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November 2, 2006

By Hand Delivery

Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 060635-EU

Dear Ms. Bayo:

Enclosed for filing in the above referenced proceeding are fifteen copies of the testimony of Stephen Smith and Steve Urse on behalf of intervenor Rebecca J. Armstrong. Copies of this testimony have been provided by regular mail to the parties.

Please acknowledge the filing of this testimony by date stamping the enclosed copy of this letter and returning it to the individual who has hand delivered it.

Your assistance and cooperation, as always, is very much appreciated.

Very truly yours,



Brian P. Armstrong

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Testimony of Stephen A. Smith

On behalf of

Intervenor Rebecca Armstrong

Docket No. 060635-EU

1 Q. Please state your name.

2 A. My name is Stephen A. Smith, I am Executive Director of the Southern Alliance for
3 Clean Energy.

4 Q: Please briefly describe the Southern Alliance for Clean Energy.

5 A: Southern Alliance for Clean Energy is a non-profit, nonpartisan organization that
6 promotes responsible energy choices that solve global warming problems and ensure clean,
7 safe and healthy communities throughout the Southeast. We have offices and staff in Florida,
8 as well as Asheville and Raleigh, North Carolina, Tennessee and Georgia.

9 Q: Please briefly state your education, background and experience.

10 A: I graduated from Kentucky Wesleyan College in 1988 with a Bachelor of Science
11 degree in biology and chemistry. I received a Doctorate in Veterinarian Medicine from the
12 University of Tennessee in 1992.

13 Since 1983, I have worked with non-profit environmental and energy advocacy
14 organizations. In 1993, I became the Executive Director of the Tennessee Valley Energy
15 Reform Coalition, which became the Southern Alliance for Clean Energy in 2000.

16 Over the past 20 years I have served in a number of advisory roles including with the
17 Tennessee Valley Authority, from 1994 to 1996 on their Integrated Resource Plan Review
18 Group. I later served two terms on TVA's Regional Resource Stewardship Council from
19 2000 to 2002. I currently serve on TVA's Green Power Marketing Committee.

20 I served on the Tennessee Valley Electric System Advisory Committee for the United States
21 Department of Energy from 1997 to 1998. From 2000 to 2005, I served on the national
22 governing board of the Center for Resource Solutions' National Green Power Accreditation.

23 Currently, I serve on Florida Power & Light's Green Power Program Advisory Board and as
24 the co-chair for the US Climate Action Network. The US Climate Action Network is the
25 United States affiliate of Climate Action Network International, a worldwide network of 340

1 Non-governmental Organizations working to promote government and individual action to
2 limit human-induced climate change to ecologically sustainable levels.

3 I also currently serve on the North Carolina Legislative Commission on Global Climate
4 Change and the North Carolina Climate Action Planning Advisory Group.

5 I have testified before the United States Congress and state regulatory commissions in
6 Florida, North Carolina and Georgia.

7 Q. What is the purpose of your testimony?

8 A. The Commission only provided intervenor Armstrong 35 days from the day that
9 Applicants filed their petition to review thousands of pages of testimony, data and exhibits
10 filed by the three utilities and one multi-utility power agency which comprise the Applicants
11 in this proceeding. It was impossible to perform any substantive analysis that could
12 comprehensively address the flaws and shortcomings of Applicant's application in such a
13 short period of time. Given the lack of time and absence of due process in this proceeding, I
14 only will be able to summarize in a very preliminary manner, some obvious areas where
15 Applicants have not met their burden or where facts appear to refute Applicants' testimony.

16 These include:

17 1. Applicants appear to be using out-dated coal plant construction costs that pre-date
18 Hurricane Katrina when comparing the proposed coal plant to post-Katrina costs of available
19 alternatives. Recent events in North Carolina concerning Duke Energy show how critical it
20 is for the Commission to insure that costs are updated. Only weeks after completing similar
21 hearings before the North Carolina regulatory body, Duke Energy has suggested that it has
22 received new, updated cost information for its proposed coal plant that are significantly
23 higher than the costs presented in evidence to the regulator. This Commission cannot permit
24 that to happen here.

