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From: George Cavros <george@cavros-law.com>
Sent: Monday, August 19, 2013 3:44 PM
To: Filings@psc.state.fl.us
Subject: SACE's Post Hearing Stmt and Brief - Docket 130009-EI
Attachments: SACE NCRC-2013-Post-Hearing Stmt and Brief.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 27 total pages.
- E. The attached document is SACE's Post Hearing Statement, and Findings of Fact and Conclusions of Law.

Sincerely,

George Cavros

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause

DOCKET NO. 130009-EG

Date: August 19, 2013

**THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
POST HEARING STATEMENT, AND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

The Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, pursuant to Order No. PSC-13-0063-PCO-EI, and Order No. PSC-13-0333-PHO-EI, hereby submits its Post-Hearing Statement, and Findings of Fact and Conclusions of Law. References to the hearing transcript will be denoted by V# @ page number. References to exhibits will be denoted as Ex. #.

STATEMENT OF BASIC POSITION

SACE supports the use of low cost, low risk energy resources in meeting electricity demand - primarily through increased energy efficiency implementation and meaningful renewable energy development. SACE has appeared before the Florida Public Service Commission ("Commission") since 2009 arguing that the proposed reactor projects by Duke Energy Florida ("DEF")¹ and Florida Power and Light ("FPL") are neither low cost, nor low risk. The deferral of the DEF issues in this docket due to the Revised and Restated Settlement Agreement, which in part, cancels the Levy Nuclear Project ("LNP") bears out SACE's concerns before this Commission in previous years. The cancellation of the LNP is the right decision for DEF customers, although customers have shouldered substantial costs related to LNP and will continue to bear significant monthly costs to close out the project. The financial fall-out from the LNP was facilitated

¹ Formerly Progress Energy Florida, Inc.

by a law that shifts all the financial risk of building reactors from company shareholders to its customers and by previous cost recovery granted to the increasingly speculative LNP by the Commission. The realization that nuclear reactor projects are becoming increasingly economically speculative led the Florida Legislature to amend Section 366.93, F.S. to provide more process to rein-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. Thus, it is imperative that the Commission apply a high level of scrutiny to the proposed FPL Turkey Point 6 & 7 ("TP") reactors so that FPL customers do not suffer the same financial fate as DEF customers.

SACE maintains that the FPL TP project remains infeasible and that the Company has not met the requisite intent to build the proposed two reactors. Rule 25-6.0423(5)(c)5, F.A.C., requires FPL to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing the proposed new nuclear reactors. FPL has failed to complete and properly analyze a realistic feasibility analysis and has not met its burden of proving that the project is economically feasible. The Company's resource planning process, which forms the foundation for its economic feasibility analysis, does not place demand-side resources, such as energy efficiency, on a "level playing field" with supply-side resources - thereby skewing the results of the analysis towards approval of the TP project. This bias is evidenced by the fact that FPL only meets two tenths of one percent (0.2%) of electricity demand annually with utility-sponsored energy efficiency programs, a resource which the Company concedes can meet

peak demand, and therefore can contribute to cost-effectively deferring or displacing the need for the project. Yet, this resource is not permitted to compete head to head, under the FPL planning process and feasibility study, with the TP reactors as resource to meet projected demand. From a qualitative feasibility perspective, the net cumulative fuel savings benefits of the project, extolled by FPL as the prime benefit for customers, will not be realized by customers until 25 years to 36 years from today – assuming the project is built at all. This practically means that a 70 year old FPL customer today may not realize a cumulative net fuel savings benefit, if at all, from the project until the customer is 106 years old.

