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Subject: Electronic Filing / Docket 110009-EI
Attachments: Florida Power & Light Company's Motion to Preclude SACE Testimony.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 110009-EI

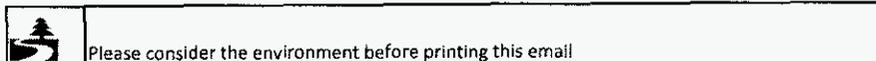
IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of five (5) pages.

e. The document attached for electronic filing is: *Florida Power & Light Company's Motion to Preclude SACE Testimony*

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DOCUMENT NUMBER-DATE
 05311 JUL 29 =
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant)
Cost Recovery Clause _____)

Docket No. 110009-EI
Date Filed: July 29, 2011

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO PRECLUDE SACE TESTIMONY**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby moves to preclude the Southern Alliance for Clean Energy ("SACE") from offering any testimony of Mark Cooper or Arnold Gundersen, which testimony was not filed in compliance with the Order Establishing Procedure in this docket, and in support thereof states as follows:

1. The Order Establishing Procedure sets forth all deadlines applicable to this docket. Importantly, the deadline for filing intervenor testimony and exhibits was July 8, 2011. SACE filed no testimony. *First Order Revising Order Establishing Procedure*, Order No. PSC-11-0245-PCO-EI, issued June 3, 2011.

2. On July 8, 2011, FPL placed a call to the attorneys for SACE asking whether SACE intended to file testimony in this docket and whether any such testimony could be served on FPL electronically. SACE confirmed to FPL that it was not filing any testimony.

3. On July 25, 2011, in compliance with the deadlines established in the Order Establishing Procedure, FPL filed its rebuttal testimony responding to the intervenor testimony timely filed on July 8, 2011.

4. On July 25, 2011, SACE filed its prehearing statement which indicated – for the first time – its intent to offer witness testimony and exhibits that have not been filed in this docket. SACE's attempt to offer testimony at this late date is a violation of the deadlines in the Order Establishing Procedure. All parties are expected to comply with the deadlines established

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by the prehearing officer in the Order Establishing Procedure, and all parties in turn rely on the fact that other parties will be compliant. Indeed, FPL's ability to exercise its right to respond to intervenor testimony through rebuttal testimony is dependent upon intervenors' compliance with the deadline for filing their testimony.

5. It appears that SACE intends to offer the same testimony that was filed last year in Docket No. 100009-EI. The fact that this testimony was filed last year does not cure SACE's failure to file testimony in this docket. While certain issues were deferred from last year's docket, no testimony was carried forward from Docket No. 100009-EI to docket No. 110009-EI.¹ All parties – except SACE – have complied with the testimony requirements and deadlines established for purposes of this year's Nuclear Cost Recovery docket. Nothing about the 2010 Nuclear Cost Recovery Order, Order No. PSC-11-0095-FOF-EI, or this year's Order Establishing Procedure indicates that any type of "carry over" testimony should be presumed as permissible, and SACE is the only party that has attempted this end run around the Order Establishing Procedure.

6. The Commission has, in the past, determined it would not accept late-filed testimony. In Docket No. 930485-TL, for example, the Prehearing Officer denied a party's request to file direct testimony after the direct testimony deadline established in that docket's Order Establishing Procedure, noting that "other parties [to that proceeding] would be prejudiced by such late-filed testimony because they would not be given adequate opportunity to respond prior to the hearing." Order No, PSC-94-0968-PCO-TL. SACE has not even sought permission to file its testimony at this late date. SACE should therefore be precluded from offering it at hearing.

¹ If there was ever any question about the treatment of the testimony submitted for purposes of last year's Nuclear Cost Recovery docket, it could have been raised at any one of the five publicly noticed meetings for participation by "all parties of record and interested persons" that occurred before the intervenor testimony deadline.

Pursuant to Rule 28-106.204(3), FPL has conferred with the parties to this docket to ascertain their positions on this motion. The Office of Public Counsel, Progress Energy Florida, and PCS Phosphate - White Springs take no position on this motion. FPL was unable to reach the Florida Industrial Power Users Group or Federal Executive Agencies prior to filing this motion. SACE objects to this motion.

WHEREFORE, for all the reasons stated above, FPL respectfully requests that SACE be precluded from offering any testimony or exhibits of Mark Cooper or Arnold Gundersen at the hearing in this docket. No such testimony has been pre-filed in this docket and therefore it cannot be offered at hearing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE
DOCKET NO. 110009-EI**

I HEREBY CERTIFY that a true and correct copy of this Motion to Preclude SACE Testimony was served electronically this 29th day of July 2011, to the following:

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