

**Eric Fryson**

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**From:** George Cavros <george@cavros-law.com>  
**Sent:** Friday, July 05, 2013 11:29 AM  
**To:** Filings@psc.state.fl.us  
**Subject:** SACE's Prehearing Statement - Docket: 130009  
**Attachments:** SACE Prehearing Statement-NCRC-2013.pdf

Dear Commission Clerk,

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- A.  
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- B. This filing is made in Docket No. 130009-EI: In re: Nuclear Cost Recovery Clause.
- C. This document is filed on behalf of Southern Alliance for Clean Energy (SACE).
- D. The document is 12 total pages.
- E. The attached document is SACE's Prehearing Statement.

Sincerely,

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Nuclear Cost Recovery Clause**

**DOCKET NO. 130009-EG**

**Date: July 5, 2013**

**THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S  
PREHEARING STATEMENT**

The Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, and pursuant to Order No. PSC-13-0063-PCO-EI, Order Establishing Procedure, as modified by Order No. PSC-13-0301-PCO-EI hereby submits its Prehearing Statement in regards to the above-styled docket.

**APPEARANCES**

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*Attorney for Southern Alliance for Clean Energy*

**WITNESSES**

SACE is not sponsoring any witnesses.

**STATEMENT OF BASIC POSITION**

SACE supports the development of low cost, low risk energy resources primarily through increased energy efficiency implementation and meaningful renewable energy development. The proposed new nuclear reactor projects by Duke Energy Florida ("DEF") and Florida Power and Light ("FPL") are neither low cost, nor low risk. There is great uncertainty and risk surrounding the completion of the proposed projects with all the financial risk being borne by ratepayers. This

realization led the Florida Legislature to amend Section 366.93, Fla. Stat. to provide more process to reign-in some of the unbridled cost recovery and uncertainty in the nuclear advance cost recovery process through the passage of SB1472 earlier this year. The Legislature has sent a clear message to the Commission that it expects a higher level of scrutiny during the nuclear cost recovery process. SACE supports the implementation of the provisions of the new law by the Commission in this case.

SACE maintains that the DEF and FPL proposed new nuclear reactor projects remain infeasible and that both utilities have not met the requisite intent to build the projects. Rule 25-6.0423(5)(c)5, F.A.C., requires DEF and FPL to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing these proposed new nuclear projects. Both utilities, to varying degrees, have failed to complete and properly analyze a realistic feasibility analysis and have not met their burden of proving that the projects are feasible. There remains great uncertainty and risk surrounding the completion of these proposed new nuclear projects. As the uncertainty and risk continue to increase, as it has every year, the non-binding cost estimates increase and projected in-service dates become nothing more than placeholders for the next projected in-service date delay announcement. Moreover, natural gas prices remain depressed and there is no greenhouse gas legislation on the horizon, and these two key drivers in any feasibility analysis, standing alone, make new nuclear generation cost prohibitive and impractical compared to other sources of generation, especially compared to lower cost, lower risk and reliable demand side management resources.

Furthermore, Section 366.93, F.S., provides for advance cost recovery of certain costs for utilities engaged in the "siting, design, licensing, and construction" of nuclear power plants, including new nuclear power plants. In Order No. PSC-11-0095-FOF-EI, the Commission

interpreted this statutory provision and made two distinct findings. First, the Commission found that a utility does not have to simultaneously engage in the “siting, design, licensing, and construction” of a nuclear power plant to remain eligible for cost recovery under § 366.93, Fla. Stat. However, the Commission held that a utility “must *continue to demonstrate its intent to build* the nuclear power plant for it seeks advance recovery of costs to be in compliance with Section 366.93, F.S.” Order at 9 (emphasis added).<sup>1</sup>

In the current docket, as was the case in Docket 120009-EI, the activities since January of 2012 of DEF related to the proposed Levy Nuclear Plant (“LNP”) and of FPL related to the Turkey Point Nuclear Plant (“TP”) fail to demonstrate this requisite realistic intent to build. In sharp contrast, the utilities’ activities plainly demonstrate that both DEF and FPL, due to the increasing risk and uncertainty surrounding the development of new nuclear generation, continue to employ an “option creation” approach where the only intent on the part of the utilities is to create the option to construct by attempting to obtain the necessary licenses and approvals to potentially one day operate these proposed new nuclear projects - should it become feasible at some point in the future. This option creation approach does not satisfy the intent to build requirement, in statute, and the Commission’s interpretation of the same, doesn’t contemplate such an approach.