There remains great uncertainty and risk surrounding the completion of the proposed TP project. FPL is five years into the project and will not commit to a price for the TP reactors and will not commit to an in-service date, or that the reactors will be built at all. As the uncertainty and risk continue to increase, as it has every year, the non-binding cost estimate range increases and projected in-service dates become nothing more than placeholders for the next projected in-service date delay and price increase 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 energy efficiency 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).²

In the current docket, as was the case in Docket 120009-EI, the activities of FPL since January of 2012 related to the TP project fail to demonstrate this requisite realistic intent to build. In sharp contrast, the utility’s activities plainly demonstrate that 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 evidenced is to create the option to construct by attempting to obtain the necessary licenses and approvals to potentially one day construct the proposed new reactor units - should there be more clarity on the feasibility of construction 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, the Commission should find that FPL is not eligible for cost recovery in Docket 130009-EI for costs related to the TP project, nor to a finding that projected 2014 costs are reasonable. Given the reasons cited above and the recent announcement of

² 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.”)

the cancellation of the LNP, this is a reasonable measure to protect the financial interests of FPL's customers.

STATEMENT OF ISSUES AND POSITIONS

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?

Stipulated

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 Position: *Stipulated*

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 Position: *Stipulated*

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 Position: *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.*

Findings of Fact

FPL has made no showing of intent to construct the proposed TP project

1. FPL has made no commitment to construct the TP project. FPL has not made the decision to proceed to the construction phase of the project V3 @ 630-31.
2. The Company will not guarantee that the reactors will be built at all. V3 @ 617.
3. FPL only continues to create the “opportunity” for new nuclear generation V3 @ 561, 587.

Conclusions of Law

1. 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. §366.93, Fla. Stat.
2. 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 Section 366.93, F.S. However, the Commission held that a utility “must *continue to demonstrate its intent to build* the nuclear power plant for which it seeks advance recovery of costs to be in compliance with Section 366.93, F.S.” Order at 9 (emphasis added).
3. Therefore, the Company must demonstrate that it intends to build the TP project. Such intent necessarily must include decision to proceed to the construction phase of the project – the phase when the reactors will actually be *built*.

4. FPL has explicitly testified that it will not make a commitment to proceed to the construction phase of the project and that it cannot guarantee that the project will be *built* at all.

5. Such testimony violates the Commission's own standard that FPL "must continue to demonstrate its *intent to build* the nuclear power plant for which it seeks advance recovery of costs to be in compliance with Section 366.93, F.S." Order at 9 (emphasis added).

6. Therefore, the Company is not eligible for recovery in this docket for preconstruction costs incurred in 2012 or 2013, nor can projected preconstruction costs be deemed reasonable for a project for which there is no intent to build.

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 Position: *No. FPL has failed to complete and properly analyze a realistic feasibility analysis which includes the impact of demand side management 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.*

Findings of Fact

The TP project is not qualitatively feasible:

The accrual of alleged fuel savings to customers is not equitable

1. Benefits of the alleged fuel savings, assuming the TP project is built at all, is not projected to be realized until at least 25 years to 36 years from today, assuming the

projected 2022-23 in-service dates and an overnight cost of \$5,320 per installed kW. Ex.74, Bates 0091; V4 @ 789- 792.

2. Net cumulative benefit (cumulative nominal net costs) is a measure of going back to 2013 and looking back at all the costs that have been incurred and all the benefits that have been received by customers.V4 @ 790. Hence a net cumulative benefit analysis is appropriate to measure when the cumulative customer benefits exceed the cumulative costs of the proposed TP project. The crossover point for customer benefit under a high natural gas/high CO₂ scenario (the most favorable scenario put forth by FPL for the cost-effectiveness of the project) doesn't occur until 2038. V4 @ 789; Ex.74, Bates 0091. Using the 2038 crossover date, a 60-year-old FPL customer today will not realize a net cumulative savings until the customer reaches an age of 85 years old. *Id.* Under a low natural gas/ low CO₂ scenario (the scenario that most closely resembles conditions today) the customer benefit crossover doesn't occur until 2049. V4 @ 791; Ex.74, Bates 0091. If one uses the 2049 crossover date, a 60-year old FPL customer today won't realize a net cumulative savings until the customer reaches an age of 96 years old. V4 @792. If one uses the 2038 crossover date, a 70 year-old FPL customer today won't realize a net cumulative savings until the customer reaches an age of 95 years old. *Id.* If one uses the 2049 crossover date, a 70-year-old FPL customer today won't realize net cumulative savings from the project until the customer reaches an age of 106 years old. *Id.* The projected benefit crossover dates assume that the FPL customers do not expire prior to the dates that they receive a net cumulative savings from the project.

