

**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: October 31, 2006**

PETITION TO INTERVENE

Dianne V. Whitfield, Carole E. Taitt and John Carl Whitton, Jr. (collectively “Petitioners”), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, by and through the undersigned counsel, hereby petition to intervene in the above-styled case. Petitioner Whitton is a retail electric customer of the City of Tallahassee (“Tallahassee”), which is one of the petitioners in this docket and a prospective recipient of more than 150 MW of electricity from the proposed coal plant. The interests of Whitton as a customer of Tallahassee will be directly affected by the Commission’s decisions in this case, and accordingly, Whitton is entitled to intervene to protect his substantial interests. Petitioners Whitfield and Taitt (“Taylor County Petitioners”) are residents of Taylor County, the proposed location of the proposed coal power plant. Petitioner Whitfield and Petitioner Taitt are also steering committee members of Taylor Residents United for the Environment (TRUE), a group of individuals who have been meeting for more than a year regarding their concerns about the proposed coal power plant; TRUE is in the process of incorporating with the State of Florida as a non profit corporation. The Taylor County Petitioners have substantial interests in whether a coal power plant is the most cost-effective alternative as well as in the use of alternate energy sources, including renewables and energy conservation and efficiency (including demand side management (“DSM”). Both women are also members of a number of groups who work on

energy efficiency issues and have participated in activities related to these issues. Since this Docket is the only opportunity where the type of electricity generating facility to be located in Taylor County is to be determined, the Taylor County Petitioners are entitled to intervene to protect their substantial interests. Also, the Commission's determination includes the appropriateness of the "siting," which incorporates matters ranging from zoning-type issues to emergency response and its effect on nearby residents. For these reasons also the Taylor County Petitioners are entitled to intervene in this process. In further support of this Petition to Intervene, Petitioners state:

AFFECTED AGENCY

1. The agency affected by this Petition is the STATE OF FLORIDA, PUBLIC SERVICE COMMISSION (“Commission” or “PSC”), an independent arm of the legislative branch of government charged with determining the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act, 403.501-403.518, Florida Statutes. PSC’s address is as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

PETITIONERS

2. The names and addresses of the Petitioners are as follows:

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Mailing:

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Perry, FL 32348

Physical:

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Perry, FL 32348

Carole A. Taitt
4930 Sumter Street
Perry, Florida 32348

John Carl Whitton, Jr.
1107 Seminole Dr.
Tallahassee, Florida 32301

3. PETITIONERS are represented in this matter by Brett M. Paben and Jeanne Zokovitch Paben. All pleadings, orders and correspondence should be directed to Petitioner's counsel as follows:

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OTHER PARTIES

4. The Commission will decide in this case whether it should certify the need for a 765 MW pulverized coal and petroleum coke electric generating plant, to be located in Taylor County, Florida, and called the Taylor Energy Center ("TEC"). The TEC will be owned by the Jacksonville Electric Authority ("JEA"), Florida Municipal Power Agency ("FMPPA"), City of Tallahassee ("Tallahassee") and Reedy Creek Improvement District ("RCID") (hereinafter "TEC").

STATEMENT OF PETITIONERS' AFFECTED INTERESTS

5. Petitioners' interests are of the type that this proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So. 2d 473 (Fla. 1997); *Agrico Chemical Co. v. Dep't of Env't'l Reg.*, 406 So.2d 478 (Fla. 2d DCA 1981), *reh. denied*, 415 So. 2d 1359 (Fla. 1982); *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982). Petitioners have substantial interests in how energy services are provided in Florida, including but not limited to how electricity is generated and delivered, how fuel used to generate

electricity is gathered, delivered, and processed, and how alternatives to a conventional fossil fueled power plant which defer the need for such plant, such as renewables, energy efficiency, energy conservation, and DSM are deployed. *See* PSC Docket No. 981042-EM, Order No. PSC-99-0535-FOF-EM at 62-63; 99 FPSC 3:401.

