

Dorothy Menasco

From: ljacobs50@comcast.net
Sent: Monday, April 27, 2009 12:13 PM
To: Filings@psc.state.fl.us
Cc: jbrew@bbrslaw.com; Katherine Fleming; mwalls@carltonfields.com; mbernier@carltonfields.com; wade_litchfield@fpl.com; Bryan.Anderson@fpl.com; KSTorain@potashcorp.com; paul.lewisjr@pgnmail.com; john.burnett@pgnmail.com; RMiller@pcsphosphate.com; jmcwhirter@mac-law.com; vkaufman@kagmlaw.com; kelly.jr@leg.state.fl.us; rehwinkle.charles@leg.state.fl.us
Subject: Docket No. 090009 - Petition to Intervene of the Southern Alliance for Clean Energy
Attachments: SACE-Intervention_Petition__090009_Cost Recovry_4-24-09.doc

Attached please find the Petition by SACE to intervene in Docket No. 090009.

- A. from E. Leon Jacobs, Jr.
Williams & Jacobs, LLC
- B. in Docket No. 090009-EI - Nuclear Cost Recovery
- C. on behalf of The Southern Alliance for Clean Energy, Inc.
- D. 7 pages

Done
4/27/09
- BM

4/27/2009

DOCUMENT NUMBER-DATE

03920 APR 27 8

FPSC-COMMISSION CLERK

WILLIAMS & JACOBS, LLC

ATTORNEYS AT LAW
1720 S. GADSDEN ST. MS. 14
TALLAHASSEE, FL 32301

MOSES WILLIAMS, ESQ.

E. LEON JACOBS, JR., ESQ.

April 27, 2009

Ann Cole
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

RE: Docket No. 090009-EI
In Re: Nuclear Cost Recovery.

Dear Ms. Cole:

On behalf of the Southern Alliance for Clean Energy, Inc., I have enclosed for filing the Petition for Intervention, consisting of seven pages. I thank you for your attention to this matter.

Sincerely,

/s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr.
Attorney for Intervenor

Enclosures

DOCUMENT NUMBER-DATE

03920 APR 27 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re; Nuclear Cost Recovery Clause) DOCKET NO. 090009-EI
) FILED: April 27, 2009
)
)
)
_____)

**PETITION TO INTERVENE OF
SOUTHERN ALLIANCE FOR CLEAN ENERGY, INC.**

Petitioner, Southern Alliance for Clean Energy (“SACE”), pursuant to Sections 120.569 and 120.57(1), Florida Statutes and Rules 25-22.039, and 28-106.205, F.A.C., hereby files its petition to intervene in this docket and states:

1. The name and address of the agency affected by this petition is

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

2. The name and address of the Petitioner is:

Southern Alliance for Clean Energy, Inc.
P.O. Box 1842
Knoxville, Tennessee 37901

3. The name and address of counsel for SACE authorized to receive all notices, pleadings, and other communications in this docket are

E. Leon Jacobs, Jr.
Williams & Jacobs, LLC
1720 S. Gadsden St. MS 14
Suite 201
Tallahassee, Florida 32301
(850) 222-1246
(850) 599-9079 fax
Ljacobs50@comcast.net

4. SACE is a non-profit corporation organized under the laws of Tennessee. SACE received notice of the Florida Public Service Commission's ("Commission") action by virtue of the Commission's Order establishing the 2009 Nuclear cost recovery docket, issued on January 15, 2009.

5. The mission of SACE is to promote responsible, economic energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including the State of Florida. SACE also has staff working on this mission in Tennessee, North Carolina, Georgia and South Carolina.

6. SACE has 1,781 members in the State of Florida, dedicated to the promotion of responsible energy choices. The Florida Power & Light Company ("FPL") and Progress Energy Florida ("PEF") provide electric service to a vast geographic area of the State of Florida. SACE members, while concentrated in the population centers that fall within these respective territories, are dispersed throughout the territories of FPL and PEF.

7. In furtherance of its mission, SACE is deeply involved in advocacy on adoption, implementation, and enforcement of meaningful requirements to evaluate the appropriateness of new electricity capacity. SACE experts have provided testimony in numerous forums in Florida, including before the Governor's Climate and Energy Action Team, the Florida State Legislature, the Department of Environmental Protection and this Commission, on the importance of thoroughly evaluating all cost-effective energy efficiency measures as a means of mitigating or displacing the need for new, non-renewable electricity generation. Indeed, intervention was granted to SACE by the Commission in *In re: Petition to determine need for Polk Unit 6 electrical power plant, by Tampa Electric Company*, Docket No. 070467 EI.

8. The Commission will decide in this docket whether costs of nuclear electric generating facilities owned and modified by, or proposed for construction by FPL and PEF are subject to cost recovery from SACE members who are ratepayers of FPL and PEF. In addition, there is a substantial likelihood that additional utilities in the state will become partners in one or more of the nuclear units being constructed by FPL and PEF. If the respective cost recovery requests of FPL and PEF are approved, the revised costs to ratepayers will substantially and directly increase their cost of service. SACE members view the risk of these increases with serious concern and wish to vigorously examine the basis of such charges.