Great uncertainty remains as to, the ultimate cost of the project, the projected in-service date of the proposed TP project or whether the Company will build the project at all

3. The Company continues to use a range of costs expressed in both overnight \$/kW installed costs and total project costs a full five years after it garnered its determination of need from the Commission. V3 @ 620. After five years, the best nonbinding cost estimate that the Company can offer the Commission is a range from \$12.7 billion to \$18.5 billion for the proposed project. *Id.* One can consider this range as indicating uncertainty of the costs of construction moving forward. V3 @ 620-1.

4. The lower end of the projected cost range of the TP project is not realistic. The Company uses a non-binding overnight cost range of \$3,659/kW to \$5,320/kW and a non-binding total project cost range of \$12.7 to \$18.5 billion V3 @ 586.

5. FPL utilizes Concentric Energy Advisors review of AP-1000 projects of overnight and total estimated costs to gauge the reasonableness of its non-binding cost range. V3 @ 588. Yet, Concentric Energy Advisors estimates an overnight cost of \$5,320 per installed kW for the TP project (at the high end of FPL's range). V3 @ 623; Ex.114 (also Ex. 74, Bates 0078). Concentric Energy Advisors also projects a total cost for the TP of \$18.5 billion (at the high end of FPL's range). *Id.* Witness Scroggs states, "when we do our feasibility analysis, we are comparing the break-even cost against that high end of the range [\$5,320/kW]." V3 @ 621. The TP project at \$5,320/kW and \$18.5 billion is neither the highest cost project or the lowest cost project both in terms of overnight costs per \$/kW installed or total project cost compared to other AP-1000 projects. V3 @ 623-24; Ex. 114 (also Ex. 74, Bates 0078). There are no proposed AP-1000 reactor projects that come "close" to the low end of the FPL range of \$3,659 per installed kW. V3 @ 624; Ex. 114 (also Ex. 74, Bates 0078). Hence, the realistic projected cost today of the project is an overnight cost of \$5,320 per installed kW and \$18.5 billion total project cost.

6. The Company cannot guarantee that by the time of construction, if the project ever gets to that phase, that the overnight cost won't be \$7,000/kW installed. V3 @ 626.

7. The earliest "practicable" in service dates are for the TP project is 2022-2023. V3 @ 611.

8. In fact, the Company cannot guarantee that the projects will be built at all. V3 @ 617.

9. FPL would have to enter into substantive contracts by early 2015 to meet the projected in-service dates. V3 @ 610. Such contracts are contingent on the procurement of a combined operating license ("COL"). V3 @ 610.

10. According to the Company, the projected in-service dates are dependent on, the issuance within the next 4.5 months, of a revised Combined Operating License Application ("COLA") review schedule, the issuance of a Safety Evaluation Report ("SER"), and the issuance of a Draft Environmental Impact Statement ("EIS") to meet the projected in-service dates. V3 @ 610-11.

11. Yet, the COLA review schedule is "under review" by the NRC. V3 @ 605. FPL is still working with the NRC to answer outstanding questions that will lead to the issuance of "revised" COLA review schedule. V3 @ 605-06. The revised review schedule may not be issued until next year [2014]. V3 @ 606. If the COLA revised review schedule is not issued this year, it would be outside the 4.5 month window necessary for the Company to meet the projected in-service dates of 2022-23. V3 @ 613.