As a result, neither DEF nor FPL is eligible for cost recovery in Docket 130009-EI for costs related to these proposed new nuclear projects, nor to a finding that projected 2014 costs are reasonable.

## **STATEMENT OF ISSUES AND POSITIONS**

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<sup>1</sup> The amended statute has a similar requirement for recovery. Chapter 2013-184, Laws of Florida. (“Beginning January 1, 2014, in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to construct a nuclear or integrated gasification combined cycle power plant only if the utility proves by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.”)

### **Legal Issues**

**Issue 1:** Does recently enacted Senate Bill 1472, effective July 1, 2013, change the AFUDC rate that should be used for nuclear cost recovery clause computations in this year's pending case.

**SACE:** Yes. Chapter 2013-184, Laws of Florida is clear and unambiguous on its face, thus requires no statutory interpretation. This procedural provision of the amended statute must be implemented in this year's case.

**Issue 2:** Does recently enacted Senate Bill 1472, effective July 1, 2013, preclude a utility from continuing preconstruction work not related to obtaining a combined operating license from the Nuclear Regulatory Commission or certification that was under contract or commenced prior to July 1, 2013?

**SACE:** Yes. Chapter 2013-184, Laws of Florida is clear and unambiguous on its face, thus requires no statutory interpretation. This procedural provision of the amended statute must be implemented in this year's case.

**Issue 3:** Does recently enacted Senate Bill 1472, effective July 1, 2013, preclude a utility from recovering costs associated with preconstruction work not related to obtaining a combined operating license from the Nuclear Regulatory Commission or certification, that was under contract or commenced prior to July 1, 2013?

**SACE:** SACE will brief the legal issue.

### **FPL – TP 6 & 7 Project Issues**

**Issue 4:** Do FPL's activities since January 2012 related to the proposed Turkey Point Units 6 & 7 qualify as "siting, design, licensing and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

**SACE:** No. FPL's activities since January 2012 fail to demonstrate the requisite intent to build TP 6 & 7. FPL remains focused solely on obtaining a COL from the NRC to create the option to build TP 6 & 7 and has continued to defer all activities related to actual construction. Section 366.93, Fla. Stat. and Commission precedent do not contemplate such an approach. As a result, FPL is not realistically engaged in the "siting, design, licensing, and construction" of TP 6 & 7, and is not eligible for recovery of costs related to TP 6 & 7.

**Issue 5:** Should the Commission approve what FPL has submitted as its 2013 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as

provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

**SACE:** No. FPL has failed to complete and properly analyze a realistic feasibility analysis which includes the impact of demand side management and renewable energy in meeting demand and doesn't properly take into account all of the factors that have resulted in the great uncertainty and risk impacting TP 6 & 7, including, but not limited to: depressed natural gas prices, absence of a cost of carbon; and other economic conditions. The Commission should deny cost recovery for costs related to TP 6 & 7 and find projected 2014 costs related to TP 6 & 7 as not reasonable.

**Issue 5A:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

**SACE:** No position at this time.

**Issue 5B:** What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

**SACE:** No position at this time.

**Issue 6:** What are the jurisdictional amounts for Turkey Point 6 & 7 project activities that are related to obtaining a combined license from the Nuclear Regulatory Commission or certification during 2013 and 2014?

**SACE:** No position at this time.

**Issue 7:** Should the Commission find that, for the year 2012, FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project? If not, what action, if any, should the Commission take?