DISPUTED ISSUES OF MATERIAL FACT

6. Petitioners dispute whether TEC has demonstrated the need for a 765 MW pulverized coal and petroleum coke electric generating plant to be located in Taylor County, Florida, under 403.519, Florida Statutes. The following particular and specific disputed issues have been identified as of the date of this Petition. Petitioners reserve the right to add issues as they become apparent and through the course of their investigation and through the discovery process, in accordance with the Commission's rules and any orders establishing the procedure to be followed in this case.

a. Petitioners dispute whether JEA has demonstrated that the proposed pulverized coal plant is needed or is cost effective.

b. Petitioners dispute whether FMPA has demonstrated that the proposed pulverized coal plant is needed or is cost effective.

c. Petitioners dispute whether Tallahassee has demonstrated that the proposed pulverized coal plant is needed or is cost effective.

d. Petitioners dispute whether RCID has demonstrated that the proposed pulverized coal plant is needed or is cost effective.

e. Petitioners dispute whether TEC's projected cost of the proposed pulverized coal plant are reasonable in light of the increased construction costs after Hurricane Katrina.

f. Petitioners dispute whether TEC has adequately considered projected costs associated with coal, based on market costs post-Katrina, the current volatility of coal and other

fossil fuels, proposed legislation that would greatly increase the costs associated with carbon emissions from the type of coal plant being proposed and acknowledgement within the industry that the cost of coal is expected to rise.

g. Petitioners dispute whether TEC has appropriately considered the ability of the proposed pulverized coal plant to comply with the proposed more stringent particulate standards of the Environmental Protection Agency.

h. Petitioners dispute whether TEC and in particular FMPA has demonstrated that the proposed pulverized coal plant is the most cost effective source of power, in light of FMPA witnesses' testimony presented to the Commission only one year ago that a natural gas fired plant is more cost effective than coal plant alternatives.

i. Petitioners dispute whether TEC has demonstrated that the proposed pulverized coal plant, and its detrimental effect on the public health and the environment of our State, is cost effective in comparison to other demand and supply side sources of energy.

j. Petitioners dispute whether TEC has adequately characterized all costs associated with the proposed pulverized coal plant as they have not included any economic costs associated with detrimental effects on the public health and the environment of our State.

k. Petitioners dispute whether TEC has provided a reasonable projection of the cost of the emission control equipment which purportedly will be used on the proposed pulverized coal plant.

l. Petitioners dispute whether TEC has accurately identified the level of emissions projected to be emitted from the proposed pulverized coal plant such that the Commission may reach a determination as to whether the construction of the plant will be the most cost effective

source of power among the alternatives available, including conservation and efficiency alternatives.

m. Petitioners dispute whether TEC has included all capital and operating costs likely to be incurred to construct and operate the proposed pulverized coal plant, including transmission interconnects, rail transportation, payments to entities in Taylor County, plant site remediation costs and other costs which should be known to Petitioners.

n. Petitioners dispute whether Tallahassee has demonstrated a need for the 154 MW of power from the proposed pulverized coal plant given Tallahassee's plan to acquire at least 192 MW of energy from DSM and biomass, all of which were identified subsequent to November, 2005.

o. Petitioners dispute whether each of the TEC members, and each of the municipal members of FMPA, have appropriately analyzed the potential for DSM and renewables to meet additional capacity needs of each such member.

p. Petitioners dispute whether TEC has complied with the mandate of the Resolution passed by the Taylor County Board of County Commissioners on October 3, 2005, which states as follows:

THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Taylor County, Florida inform JEA that, if a coal generated power plant is to be located in Taylor County, that JEA request funding from the U.S. Department of Energy for this plant so that it will be built using only the very latest and cleanest technology available, such as the coal gasification process.

q. Petitioners dispute whether the appropriate governing bodies of each of the FMPA members have approved of the FMPA's participation in this proceeding.

r. Petitioners dispute whether TEC's plans provide for the operation of the selective catalytic reduction ("SCR") equipment for nitrous oxide control on a year round basis and not just from May to October.

s. Petitioners dispute whether TEC's plans provide for all 800 MW of flue gas to be passed through the wet electrostatic precipitators ("Wet ESP") for 365 days a year, twenty-four hours a day.

t. Petitioners dispute whether TEC's site selected for a pulverized coal plant is reasonable or is TEC assuming unnecessary risks given the potential water quality, sinkhole, and toxic substances issues at the site.

u. Petitioners dispute whether TEC has adequately calculated the cost of the constructing and operating the proposed plant by failing to include carbon compliance costs in their projections.

v. Petitioners dispute whether TEC has adequately calculated the cost of constructing and operating the proposed plant due to the failure to include costs of more stringent Clean Air Interstate Rule ("CAIR") standards.

w. Petitioners dispute whether TEC has adequately calculated the cost of constructing and operating the proposed plant due to the failure to include costs associated with changes to the environment.

x. Petitioners dispute whether TEC has adequately calculated the cost of constructing and operating the proposed plant due to the failure to include the cost of further mercury pollution of Florida's water resources.

y. Petitioners dispute whether TEC has adequately considered the long-term costs of operating an antiquated, environmentally destructive coal-fired energy plant over a 30-year

period which is contrary to state and federal agencies' policies encouraging more environmentally benign, renewal energy options.

z. Petitioners dispute whether TEC has adequately calculated the costs of constructing and operating the proposed pulverized coal plant due to the failure to include the costs associated with local transportation projects necessary to move the coal into the facility. To date, TEC has committed \$5 million plus in costs to the City of Perry for moving railroad lines and a number of other local governments in the area have requested information and compensation from TEC for similar changes.