12. Additionally, federal budget sequestration is causing delays in the processing of COLAs. Ex. 113. FPL has not accounted for such budget cuts in its testimony on projected in-service dates. V3 @ 615.

13. Moreover, the Company's COL is contingent on a Waste Confidence Final EIS and rule promulgation by the Nuclear Regulatory Commission ("NRC") by late 2014. V3 @ 612-13. The Final EIS or the Waste Confidence Rule could be subject to appeal. *Id.* This could have the effect of delaying the issuance of the Company's COL.

14. Other AP-1000 proposed reactor projects are experiencing delays, cost overruns and cancellations: the Vogtle Plant in Georgia has been delayed 15 months and it has experienced cost overruns . V3 @ 619. Those are also proposed AP-1000 reactors. *Id.* The NRC has signaled a significant delay in the processing of the COLA for the Lee Nuclear Units in South Carolina V3 @ 618-619. Those are also proposed AP-1000 reactors. *Id.* The Levy project reactors have been cancelled. V3 @ 618. Those were proposed AP-1000 reactors. *Id.*

15. FPL does not have a co-ownership agreement with another utility; such an agreement could help mitigate risk and help procure a lower interest rate for the project. V3 @ 633.

16. FPL is planning, for the 11th time, to defer its forging agreement. V3 @ 629-30. The Company cannot construct the project without a forging agreement.

17. FPL has not settled on reasonable financing terms yet. Financing is one of several important factors in considering whether to move to the construction phase. V3 @ 631-32.

The TP project is not economically feasible

The FPL resource planning model and feasibility analysis is flawed

18. FPL has projected resource needs beginning in the year 2022 timeframe that is expressed in megawatts ("MW"). Ex. 56.

19. The resource options selected to meet FPL's projected resource needs are arbitrarily limited to the proposed TP project and a natural gas combined cycle power plant option. V4 @ 665.

20. FPL's resource planning process, hence its feasibility analysis, assumes that its resource need will be "met with new generating capacity," not with demand side management ("DSM"). V4 @ 672. This is an imbedded bias in FPL's planning process since 2008, because they've used the same feasibility analysis since that date. V3 @ 626-27.

21. DSM includes both utility demand response (load control) programs, and energy efficiency programs. V4 @ 769-770.

22. Demand response includes measures such as cycling down air conditioners during peak demand. V4 @ 770.

23. Examples of energy efficiency measures include: 1) increased level of attic insulation that helps maintain the temperature inside the home; 2) repairing leaking A/C ducts; 3) replacing an A/C unit with a more efficient one; and 4) placing window film on windows to reduce the amount of heat that enters a customer's home is an energy efficiency measure. V4 @ 771-72. These measures are part of utility-sponsored programs. Ex. 79, Bates 01998.

24. Utility-sponsored energy efficiency programs help reduce both energy use (GWh) and peak demand (MW). V4 @ 772. Witness Sim states, "we have roughly 300 megawatts [MW] of load control projected to be implemented, about 900 megawatts [MW] of energy efficiency program" in relation to FPL's forecast for the next ten years.

V4 @ 767-768. Therefore, some amount of energy efficiency will be utilized by the Company in the future to reduce load by 900 MW.

25. Utility sponsored energy efficiency programs have likewise shown a consistently growing contribution to avoiding supply-side capacity – in reducing MWs. Ex. 79, Bates 983, Table 3.1.

26. Energy efficiency potential is screened out as a potential resource in meeting the resource need early in the process as a reduction in demand. The first step in the FPL resource planning process is to update the load (electricity demand) forecast. V4 @ 765-66. Thereafter, the benefit of energy efficiency is a line item reduction in the load forecast. V4 @ 768.

27. Yet, the full potential of energy efficiency to defer or avoid the need for the proposed TP project is never considered because it is constrained early in the process by certain “cost effectiveness tests.” V4 @ 767.

