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090009-ET

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 Subject: Filing Docket 090009
 Attachments: jt response sace oral arg request.pdf



jt response
ce oral arg requ

Docket 090009
In re: Nuclear Power Plant Cost Recovery Clause

1. This filing is made by

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2. This filing consists of Progress Energy Florida, Inc.'s and Florida Power & Light Company's Joint Response in Opposition to the Southern Alliance For Clean Energy's Request for Oral Argument.
3. This filing consists of 4 pages.
4. This filing is been made on behalf of Progress Energy Florida, Inc.

DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR POWER PLANT COST
RECOVERY CLAUSE

Docket No. 090009-EI
Submitted for Filing: October 30, 2009

**PROGRESS ENERGY FLORIDA, INC.'S AND FLORIDA POWER & LIGHT
COMPANY'S JOINT RESPONSE IN OPPOSITION TO THE SOUTHERN ALLIANCE
FOR CLEAN ENERGY'S REQUEST FOR ORAL ARGUMENT**

Progress Energy Florida, Inc. ("PEF") and Florida Power & Light Company ("FPL") file this Joint Response in Opposition to the Southern Alliance for Clean Energy's ("SACE's") Request for Oral Argument ("Oral Argument Request") and state the following:

On October 21, 2009, SACE filed a Request for Official Recognition of Action by the Nuclear Regulatory Commission ("Official Action Request"). It then filed its Oral Argument Request, with respect to the Official Recognition Request, on October 26, 2009, five days later. Rule 25-22.058(1), F.A.C., clearly provides that "a request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested." The rule further states: "Failure to file a timely request for oral argument *shall* constitute *waiver* thereof." Rule 25-22.058(1), F.A.C. (emphasis added). The Florida Supreme Court, relying on this rule, has upheld the Commission's denial of a party's request for oral argument as untimely. See U.S. Sprint Communications Co. v. Nichols, 534 So. 2d 698 (Fla. 1988) (holding that Commission properly denied oral argument request filed after the petition for hearing was filed). Because SACE did not file its Oral Argument Request simultaneously with its Official

Recognition Request, it has waived its right to request oral argument and the Commission must deny its request as untimely pursuant to Rule 25-22.058, F.A.C.¹

WHEREFORE, PEF and FPL respectfully request that this Commission deny SACE's Request for Oral Argument as untimely.

Respectfully submitted this 30th day of October,

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¹ Because the Oral Argument Request is procedurally improper, PEF and FPL have not focused on the need for oral argument on SACE's Official Recognition Request. PEF and FPL do not agree, however, that SACE has shown with particularity why oral argument would aid the Commission in evaluating these issues. Simply saying that oral argument will aid the Commission is not sufficient.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 30th day of October, 2009.

s/ Dianne M. Triplett
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