovery and testimony filing schedule that provides a reasonable opportunity for Armstrong to conduct the above-described activities that are essential to presenting Armstrong's position and testimony in this case, allowing at least the additional three months specified in her motion.

WHEREFORE, Armstrong moves that the Commission grant the Emergency Motion for Extension of Time to File Testimony.

Respectfully submitted this 23rd day of October, 2006.

s/ Brian P. Armstrong

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ATTORNEY FOR INTERVENOR

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Reply To Applicants Response In Opposition To Emergency Motion For Extension Of Time To File Testimony has been furnished by electronic Mail and U.S. Mail this 23rd day of October, 2006, to the following:

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