28. Witness Sim alleges that there is not enough DSM, including energy efficiency to be a viable alternative to the TP project. V4 @ 774. Yet, he also concedes that the proposed TP project never goes head to head with the nuclear option in an unconstrained fashion to determine which option is ultimately more cost-effective for customers in meeting FPL’s resource need. V4 @775-76. The FPL planning process never allows energy efficiency measures to compete with the TP project to determine which resource can meet projected demand more cost-effectively. Therefore, there is no support for Witness Sim’s allegation that there is not enough energy efficiency to be a viable alternative to the TP project.

29. The levelized cost of the proposed TP project will be *stunningly over 15 cents per kilowatt hour ("kWh")* V4 @ 763. This is three to five times greater than the Company's so-called "avoided cost" and well over its current retail rate of electricity. V4 @ 762-763. Pursuant to FPL resource planning process and its feasibility analysis, energy efficiency, as a resource, was never permitted to compete head-to-head to determine how much resource need energy efficiency could meet at less than 15 cents per kWh. V4 @ 775-76.

30. Energy efficiency measures have similar benefits to FPL's system as the proposed TP project. The benefits include avoiding SO₂ emissions in meeting demand, avoiding NO emissions in meeting demand, and avoiding CO₂ emissions in meeting demand, and energy efficiency can serve as a hedge against fossil fuel price volatility. V4 @ 787.

FPL Feasibility Analysis Bias

31. FPL lacks a commitment to energy efficiency as a resource in meeting projected demand. Witness Sim testifies to the reliability benefit of resource diversification to FPL's system. V4 @ 661. Yet, FPL meets 67 percent of annual electricity demand through natural gas-fired power plants, 20 percent through nuclear power plants, and a mere two-tenths of one percent (0.2%) through energy efficiency. V4 @ 759, 784; Ex. 115, 116.

32. The economic feasibility analysis is biased towards resources that maximize shareholder value. Projects such as nuclear power plants and natural gas-fired power plants earn a rate of return for FPL shareholders of 10.5 percent. V4 @ 760-61, 787. FPL shareholders do not earn any rate of return on energy efficiency programs. *Id.* In fact, there is a distinct disincentive for FPL to pursue too much energy efficiency because it

reduces energy (GWh) and capacity (MW) needs into the future (V4 @ 772), thereby delaying or avoiding the very supply-side options that directly benefit FPL shareholders.

Assumptions

33. Witness Sim in his testimony fails to state which natural gas and environmental compliance cost scenarios are the most probable scenarios.

34. The environmental forecast with a zero CO₂ compliance cost (which resembles today's reality) significantly affects the break-even analysis. The TP project is *not feasible* under any fuel or environmental scenario at zero CO₂ compliance cost at the overnight price cost today of \$5,320/kW. Ex. 74, Bates 00111;V4 @ 803.

35. The Company has a recent history of overstating electricity demand as expressed as "net energy load." Ex. 118; V4 @ 794-5. If the load forecast are actually lower than what FPL is projecting, the resource need for the TP project will be pushed out further. Therefore, if FPL continues on the trend of overestimating demand, the alleged need for the TP reactors will be pushed out further in time.

Conclusions of Law

1. The Commission has established by rule an "alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant." §366.93(2), Fla. Stat.

2. In implementing the above statute, the Commission promulgated Rule 25-6.0423 F.A.C. It requires FPL to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing the proposed new nuclear project. *Id.* at (5)(c)5.

3. The feasibility study provides the appropriate checks and balances to ensure that the construction of the nuclear units continues to be in the best interest of ratepayers. (Order No. PSC-09-0783-FOF-EI, page 31).