**SACE:** No position at this time.

**Issue 8:** What jurisdictional amounts should the Commission approve as FPL's final 2012 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

**SACE:** None. FPL failed to demonstrate the requisite intent to build in Docket 120009-EI, and thus was not realistically engaged in the "siting, design, licensing, and construction" of TP 6 & 7, nor did it complete and properly analyze a realistic feasibility analysis, and thus is not eligible for recovery of 2012 costs related to TP 6 & 7.

**Issue 9:** What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

**SACE:** None. FPL did not complete and properly analyze a realistic feasibility analysis. Additionally, its activities since January of 2012 fail to demonstrate the requisite intent to build TP 6 & 7. As such, FPL is not realistically engaged in the "siting, design, licensing, and construction" of TP 6 & 7 and thus is not eligible for recovery of costs related to TP 6 & 7.

**Issue 10:** What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for FPL's Turkey Point Units 6 & 7 project?

**SACE:** None. FPL did not complete and properly analyze a realistic feasibility analysis. Additionally, its activities since January of 2012 fail to demonstrate the requisite intent to build TP 6 & 7. As such, FPL is not realistically engaged in the "siting, design, licensing, and construction" of TP 6 & 7, and thus the Commission should find projected costs in 2014 as not reasonable.

#### **FPL - EPU Project Issues**

**Issue 11:** During the September 2012 hearing in Docket No. 120009-EI, did FPL provide the Commission with all the relevant cost information regarding the actual and estimated Turkey Point EPU expenditures for calendar year 2012 and projected total costs at completion in 2013? If not, what action, if any should the Commission take?

**SACE:** No position at this time.

**Issue 12:** Are the costs of the Turkey Point EPU, as affected by actual 2012 and estimated 2013 costs, economic and cost-effective for FPL's ratepayers? If not, what action, if any, should the Commission take? (**Disputed Issue**)

**SACE:** No position at this time.

**Issue 13:** Should the Commission find that, for the year 2012, FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project? If not, what action, if any, should the Commission take?

**SACE:** No position at this time.

**Issue 14:** What jurisdictional amounts should the Commission approve as FPL's final 2012 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

**SACE:** No position at this time.

**Issue 15:** What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

**SACE:** No position at this time.

**Issue 16:** What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for FPL's Extended Power Uprate project?

**SACE:** No position at this time.

#### **FPL - Fallout Issue**

**Issue 17:** What is the total jurisdictional amount to be included in establishing FPL's 2014 Capacity Cost Recovery Clause factor?

**SACE:** This is a fallout amount from the substantive issues.

#### **DEF - Levy Project Issues**

**Issue 18:** Do DEF's activities since January 2012 related to the proposed Levy Units 1 & 2 qualify as "siting, design, licensing and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

**SACE:** No. DEF's activities since January 2012 fail to demonstrate the requisite intent to build the LNP. DEF remains focused solely on obtaining a COL from the NRC to create the option to build the LNP and has continued to defer, and has in fact suspended activities related to actual construction. Section 366.93, Fla. Stat. and Commission precedent do not contemplate such an approach. As a result, DEF is not realistically engaged in the "siting, design, licensing, and construction" of the LNP, and is not eligible for recovery of costs related to the LNP.

**Issue 19:** Should the Commission approve what DEF has submitted as its 2013 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

**SACE:** No. DEF has failed to complete and properly analyze a realistic feasibility analysis which includes the impact of demand side management and renewable energy in meeting demand and doesn't properly take into account all of the factors that have resulted in the great uncertainty and risk impacting LNP 1 & 2, including, but not limited to: depressed natural gas prices, absence of a cost of carbon; and other economic conditions. The Commission should



deny cost recovery for DEF's costs related to LNP 1 & 2 and find projected 2014 costs related to LNP 1 & 2 as not reasonable.