1 2. The Tallahassee City Commission, recognizing that the plant cost projections are
2 stale, requested that the City's financial advisor review the projected cost. The City's
3 financial advisor informed the City that the projected costs were at the bottom of a range
4 which the financial advisor thought was reasonable. The financial advisor noted that it was
5 not qualified to estimate such costs but that the industry had seen a significant rise in plant
6 construction costs. In fact, utility executives recently have been under great pressure lately
7 for advocating coal plant construction when costs have risen precipitously and at least one
8 utility has halted plans to build a coal plant.

9 3. Applicants apply three different methods to calculate the cost of demand side
10 management and other conservation programs. The City of Tallahassee conducted its own
11 independent review and identified 162 mw of power that could be saved if Tallahassee
12 simply implements programs currently used by other utilities.

13 4. Tallahassee recently agreed to a contract with a company that will provide 38 mw of
14 power using biomass. The power from the plant available to Tallahassee may reach 75 mw
15 in the near future and could exceed 75 mw. These facts are not presented in Applicant's
16 testimony. Biomass clearly can be a viable alternative to the proposed coal plant.

17 Tallahassee's witnesses do little to nothing to explain why Tallahassee should
18 continue as a partner in this partnership when Tallahassee has the 162 mw of power savings
19 and up to 75 mw of power to be produced from a biomass plant. Tallahassee is proposing to
20 purchase 150 mw of power from the TEC coal plant, however, Tallahassee utility staff have
21 presented information to the City Commission that the latest projections indicate that the
22 optimal cost solution to meet Tallahassee's energy needs includes only 75 mw of supply from
23 the TEC coal plant. Applicants' testimony for some reason does not include this information,
24 at least upon the review allowed by the Commission's compressed and unjustifiably short
25 time for submitting this testimony.

1 5. Applicants' case does not identify the demand side management/conservation
2 programs in place at each of the municipal utilities that are members of the Florida Municipal
3 Power Agency and that will receive power if Applicant's petition is granted. There is no
4 exception in the Commission rules that I am aware of that would allow individual
5 municipalities to escape Commission review of their demand side management activities by
6 congregating for power supply purposes in one agency. The FMPA is not the retail provider
7 and demand side management applies to the individual municipal retail providers – the
8 individual municipal electric utilities that are FMPA numbers.

9 6. The City of Tallahassee included estimated carbon allowance costs in its independent
10 review of available power alternatives. Tallahassee used the lowest cost projected by one of
11 the two consultants which projected such costs during the city's IRP alternatives study.
12 Applicants' projected carbon allowance costs which have been included in the analysis
13 performed by one of the Applicant's witnesses must be tested through discovery.

14 7. JEA cleverly selected a site far away from the City of Jacksonville for the proposed
15 construction of what is in my opinion a second rate pulverized coal plant. When the JEA last
16 proposed to construct a coal plant in or near the City of Jacksonville, JEA ended up
17 implementing energy supply alternatives, including I believe, solar energy. The JEA's
18 Northside pulverized coal plant and the St. John's River coal plant have been reported as the
19 Number One and Number Two largest polluters of mercury in the State of Florida. At a time
20 when all of Florida's water bodies are under mercury warnings, the Commission must
21 consider incremental construction cost to include additional equipment on the plant to reduce
22 mercury emissions to the lowest levels possible.

23 There is Commission precedent for forcing utilities to incur additional capital costs to
24 improve the quality of its product even when such product complies with applicable health or
25 environmental standards. For instance, I draw the Commission's attention to its regulation of

1 water and wastewater utilities operating in this State. The Commission has opened
2 investigations and penalized water and wastewater utilities where environmental or health
3 standards are met, but the public interest requires supplemental treatment to further improve
4 the quality of the product. The Commission should not hesitate to take similar actions in this
5 proceeding.