4. Past Commission guidance *does not limit the Commission's authority* to consider any factor in approving, or disapproving, the feasibility of the proposed TP project. The Commission first provided guidance in its affirmative determination of need order for Turkey Point 6 & 7 (Order No. PSC-08-0237-FOF-EI, page 27), when it stated:

"FPL shall provide a long-term feasibility analysis as part of its annual cost recovery process which, in this case, *shall also* include updated fuel costs, environmental forecasts, break-even costs, and capital cost estimates. In addition, FPL should account for sunk costs. Providing this information on an annual basis will allow us to monitor the feasibility regarding the continued construction of Turkey Point 6 and 7. (emphasis added)

5. The factors outlined above are a necessary, but not a sufficient condition, for approval of an FPL feasibility analysis.

6. The guidance above assumes that the FPL resource planning process and the associated feasibility analysis is not flawed in a way that biases the outcome of a feasibility analysis towards selection of the proposed TP project. The findings of fact provide a clear picture of bias in the FPL planning process and feasibility analysis. The Company, for instance, assumes the resource need will be met with supply-side options (power plants). Energy efficiency measures are constrained through "cost-effectiveness" test and disingenuously disposed of as a line item reduction in projected load. A more genuine and transparent approach would be to let all resources compete for the resource need based on the Company's initial projected load update. That would allow unconstrained energy efficiency to compete up to the point where it cost less than the

proposed TP project. In the instant case, this planning process did not allow a fair comparison of both supply-side *and* demand side resources, and such is flawed and not contemplated by Commission rule and does a disservice to FPL customers. The TP project is not in the best interest of the customers. Therefore, the Company has failed to demonstrate the long-term feasibility of completing the proposed new nuclear project as required by Commission rule.

7. The Company exhibits a pattern of overstating demand as represented by net energy load. Such overestimations tend to support the in-service dates of the of the TP project. While this factor, by itself, likely can't support a denial of the feasibility study, in totality with the other factors, it adds to the flawed process and economic assumptions that must lead this Commission to find that the Company has not met its burden of providing a feasibility analysis that fairly portrays the feasibility of the project.

8. The Company fails to show that the project is qualitatively feasible. The project has enormous and inequitable intergenerational impacts. It is rational to expect that FPL customers should be able to enjoy the alleged benefits of lower fuel costs from the proposed TP project in their lifetime, but the facts indicate otherwise. There also remains great uncertainty over the timing of the issuance of a COL for the TP project; over the cost of the project; and whether the project will be built at all. As such, the Commission is not precluded by law or rule to find that the project no longer remains qualitatively feasible.

9. Alternatively, if the Commission is inclined to find that past costs were prudently incurred, it is not precluded by statute to disapprove projected (prospective) costs as unreasonable. §403.519(4)(e), Fla. Stat.

10. Section 403.519, F.S. is silent on the Commission's role on prospective costs; therefore, the Commission has great discretion in this area. An agency's interpretation of the statute that it is charged with enforcing is entitled to great deference. *See BellSouth Telecommunications, Inc. v. Johnson*, 708 So. 2d 594, 596 (Fla. 1998).

11. Prudence is backwards looking in nature. The applied standard for determining prudence is consideration of what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been known at the time decisions were made.³ Prospective costs are judged by a reasonable standard.

12. Based on the foregoing, the qualitative and economic feasibility analysis filed by the Company, fail to show that the project is feasible, pursuant to Rule 25-6.0423. Therefore, recovery of 2012 and 2013 costs already incurred should be denied and prospective costs should be found not to be 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 Position: *The current total estimated all inclusive cost will exceed FPL's estimate of \$18.5 billion as evidenced by the Findings of Fact below.*

Findings of Fact

1. The Company continues to use a range of costs expressed in both overnight \$/kW installed costs and total project costs a full five years after it garnered its determination of need from the Commission. V3 @ 620. After five years, the best nonbinding cost estimate that the Company can offer the Commission is a range from \$12.7 billion to

³ Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, In Docket No.060658-EI, *In Re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million*, at 3.

\$18.5 billion for the proposed project. *Id.* One can consider this range as indicating uncertainty of the costs of construction moving forward. V3 @ 620-1.

