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ORIGINAL

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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 John C. Whitton, Jr.

d. There are a total of 6 pages.

e. The document attached for electronic filing is Response to Motion To Strike Portions of Testimony and Exhibits Filed by John Carl Whitton, Jr.

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BEFORE THE STATE OF 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
Dated: December 27, 2006

**RESPONSE TO MOTION TO STRIKE PORTIONS OF TESTIMONY AND EXHIBITS
FILED BY JOHN CARL WHITTON, JR.**

John Carl Whitton, Jr. ("Whitton"), by and through the undersigned counsel, hereby responds in opposition to Applicants' Motion To Strike Portions of Testimony and Exhibits Filed by John Carl Whitton, Jr., and states as follows:

MS. DEEVEY'S TESTIMONY IS RELEVANT AND PROVIDES PROBATIVE VALUE

1. The Applicants' objections to the portions of Direct Testimony of Dian Deevey on behalf of Whitton regarding global warming and carbon dioxide emissions as either outside the PSC's jurisdiction or speculative without probative value are misplaced. While the Applicants have asserted throughout this docket that the potential costs associated with carbon dioxide regulation are too speculative to be considered, the Pre-Hearing Officer has already determined at the Prehearing Conference on December 21, 2006, that one of the issues to be considered by the full Commission in this proceeding will be: Have the Applicants appropriately evaluated the cost of CO₂ emission mitigation costs in their economic analyses? Thus, the Pre-Hearing Officer has determined that carbon costs are relevant in this proceeding and Ms. Deevey's testimony concerning these is indeed relevant as well.

2. The Applicants themselves try to have it both ways on this issue by requesting that information related to this be excluded as irrelevant but they themselves first raised the included

potential carbon costs in their price sensitivity scenario which anticipates changes in response to a carbon constrained economy. *See, e.g.*, Direct Testimony of Matthew Preston at 20-21. Indeed, much of the testimony to which the Applicants object to as “speculative” and “without probative value” is a rebuttal and critique of the Hill & Associates report and testimony of Matthew Preston.

3. The entry of this relevant and probative testimony does not cause unfair prejudice, confuse issues, mislead the PSC or involve needless presentation of cumulative evidence, which would be the only grounds for excluding relevant testimony.

4. Further, the PSC has previously accepted as fact and incorporated in its findings evidence of environmental impacts. *See, e.g., In Re: Joint petition to determine need for Electric Power Plant to be Located in Okeechobee County by Florida Power & Light Company and Cypress Energy Partners*, Docket No. 920520-EQ; Order No. PSC-92-1355-FOF-EQ, at p. 34, 50-51, 82, 83 (1992).

5. Therefore, the testimony of Ms. Deevey regarding carbon dioxide costs is not irrelevant, is probative in value and should not be stricken.

**MS. DEEVEY QUALIFIES AS AN EXPERT WITNESS AND THEREFORE MAY
PROVIDE OPINION TESTIMONY**

6. The Applicants also apparently object to “most” of Ms. Deevey’s testimony on the basis of lack of expertise, but it is not clear exactly which portions of her testimony the Applicants wish to strike on this basis as they refer to her testimony with general summary. *See Applicants’ Motion to Strike*, Doc. No. 11634-06, p.5, ¶ 11.

7. Further, the Applicants are unable to point to any substantive information supporting their claim that Ms. Deevey is not an expert, and can only simply claim without substantiation that she is not.

8. Section 90.702, Florida Statutes, provides that a witness may be qualified as an expert by “knowledge, skill, experience, training or education.”

9. Applicants contend that because Ms. Deevey is not an engineer that she is not an expert. *See Applicants’ Motion to Strike*, Doc. No. 11634-06, p.5, ¶ 10. The Florida Evidence Code does not require Ms. Deevey to be an “engineer” to be qualified as an expert.

10. As demonstrated in her Direct Testimony, Ms. Deevey possesses the requisite knowledge, skill, experience and/or training to offer opinion testimony regarding electric utility resource planning, biomass generation and emission allowance price forecasts. Indeed, Ms. Deevey has co-authored a peer-reviewed study of the new capacity needs for Gainesville Regional Utilities. Ms. Deevey’s work regarding interdisciplinary atmospheric studies has also been published numerous times in peer-reviewed journals. Ms. Deevey also has been working with scientists at the University of Florida’s School of Forestry and Conservation, where she has gained additional knowledge, skills and experience, specifically in calculating the potential for woody biomass generation and fuel supply pricing. She also presented a summary of these findings and their applicability to the City of Tallahassee at a City of Tallahassee Commission meeting in September 2006. *See Exhibit DD-4.*

11. Based on the above-outlined facts and the evidence before the Public Service Commission, Ms. Deevey is an expert in the areas which are the subject of her direct testimony, and therefore, it is acceptable for her to offer opinion testimony in these areas.

**MS. DEEVEY IS AN EXPERT, AND THE ASSERTIONS THE APPLICANTS
PORTRAY AS HEARSAY ARE THE BASIS OF HER OPINION TESTIMONY**

12. Opinion testimony from experts is admissible pursuant to Section 90.702, Florida Statutes.

13. Ms. Deevey is an expert as established above and in the record before the Public Service Commission.

14. The assertions and documents the Applicants allege to be unsupported hearsay are the basis of Ms. Deevey's opinion testimony. These assertions and documents are "the facts and data ...of a type reasonably relied upon by experts in the subject to support the opinion expressed." Section 90.704, Florida Statutes.

15. For these reasons, Ms. Deevey's testimony and the documents she offers as a basis for her testimony do not constitute hearsay and are therefore admissible.

16. Furthermore, Exhibit Nos. DD-2, DD-3, DD-5, DD-6 and DD-7, also fall under the hearsay exception for commercial publications, pursuant to Section 90.803(17), Florida Statutes.

ALL OF MS. DEEVEY'S PRE-FILED TESTIMONY IS RELEVANT TO THIS PROCEEDING

17. Applicants assert that Ms. Deevey's statement in her direct testimony regarding limited time to prepare her testimony is irrelevant, untimely and inappropriate.

18. The statement included in Ms. Deevey's direct testimony that Applicants appear to object to simply reflects that reality and indicates that she may have been able to provide expanded testimony given more time. Unlike the Applicants' witnesses, Ms. Deevey did not have an unlimited amount of time to prepare her pre-filed testimony.

19. The Applicants also seek to strike Exhibit No. DD-1 and any reference to that Exhibit in Ms. Deevey's testimony. Exhibit No. DD-1 and references to this Exhibit, her GRU study, help establish her credibility as an expert in this proceeding and should be admissible on those grounds alone.

20. Further, the Applicants claim that there has been no showing that the information submitted in Exhibit No. DD-1 has any relation to the cost-effectiveness analysis performed by

the Applicants. As indicated above, the Exhibit is admissible for purposes of establishing Ms. Deevey's expertise, but also is relevant to the proceedings with respect to the cost-effective analysis as well as other issues which are subjects of this proceeding. Whitton should be permitted to show the relationship at the Hearing and in his final brief for this Docket.

CONCLUSION

21. For the reasons discussed above, the Commission should deny the Applicants' Motion to Strike Portions of Testimony and Exhibits Filed by John Carl Whitton, Jr.
22. If the Commission is not convinced of Ms. Deevey's ability to provide opinion testimony, the Commission should not require oral argument on the Applicants' Motion to Strike but permit the Applicants to conduct a voir dire examination of Ms. Deevey at the Hearing in this Docket.

Dated this 27th day of December, 2006.

Respectfully submitted,

s/ Brett M. Paben
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CERTIFICATE OF SERVICE

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Respectfully submitted,

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