9. SACE has interests that are of the type this proceeding is designed to protect. *Ameristeel Corp. v. Clark*, 691 So.2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So.2d 1359 (Fla. 1982); *Florida Home Builders Ass 'n v. Department of Labor and Employment Security*, 412 So.2d 351,353-54 (Fla. 1982). As an advocate for the interests of its members who are FPL and PEF consumers, SACE is uniquely poised to assess and enunciate the significant risks to FPL and PEF ratepayers associated with the Commission's decision in this case, in particular, related to the volatility of capital costs of electric generation facilities, and risks resulting from regulatory decisions made based on incorrect and/or inadequate assumptions and factual information related to the construction and operating costs of new nuclear power plants, with new design specifications. The best interests of SACE's members can be served by requiring PEF to correctly identify and evaluate all costs associated with delivery of power from the modified or new nuclear facilities.

10. The subject matter of this docket is within the scope of interest and activities of SACE, and the relief requested is the type of relief appropriate for SACE to receive on behalf of its members.

11. The rights and interests of members of SACE cannot adequately be represented by any other party in this docket, and intervention will not unduly delay or prejudice the rights of other parties.

STATEMENT OF DISPUTED ISSUES OF FACT

12. SACE anticipates that disputed issues of material fact will be identified in the course of these proceedings.

STATEMENT OF ULTIMATE FACTS

13. FPL and PEF must adduce competent and substantial evidence which supports the identification of costs, which fully and accurately accounts for those costs, and which supports a determination of prudence of costs associated with the reconstruction of, or the initial construction of the respective nuclear facilities, in order to meet the requirements of Rules 25-6.0423, F.A.C. Before approving cost recovery for the FPL and PEF nuclear units as proposed, the Commission must ensure that the requisite competent and substantial evidence is in the record sufficient to fully identify, demonstrate the accountability of, and evaluate the prudence of costs for which recovery is sought.

14. Each of these elements is necessary to protect the interests of affected consumers as required by Florida law.

15. The Commission must closely scrutinize the submissions of FPL and PEF proposal, including cost projections, evaluation of financial risks, and the timeliness of construction.

STATUTES AND RULES THAT REQUIRE THE RELIEF REQUESTED

16. The statutes and rules that require the relief requested by Intervenors include, but are not limited to, Chapter 120, Section 366.93 Florida Statutes, and Rule 25-6.0423, F.A.C.

17. Rule 25-22.039, Florida Administrative Code, provides that persons whose substantial interests are subject to determination in, or may be affected through an agency proceeding are entitled to intervene in such proceeding.

18. The Commission's determinations on any or all of these criteria will have a substantial impact on SACE's members, as set out above. The substantial interests of SACE's members are of a type or nature which this proceeding is designed to protect.

RELIEF SOUGHT

30. WHEREFORE, SACE respectfully requests that the Commission enter an order granting it leave to intervene in this docket and that the Commission take full consideration of the issues raised by SACE in this docket and further requests parties to provide the undersigned with all discovery filed in this docket.

RESPECTFULLY SUBMITTED this 27th day of April, 2009

/s/ E. Leon Jacobs, Jr.

E. Leon Jacobs, Jr.
Williams & Jacobs, LLC
1720 S. Gadsden St. MS 14
Suite 201
Tallahassee, Florida 32301
Florida Bar Id. 0714682
(850) 222-1246
(850) 599-9079 fax
Ljacobs50@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 10th day of April via the internet and via US Mail on:

Katherine Fleming Keino Young Caroline Klancke Florida Public Service Commission Gerald L. Gunter Building 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850	Charles Rehwinkle/J.R. Kelly / C. Beck Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 8 12 Tallahassee, FL 32399-1400
James W. Brew / F. Alvin Taylor Brickfield, Burchette, Ritts & Stone, P.C. 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower Washington, DC 20007-5201	Mr. Paul Lewis, Jr. Progress Energy Florida 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740
John T. Burnett / R. Alexander Glenn Progress Energy Service Company, LLC Post Office Box 14042 St. Petersburg, FL 33733-4042	J. Michael Walls/Diane M. Tripplett/Ma Carlton Fields Post Office Box 3239 Tampa, FL 33601-3239
Mr. Wade Litchfield Florida Power & Light Company 215 South Monroe Street, Suite 810 Tallahassee, FL 32301-1859	Matthew R. Bernier Carlton Fields 215 South Monroe St. Suite 500 Tallahassee, FL 32301-1866
Bryanj Anderson/Jessica Cano/Garson R. Florida Power & Light Company 700 Universe Blvd. Juno Beach, FL 33418	John McWhirter, Jr. McWhirter Law Firm P.O. Box 3350 Tampa, Fl 33601
Vicki Gordon Kaufman/Jon C. Moyle, Jr. Keefe Law Firm 118 North Gadsden Street Tallahassee, FL 32301	Karin S. Torain PCS Administration (USA), Inc. Suite 400 1101 Skokie Boulevard Northbrook, IL 60062
Randy B. Miller White Springs Agricultural Chemicals, Inc. P.O. Box 300 White Springs, FL 32096	

This 27th day of April, 2009.

/s/ E. Leon Jacobs, Jr.