2. The lower end of the projected cost range of the TP project is not realistic. The Company uses a non-binding overnight cost range of \$3,659/kW to \$5,320/kW and a non-binding total project cost range of \$12.7 to \$18.5 billion V3 @ 586.

3. FPL utilizes Concentric Energy Advisors review of AP-1000 projects of overnight and total estimated costs to gauge the reasonableness of its non-binding cost range. V3 @ 588. Concentric Energy Advisors estimates an overnight cost of \$5,320 per installed kW for the TP project (at the high end of FPL's range). V3 @ 623; Ex.114 (also Ex. 74, B# 0078). Concentric Energy Advisors uses a total cost for the TP of \$18.5 billion (at the high end of FPL's range). *Id.* Witness Scroggs states, "when we do our feasibility analysis, we are comparing the break-even cost against that high end of the range [\$5,320/kW]." V3 @ 621. The TP project at \$53,320/kW and \$18.5 billion is neither the highest cost project or the lowest cost project both in terms of overnight costs per \$/kW installed or total project cost compared to other AP-1000 projects. V3 @ 623-24; Ex. 114 (also Ex. 74, B# 0078). There are no proposed AP-1000 reactor projects that come "close" to the low end of the FPL range of \$3,659 per installed kW. V3 @ 624; Ex. 114 (also Ex. 74, B# 0078). Hence, the realistic projected cost today of the project is overnight cost of \$5,320 per installed kW and \$18.5 billion total project cost.

4. The Company cannot guarantee that by the time of construction, if the project ever gets to that phase, that the overnight cost won't be \$7,000/kW installed. V3 @ 626.

5. FPL does not have a co-ownership agreement with another utility; such an agreement would help mitigate risk and help procure a lower interest rate for the project. V3 @ 633.

6. FPL is planning, for the 11th time, to defer its forging agreement. V3 @ 629-30. The Company cannot construct the project without a forging agreement.

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

SACE Position: *The current estimated planned commercial operation dates of the planned Turkey Point Units 6 & 7, 2022 and 2023 respectively, will occur further in time, if at all as evidenced by the findings of fact below.*

Findings of Fact

1. The earliest “practicable” in service dates are for the TP project is 2022-2023. V3 @ 611.

2. The Company cannot guarantee that the projects will be built at all. V3 @ 617.

3. FPL would have to enter into substantive contracts by early 2015 to meet the projected in-service dates. V3 @ 610. Such contracts are contingent on the procurement of a COL. V3 @ 610.

4. According to the Company, the projected in-service dates are dependent on, the issuance in the next 4.5 months of a revised COLA review schedule, the issuance of a SER, and the issuance of a Draft EIS to meet the projected in-service dates. V3 @ 610-11.

5. Yet, the COLA review schedule is “under review” by the NRC. V3 @ 605. FPL is still working the NRC to answer outstanding questions that will lead to the issuance of a “revised” COLA review schedule. V3 @ 605-06. The revised review schedule may not

be issued until next year [2014]. V3 @ 606. If the COLA revised review schedule is not issued this year, it would be outside the 4.5 month window necessary for the Company to meet the projected in-service dates of 2022-23. V3 @ 613.

6. Additionally, federal budget sequestration is causing delays in the processing of COLAs. Ex. 113. FPL has not accounted for such budget cuts in its testimony on projected in-service dates. V3 @ 615

7. Moreover, the Company's COL is contingent on a Waste Confidence Final EIS and rule promulgation by the NRC by late 2014. V3 @ 612-13. The Final EIS or the Waste Confidence Rule could be subject to appeal. *Id.* This could have the effect of delaying the issuance of the Company's COL.