ULTIMATE FACTS ALLEGED

7. TEC must comply with the requirements of Section 403.519, Florida Statutes, and Rules 25-22.080, and 25-22.081, Florida Administrative Code. TEC as a whole, JEA, Tallahassee, RCID, FMPA and each member of FMPA, must demonstrate, and the PSC must ensure, that the proposed coal plant is needed, contributes to system reliability and integrity, provides adequate electricity at a reasonable cost and is the most cost-effective alternative available. TEC and each member of TEC must also demonstrate that each TEC member has taken such conservation measures that are reasonably available to the applicant or its member that might mitigate the need for the proposed coal plant.

8. The analysis proposed by TEC does not adequately assess these important issues as well as other costs that will affect this coal plant over its life. The proposal further lacks safeguards, which would properly insulate ratepayers from the risk associated with the plant. The PSC should ensure that TEC is properly managing the investment to construct this plant that will ultimately come from ratepayers.

9. Further, the PSC should ensure consistency with emerging state and federal energy policy initiatives by promoting an integrated energy plan. This particularly requires that an integrated

analysis be conducted using proper values for alternative sources of supply, for DSM, and particularly for conservation and renewables. Throughout the state, the nation and world, policy makers are clear that the costs of energy must be better managed. The PSC must ensure a positive first step in managing electric generation costs with the approval of truly prudent, affordable costs for new power.

**SPECIFIC RULES OR STATUTES THE PETITIONER CONTENDS REQUIRE
REVERSAL OR MODIFICATION OF THE PROPOSED ACTION**

10. The following rules and statutes entitle the Petitioners to relief:
 - a. Chapter 120, Florida Statutes (“Administrative Procedure Act”);
 - b. Sections 366.80-366.85 and 403.519, Florida Statutes (“Florida Energy Efficiency and Conservation Act” or “FEECA”);
 - c. Chapter 28, Florida Administrative Code, including, but not limited to, Rule 28-106.205 (“Intervention”);
 - d. Rule 25-22.039, Florida Administrative Code (“Intervention”); and,
 - e. Chapter 25, Florida Administrative Code, including, but not limited to, Rules 25-22.080 (“Electrical Power Plant Permitting Proceedings”) and 25-22.081 (“Contents of Petition”).

**EXPLANATION OF HOW THE ALLEGED FACTS RELATE TO THE SPECIFIC
RULES OR STATUTES CITED ABOVE**

11. Chapter 120, Florida Statutes, and Rules 28-106.205 and 25-22.039, F.A.C., provide that persons whose substantial interests may be determined in, or who have a substantial interest in, an agency proceeding are entitled to intervene in such proceeding.
12. The Florida Energy Efficiency and Conservation Act, 366.80-366.85 and 403.519, Fla. Stat., provide the Commission jurisdiction over the determination of the need of any provider of electric energy to residents in this State to construct electric generating facilities in this State, and

the Commission's statutory mandate to ensure that new generating facilities are needed and, if needed, whether such facilities are the most cost effective option, the least cost alternative and the least risky alternative.

13. Whitton is a Tallahassee customer, and accordingly, his substantial interests are subject to determination in and will be affected by the Commission's decisions in this docket. Accordingly, Whitton is entitled to intervene herein.

14. The Taylor County Petitioners are advocates of efficient and cost-effective energy conservation systems in order to protect the health, prosperity, and general welfare of the State of Florida and its citizens, which is the Legislative intent of FEECA.

RELIEF SOUGHT

15. For the reasons stated above, Petitioners respectfully request that:

- a. The Florida Public Service Commission enter its order granting this Petition to Intervene;
- b. Any other relief as may be just and proper.

Dated this 31st day of October, 2006.

Respectfully submitted,

s/ Jeanne Zokovitch Paben
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been

furnished via e-mail and U.S. mail to:

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on this 31st day of October, 2006.

s/ Jeanne Zokovitch Paben
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