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 Sent: Wednesday, November 08, 2006 10:17 AM
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 Subject: Docket 060635-EU

ORIGINAL

Attachments: Docket 060635 - Applicants' Response in Opposition to the Petition to Intervene filed by Whitfield, Taitt and Whitton.pdf

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Docket
 5 - Applicants
 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 5 pages.

e. The document attached for electronic filing is Applicants' Response in Opposition to the Petition to Intervene Filed by Dianne Whitfield, Carole Taitt, and John Carl Whitton, Jr.

Thank you for your cooperation.

Dana Greene, Legal Assistant to
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DOCUMENT NUMBER-DATE

10313 NOV-8 8

FDSC-COMMISSION OF ENV

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: November 8, 2006

**APPLICANTS' RESPONSE IN OPPOSITION TO
THE PETITION TO INTERVENE FILED BY
DIANNE WHITFIELD, CAROLE TAITT, AND JOHN CARL WHITTON, JR.**

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 Dianne V. Whitfield, Carole E. Taitt, and John Carl Whitton, Jr. ("Whitfield Petition") on October 31, 2006. As discussed below, the Whitfield 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.

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FPSC-COMMISSION CLERK

4. On October 30, 2006, Joy Towles-Ezell filed a Petition to Intervene in this proceeding, which is still pending before the Commission.

5. On October 31, 2006, Dianne V. Whitfield, Carole E. Taitt, and John Carl Whitton, Jr., filed a Petition to Intervene in this proceeding, which is the subject of this pleading.

Discussion

Ms. Whitfield and Ms. Taitt have not established any basis for standing in this proceeding.

6. Standing under the Administrative Procedure Act (APA) is conferred only 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. 1st 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*.¹

¹ This legal principle is confirmed in the PSC Order cited in the Petition to Intervene filed by Ms. Whitfield and Ms. Taitt. There, the Commission found that an association did not have standing to participate in a need determination proceeding because, *inter alia*, the association's members did not have a "zone of interest personal to them" that would be invaded in a manner sufficient to confer standing. *See* Order No. PSC-99-0535-FOF-EM, 99 FPSC at 3:428.

7. In support of their proposed intervention, Ms. Whitfield and Ms. Taitt allege that they are residents of Taylor County and are members of a group currently being organized known as Taylor Residents United for the Environment and other “groups who work on energy efficiency issues and have participated in activities related to those issues.” Ms. Whitfield and Ms. Taitt allege a general interest in “how energy services are provided in Florida . . .”, but they fail to allege any “injury in fact” and do not even attempt to explain how any interests they may have in “how energy services are provided in Florida” would be affected beyond those of the general public. Accordingly, Ms. Whitfield and Ms. Taitt fail to satisfy the first prong of the *Agrico* test. Likewise, Ms. Whitfield and Ms. Taitt fail to explain how their interests as “advocates” are of the nature this proceeding is designed to protect. As such, Ms. Whitfield and Ms. Taitt also fail to meet the second prong of the *Agrico* test.

8. In this docket in Order No. PSC-06-0898-PCO-EU (Oct. 26, 2006) at 1-2, the Prehearing Officer denied intervention to Mr. 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. The petition to intervene by Ms. Whitfield and Ms. Taitt suffers the same flaw. Ms. Whitfield and Ms. Taitt do not allege that they are customers of any of the participants in the TEC project. Further, as discussed above, they have alleged no other interest that might result in an injury that meets *Agrico’s* two-pronged test for standing. Accordingly, Ms. Whitfield’s and Ms. Taitt’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 Dianne V. Whitfield and Carole E. Taitt on
October 31, 2006.

Respectfully submitted, this 8th day of November, 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 Dianne V. Whitfield, Carole E. Taitt, and John Carl Whitton, Jr., in Docket No. 060635-EU was served upon the following by U.S. Mail and electronic mail(*) on this 8th day of November, 2006:

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