8. Other AP-1000 proposed reactor projects are experiencing delays, cost overruns and cancellations: the Vogtle Plant in Georgia has been delayed 15 months and it has experienced cost overruns . V3 @ 619. Those are also proposed AP-1000 reactors. *Id.* The NRC has signaled a significant delay in the processing of the COLA for the Lee Nuclear Units in South Carolina V3 @ 618-619. Those are also proposed AP-1000 reactors. *Id.* Levy project reactors have been cancelled. V3 @ 618. They were also proposed AP-1000 reactors. *Id.*

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 Position: *FPL is not entitled to recover costs related to obtaining a combined operating license from the Nuclear Regulatory Commission nor have such projected costs deemed reasonable because its activities since January 2012 fail to demonstrate the requisite intent to build the TP project and it has failed to complete and properly analyze a realistic feasibility analysis.*

See Findings of Fact and Conclusions of Law for Issues 4 and 5 *supra*.

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 Position: *No Position*

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 Position: *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.*

See Findings of Fact and Conclusions of Law for Issues 4 and 5 *supra*.

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 Position: *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.*

See Findings of Fact and Conclusions of Law for Issues 4 and 5 *supra*. Additional Findings of Fact and Conclusions of Law for Issue 9 are found below.

Findings of Fact

1. During the evidentiary hearing, it was revealed that FPL is planning preconstruction work in 2013 and 2014 that is not related to pursuing a COL from the NRC. V3 @ 616.

Conclusion of Law

1. Chapter 2013-184, Laws of Florida (Senate Bill 1472) changes the process by which preconstruction work, unrelated to the pursuance of a COL by the NRC may be authorized and how such cost may be recovered. When the relevant provisions, subsection (2)(b) and (c) are read together, it is clear that the Florida Legislature created a preconstruction work and cost recovery process that must be followed in the present case.

During the time that a utility seeks to obtain a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle power plant, the utility may recover only costs related to, or necessary for, obtaining such licensing or certification.

Chapter 2013-184, Laws of Florida, 366.93(2)(b)

After a utility obtains a license or certification, it must petition the commission for approval before proceeding with preconstruction work beyond those activities necessary to obtain or maintain a license or certificate.

Chapter 2013-184, Laws of Florida, 366.93(2)(c)

2. FPL's pursuance of preconstruction activity not related to pursuance of a COL without first obtaining a COL from the NRC *and* without petitioning the Commission for approval of such activities is in violation of Chapter 2013-184, Laws of Florida, 366.93(2)(b),(c).

3. Therefore, the Commission cannot approve as reasonably estimated 2013 costs and estimated true-up amounts for FPL's TP project that are comprised of preconstruction work that is not related to the pursuance of a COL. Nor can the Commission approve as reasonable any costs for 2014 that comprise preconstruction activity not related to the pursuance of a COL from the NRC.

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

SACE Position: *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.*

See Findings of Fact and Conclusions of Law for Issues 4, 5 and 9 *supra*.

FPL - EPU Project Issues

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 Position: *Agree with OPC*

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 Position: *Stipulated*

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 Position: *Stipulated*

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

SACE Position: *Stipulated*

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

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

DEF - Levy Project Issues

Deferred by the Commission

DEF - CR3 Uprate Project Issues

Deferred by the Commission

CONCLUSION

For the reasons stated herein, SACE respectfully requests the Commission, in order to protect the financial interests of FPL customers, to:

1. Enter a finding that FPL's activities related to the TP project do not qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.;
2. Disapprove FPL's long-term feasibility analyses submitted in this docket and find that FPL has failed to demonstrate the long-term feasibility of the completion of the TP reactors;
3. Enter a finding that FPL's actual 2012 costs, and actual 2013 costs, were not prudently incurred;
4. Enter a finding that FPL's estimated 2013 and projected 2014 costs are not reasonable; and
5. Enter a finding that the value of CO₂ compliance costs be consistently applied to both supply-side and demand-side resources in evidentiary hearings before this Commission.

Respectfully submitted this 19th day of August, 2013.

/s/ George Cavros
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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 19th day of August, 2013, to the following:

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