**Issue 19A:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

**SACE:** No position at this time.

**Issue 19B:** What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

**SACE:** No position at this time.

**Issue 20:** What are the jurisdictional amounts for Levy Units 1 & 2 project activities that are related to obtaining a combined license from the Nuclear Regulatory Commission or certification during 2013 and 2014?

**SACE:** No position at this time.

**Issue 21:** Should the Commission find that, for the year 2012, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

**SACE:** No position at this time.

**Issue 22:** What jurisdictional amounts should the Commission approve as DEF's final 2012 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

**SACE:** None. DEF failed to demonstrate the requisite intent to build in Docket 120009-EI, and thus was not realistically engaged in the "siting, design, licensing, and construction" of LNP 1 & 2, nor did it complete and properly analyze a realistic feasibility analysis, and thus is not eligible for recovery of 2012 costs related to LNP 1 & 2.

**Issue 23:** What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for DEF's Levy Units 1 & 2 project?

**SACE:** None. DEF did not complete and properly analyze a realistic feasibility analysis. Additionally, its activities since January of 2012 fail to demonstrate the requisite intent to build LNP 1 & 2. As such, DEF is not realistically engaged in the "siting, design, licensing, and construction" of LNP 1 & 2, thus is not eligible for recovery of costs related to LNP 1 & 2.

**Issue 24:** What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for DEF's Levy Units 1 & 2 project?

**SACE:** None. DEF did not conduct or properly analyze a realistic feasibility analysis. Additionally, its activities since January of 2012 fail to demonstrate the requisite intent to build LNP 1 & 2. As such, DEF is not realistically engaged in the "siting, design, licensing, and construction" of TP 6 & 7, and thus the Commission should find projected costs in 2014 as not reasonable.

**Issue 25:** What is the appropriate regulatory treatment of any amount equal to the difference between the collections pursuant to Order No. PSC-12-0104-FOF-EI and the sum of recoverable amounts identified in the prior issues?

**SACE:** No position at this time.

#### **DEF - CR3 Uprate Project Issues**

**Issue 26:** What action, if any, should the Commission take as a result of the DEF decision to retire the CR3 unit with respect to the Balance of Plant Uprate of CR3 associated with the December 7, 2009 base rate tariff filing by DEF? (**Disputed Issue**)

**SACE:** No position at this time.

**Issue 27:** Should the Commission find that, for the year 2012, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

**SACE:** No position at this time.

**Issue 27A:** Has Duke undertaken reasonable and prudent measures to mitigate the CR3 uprate asset (e.g., through salvage, sale, cost reduction, etc.) following its decision to retire CR3? If not, what action, if any, should the Commission take?

**SACE:** No position at this time.

**Issue 28:** What jurisdictional amounts should the Commission approve as DEF's final 2012 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?

**SACE:** No position at this time.

**Issue 29:** What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for DEF's Crystal River Unit 3 Uprate project?

**SACE:** No position at this time.

**Issue 30:** What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for DEF's Crystal River Unit 3 Uprate project?

**SACE:** No position at this time.

**DEF Fallout Issue**

**Issue 31:** What is the total jurisdictional amount to be included in establishing DEF's 2014 Capacity Cost Recovery Clause factor?

**SACE:** This is a fallout amount from the substantive issues.

**STIPULATED ISSUES**

None.

**PENDING MOTIONS/OTHER MATTERS**

None at the time.

**PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

None.

**OBJECTIONS TO WITNESS' QUALIFICATIONS AS AN EXPERT**

None.

**COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE**

SACE has complied with all applicable requirements of Order No. PSC-13-0063-PCO-EI, Order Establishing Procedure, as modified by Order No. PSC-13-0301-PCO-EI.

Dated: July 5, 2013

Respectfully Submitted,

/s/ George Cavros  
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*Attorney for Southern Alliance for  
Clean Energy*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by US mail and / or electronic mail this 5th day of July, 2013, to the following:

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*/s/ George Cavros*  
George Cavros, Esq.