6 8. Only one year ago, the Florida Municipal Power Agency ("FMPA") filed a petition
7 for determination of need with this Commission seeking authority to build a natural gas fired
8 plant. The FMPA submitted testimony that the proposed natural gas plant was the most
9 cost-effective and reliable type of plant as compared to the alternative types of plants
10 available, including a pulverized coal plant like the one FMPA now proposes to build in this
11 proceeding. In fact, some of the consultants used by FMPA may be the same consultants as
12 Applicants are using in this proceeding. FMPA's testimony was found by the Commission to
13 meet the cost-effectiveness, reliability and other standards addressed by the Commission.
14 Thus, the Commission found only one year ago that a natural gas fired plant was more cost-
15 effective and reliable than a coal fired plant. That finding appears to conflict with the
16 testimony filed by FMPA in this proceeding.

17 9. The Orlando Utilities Commission ("OUC") and Southern Company have a petition
18 for a determination of need proceeding pending before the Commission. I am told that OUC
19 and Southern Company have included carbon allowance costs in their comparable cost
20 analysis in that proceeding. OUC and Southern Company also propose construction of an
21 IGCC coal plant, not a pulverized coal plant. OUC and Southern Company also received
22 federal subsidy of more than \$200 million to build their proposed IGCC plant. Applicants in
23 this proceeding apparently lacked the diligence to pursue federal funding of an admittedly
24 cleaner, although not clean, coal fired plant, despite the direction from the Taylor County
25 Board of County Commissioners that they should do so. Since the Applicants were derelict

1 in pursuing free federal funds to build an alternative type of plant, the credibility of Applicants'
2 assertions of diligence and the thoroughness of Applicant's analysis is called into serious
3 question.

4 Q. You have testified that you did not have sufficient time to file your testimony in this
5 docket. Can you explain the process for preparing testimony and why the 35 days allowed by
6 the Commission was not sufficient?

7 A. Yes, of course, but first I must point out that when utilities file applications for a rate
8 increase, intervenors are provided a minimum of nine months to conduct their discovery,
9 analyze the utility's case, present their positions in testimony and exhibits, file pre-hearing
10 motions, prepare for hearing, file appropriate briefs, and otherwise take all steps consistent
11 with due process to protect the intervenors' interests. The costs at issue in this proceeding
12 likely will be more than \$2 billion. If the Applicants' petition is granted, significant rate
13 impacts are likely, particularly for the City of Tallahassee. A decision concerning the
14 potential construction of a coal plant in and of itself is an important decision with long-term
15 impacts. Surely, these considerations require more analysis than I or anyone could conduct
16 in 35 days as well as a more thorough examination by the Commission than is possible in
17 only ninety (90) days.

18 Also, any assertion by an Applicant that there is a dire need to expedite the plant's
19 construction to meet Applicants' energy needs rings hollow in light of the facts that (a)
20 Applicants' took more than one year to file the application and (b) Applicants have included
21 within their partnership documents a term which allows any of the Applicants to withdraw
22 from the partnership even subsequent to a Commission order in this proceeding. Surely,
23 Applicants understand that the withdrawal of a partner subsequent to the Commission
24 granting Applicants' request in this docket would render such Commission order moot and
25 require a new petition to be filed so that the Commission could re-examine the need issue as

1 applied to any substitute consumer of the power from the plant. In light of these facts, the
2 fact that Applicants would permit such a term to appear in the partnership documents negates
3 any allegation of a desperate need for the proposed coal plant.

4 Finally, there are three utilities and an association of many utilities operating as
5 partners whose supply needs are to be analyzed in this proceeding.

6 I should have an opportunity to file testimony in this proceeding which addresses the
7 facts and assumptions presented by each partner. Before my testimony or the testimony of
8 others can be prepared, the following events must occur: First, the intervenor, like Rebecca
9 Armstrong or her chosen witnesses, must have a reasonable opportunity to review and
10 become informed about the substance and assumptions of the testimony and data filed by
11 each of the four partners. Second, the intervenor must complete the technical analyses upon
12 which testimony is to be based, e.g., a reasonable opportunity must be provided to allow the
13 intervenor to complete the number crunching to show why the Commission should reject
14 Applicants' petition. Third, the testimony and exhibits must be prepared and submitted.

