

# ORIGINAL

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Timolyn Henry\*\*\*\*\*1

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**From:** Dana Greene [DanaG@hgslaw.com]  
**Sent:** Tuesday, October 31, 2006 4:58 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** ljacobs50@comcast.net; barmstrong@ngn-tally.com; Jennifer Brubaker; Katherine Fleming  
**Subject:** Docket 060635

**Attachments:** Docket 060635 - Resp. to Petition to Int.pdf



Docket 060635 -  
Resp. to Petit...

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 060635-EU

In re: Petition To Determine Need For an Electrical Power Plant in Taylor County

c. Document being filed on behalf of Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and City of Tallahassee

d. There are a total of 4 pages.

e. The document attached for electronic filing is Applicants' Response in Opposition to Joy Towles-Ezell's Petition to Intervene

Thank you for your cooperation.

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FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA 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  
FILED: October 31, 2006

APPLICANTS' RESPONSE IN OPPOSITION TO  
JOY TOWLES-EZELL'S PETITION TO INTERVENE

Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and City of Tallahassee ("Applicants" or "Participants"), by and through their undersigned attorneys, hereby respond in opposition to the Petition to Intervene filed by Joy Towles-Ezell ("Towles-Ezell") on October 30, 2006. As discussed below, Ms. Towles-Ezell's petition fails to establish standing to intervene and, therefore, must be denied.

Background

1. On September 19, 2006, the Applicants filed their Need for Power Application requesting the Commission to determine need for the Taylor Energy Center, along with pre-filed direct testimony in support of the application.
2. On September 26, 2006, Rebecca J. Armstrong filed a Petition to Intervene which the Prehearing Officer granted in Order No. PSC-06-0867-PCO-EU on October 20, 2006.
3. On October 20, 2006, the Sierra Club, Inc., John Hedrick, Brian Lupiani, and Barry Parsons filed a Petition to Intervene in this proceeding. By Order No. PSC-06-0898-PCO-EU on October 26, 2006, the Pre-Hearing Officer granted the Petition to Intervene in part and denied it in part, as discussed below.
4. On October 30, 2006, Joy Towles-Ezell filed a Petition to Intervene in this proceeding, which is the subject of this pleading.

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## Discussion

### **I. Towles-Ezell has not established any basis for standing in this proceeding.**

5. Standing under the Administrative Procedure Act (APA) is only conferred on persons whose substantial interest will be affected by proposed agency action. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), *rev. denied*, 415 So.2d 1359 (Fla.1982), and 415 So.2d 1361 (Fla. 1982). A person seeking to show a substantial injury must demonstrate: (1) that the person will suffer an injury in fact which is of sufficient immediacy to entitle the party to a section 120.57 hearing, and (2) that the injury is of the type or nature which the proceeding is designed to protect. *Agrico, supra* at 482; *Florida Society of Ophthalmology v. State Bd. of Optometry*, 532 So.2d 1279, 1285 (Fla. 1st DCA 1988), *rev. denied*, 542 So.2d 1333 (Fla.1989). In general, one's substantial interests must be impacted in a manner beyond the injury which might be sustained by the general public and in a way which produces injury of a type which the proceeding is designed to protect. *St. Joe Paper Co. v. Department of Community Affairs*, 657 So.2d 27 (Fla. 1<sup>st</sup> DCA 1995), *rev. denied*, 667 So.2d 774 (Fla. 1996); *citing Grove Isle v. Bayshore Homeowners Association*, 418 So.2d 1046, 1047-48 (Fla. 1st DCA 1982), *rev. denied*, 430 So.2d 451 (Fla. 1983); and *Agrico, supra*.

6. In support of her proposed intervention, Ms. Towles-Ezell merely alleges that she is a resident of Perry and is "a leading and renowned public advocate for the expansion of renewable and clean energy in North Florida specifically, and generally throughout the state." She does not allege how her interests may be affected in this proceeding. Indeed, she fails to allege any "injury in fact" and does not even attempt to explain how any interests she may have would be affected beyond those of the general public. Accordingly, she fails to satisfy the first prong of the *Agrico* test. Likewise, other than a conclusory allegation in paragraph 5 of her

petition to intervene, Ms. Towles-Ezell fails to explain how her interests as an “advocate” are of the nature this proceeding is designed to protect. As such, she also fails to meet the second prong of the *Agrico* test.

7. In Order No. PSC-06-0898-PCO-EU (Oct. 26, 2006) at 1-2, the Prehearing Officer denied intervention to Barry Parsons in this proceeding, noting, among other things, that Mr. Parsons is not a customer of any of the participants in the Taylor Energy Center (“TEC”) project. *Id.* at 2. Ms. Towles-Ezell’s petition to intervene suffers the same flaw. Ms. Towles-Ezell does not allege that she is a customer of any of the participants in the TEC project. Further, as discussed above, she has alleged no other interest that might result in an injury that meets *Agrico*’s two-pronged test for standing. Accordingly, Ms. Towles-Ezell’s Petition to Intervene must be denied.

#### Conclusion

WHEREFORE, for the reasons discussed above, Florida Municipal Power Agency, JEA, Reedy Creek Improvement District and City of Tallahassee respectfully request entry of an order denying the Petition to Intervene filed by Joy Towles-Ezell on October 30, 2006.

Respectfully submitted, this 31st day of October, 2006.

//S//Gary V. Perko  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's Response in Opposition to the Petition to Intervene filed by Joy Towles-Ezell in Docket No. 060635-EU was served upon the following by U.S. Mail and electronic mail(\*) on this 31st day of October, 2006:

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