15 As I indicated earlier, each of the four Applicants have had over a year to develop its
16 case. Due process requires that the Commission permit any intervenor a reasonable
17 opportunity both to become informed about the utility filings and to complete their own
18 analyses, testimony, and exhibits.

19 Becoming informed about the utility filings and completing the necessary technical
20 analyses, testimony, and exhibits are no simple matter. It is clear that the current schedule
21 does not provide a reasonable opportunity for an intervenor to conduct the following
22 necessary activities prior to filing testimony. In addition to the four partners' needs, the
23 Commission must make determinations and, therefore, intervenors like Armstrong must have
24 the opportunity to conduct discovery concerning costs, alternative energy supplies, reliability
25 issues, demand side management related issues, coal transportation and coal transportation

1 cost issues, transmission system issues, and a host of other issues before being required to file
2 testimony. The steps to filing testimony can be broken down as follows:

3 **a. Reviewing the filings will take time.**

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

7 **b. Conducting discovery to secure relevant information that is necessary to
8 develop the intervenor's position and testimony will take time.**

9 As an example, discovering the bases for each partners' conclusions regarding DSM
10 cost effectiveness is likely to involve many complex matters. For example: Are the utilities'
11 projected cost for the pulverized coal plant alternative reasonable or understated?; What
12 specific costs and benefits did each utility assume for each measure whose cost effectiveness
13 was tested?; How did each utility determine what generation, transmission, and distribution
14 resources were needed?; How did each utility calculate avoided generation, transmission and
15 distribution costs?; What DSM benefits were included and how were they calculated?
16 Discovery of such matters typically takes numerous rounds of interrogatories and
17 depositions.

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

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

3 Armstrong testimony and exhibits may be based on technical analyses. These
4 analyses are dependent on information that forms the bases for each of the Applicants filings
5 e.g., analyses could include critiquing and developing alternative estimates of costs and
6 benefits used in the utility-run cost effectiveness tests or testing measures that were not tested
7 by the utility using the utility's own avoided cost assumptions. They cannot be conducted
8 until the substance and bases of the utility filings are known. Unless the utility filings
9 contain the relevant information necessary to conduct these technical analyses, which is
10 unlikely, discovery must be completed before the analyses are conducted. After the
11 necessary information is secured, time is needed to input the data, review the output, and
12 complete the analyses. Four weeks is insufficient time to even analyze Applicant's
13 information in sufficient detail to identify the additional data required.

14 **d. Preparing and distributing the intervenor's testimony and exhibits will**
15 **take time.**

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

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

21 Given the matters at issue, Armstrong submitted a motion requesting an extension of
22 the 35 days allowed to file testimony. In that motion and subsequent pleadings, Armstrong
23 indicated that she anticipated that: 1) five weeks will be needed to review the separate data
24 from the four separate partners and prepare written discovery; b) for each partner, two rounds
25 of interrogatories, followed by two depositions, will be needed to develop the information

1 needed to conduct the technical analyses upon which Armstrong's testimony will be based
2 (this could be quickened by requiring either hand or overnight delivery and expediting
3 response times to written discovery); c) two months will be needed to complete the technical
4 analyses; and d) three weeks will be needed to finalize Armstrong's testimony and exhibits.
5 Armstrong then condensed these time frames by requesting only an additional three months
6 to file testimony. As of the submission of this testimony, the Commission had not ruled on
7 Armstrong's motion.

8 Q. Does that conclude your testimony?

9 A. Yes, based on the unjustifiably short period provided by the Commission for
10 submitting intervenor testimony, Armstrong could not secure the services of additional
11 witnesses and I could do nothing further.