

Diamond Williams

From: George Cavros [george@cavros-law.com]
Sent: Tuesday, September 06, 2011 2:03 PM
To: Filings@psc.state.fl.us
Subject: SACE's Protest of Order No. PSC-11-0347-PAA-EG -- Docket No 100160
Attachments: SACE Protest of Order No. 11-0347-PAA-EG -- DN 100160.pdf

Dear Commission Clerk,

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

A.

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale , FL 33334
Telephone: 954.563.0074
Facsimile: 866.924.2824

Email: george@cavros-law.com
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B. This filing is made in Docket No. 100160-EG - In re: Petition for approval of demand-side management plan of Progress Energy Florida, Inc.

C. This document is filed on behalf of Southern Alliance for Clean Energy (SACE).

D. The document is 7 total pages.

E. The attached document is SACE's Protest of Commission Order No.PSC-11-0347-PAA-EG .

Sincerely,

George Cavros

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale, FL 33334
954.563.0074 (office)
866.924.2824 (fax number)

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DOCUMENT NUMBER-DATE

06385 SEP-6 =

9/6/2011

FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

**In re: Petition for Approval of Demand-side
Management Plan of Progress Energy
Florida, Inc.**

DOCKET NO. 100160-EG

Dated: September 6, 2011

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S PROTEST OF
ORDER NO. PSC-11-0347-PAA-EG**

Pursuant to section 120.569, 120.57, Florida Statutes, and rule 28-106.201, Florida Administrative Code, Southern Alliance for Clean Energy (SACE), through its undersigned counsel, files its Petition to Intervene in this docket and in support thereof states:

1. Name and address of agency affected by this petition is:

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

2. Name and address of Petitioner is:

Southern Alliance for Clean Energy
P.O. Box 1842
Knoxville, Tennessee 37901
Telephone: 865-637-6055

3. The name and address of counsel for Petitioners, authorized to

receive all notices, pleadings, and orders in this docket is:

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale, FL 33334
Telephone: 954.563.0074
Facsimile: 866.924.2824
Email: george@cavros-law.com

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FPSC-COMMISSION CLERK

4. Petitioner received notice of this docket by a review of the Public Service Commission's (Commission) website.

5. Statement of Substantial Interests, SACE is a non-profit corporation organized under the laws of the State of Tennessee and authorized to conduct operations in Florida. The mission of SACE is to promote responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including the State of Florida. SACE has staff working on this mission in Tennessee, North Carolina, Georgia, South Carolina, and Florida. SACE has a substantial membership base in Progress Energy Florida's (PEF) service territory dedicated to the promotion of responsible energy choices.

6. SACE advocates for adoption, implementation, and enforcement of meaningful energy policy, during the course of which they have presented experts and 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. SACE places an especially high priority on the importance of thoroughly evaluating and implementing all cost-effective energy efficiency programs as a means of mitigating or displacing the need for new more costly electricity generation. SACE has been granted party status in numerous dockets before the Commission, including: *In re: Commission Review of Numeric Conservation Goals*, Docket No. 080408-EG which set conservation goals for PEF from 2010 to 2019 through Commission Order No. PSC-10-0198-FOF-EG (also granting in part PEF's reconsideration to correct a double counting error); and *In re: Petition for Approval of Demand-side Management Plan of Progress Energy Florida, Inc.*, Docket No. 100160-EG which was intended to approve, deny

or modify demand-side management (DSM) plan for PEF and produced the proposed agency action order that is being protested by SACE.

7. In Docket No. 100160-EG, the Commission issued Order No. PSC-10-0605-PAA-EG, which denied PEF's initial DSM plan filing because it was insufficient to meet the Commission's annual goals for multiple customer class categories in multiple years as required by Commission Order No. PSC-10-0198-FOF-EG. In that Order, the Commission required PEF to resubmit a DSM plan within thirty days that would comply with goals established in Commission Order No. PSC-10-0198-FOF-EG, and also encouraged PEF to submit an "Alternate DSM Plan" to reduce rate impacts. PEF filed two plans on November 29, 2010; an "Original Goal Scenario DSM Plan" intended to meet the energy savings goals in Commission Order No. PSC-10-0198-FOF-EG and a "Revised Goal DSM Plan." SACE argued in both written and oral comments that Commission should adopt the Original Goal Scenario DSM Plan, but that costs could be reduced through better program selection and design – without reducing energy savings. Rather than consider SACE comments on reducing rate impacts, the Commission abruptly denied both DSM plans through Commission Order No. PSC-11-0347-PAA-EG, issued August 16, 2011.¹ In the same order, the Commission further ordered that a "newly modified DSM Plan consisting of programs currently in effect" be approved. The effect of the order is have a DSM Plan in place, which is nothing more than PEF's existing DSM plans currently in place, which were designed to implement goals set in the 2004 conservation goal setting proceeding set in Commission Order No. PSC-04-0769-PAA-EG.

¹ Although the Commission disapproved both DSM plans, it did not require PEF to submit a modified plan within 30 days as required by § 366.82(7), Fla. Stat.

8. The “newly modified DSM Plan” that implements the goals in Commission Order No. PSC-04-0769-PAA-EG, will deliver considerably less energy savings to PEF residential, commercial and industrial customers than the energy savings required in Commission Order No. PSC-10-0198-FOF-EG, issued in 2010. The lowered energy savings to Florida customers directly impacts the mission of SACE and its members which advocate for all cost-effective energy efficiency programs as a means for displacing more costly new generation projects. Moreover, SACE members’ cost of service in PEF’s territory will be higher because the Commission’s order encourages continued reliance on more costly new generation options to meet electricity demand in lieu of capturing less costly energy savings through DSM plans. In fact, the Commission’s order guarantees the “status quo” of relatively weak efficiency programs which were intended to meet much weaker conservation goals established in 2004. SACE and its members believe that offering less energy savings opportunities to Floridians is contrary to the Florida Energy and Conservation Act (FEECA) amendments of 2008. SACE and its members’ substantial interest will be substantially and directly affected by the proposed agency action because it will negatively impact the role of energy efficiency as resource in meeting electricity demand in PEF’s territory. Capturing all cost-effective energy efficiency is a core interest to SACE and its members. Additionally, SACE members in PEF’s territory will have a higher cost of service due to continued reliance on more costly new generation projects to meet electricity demand, in lieu of energy efficiency which can defer or displace the need for such projects.

9. The interests of members of SACE are the type of interests 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). SACE has a substantial number of members in PEF's territory that will be directly and negatively affected by Commission Order No. PSC-11-0347-PAA-EG. A core interest of SACE and its members is advocacy for cost-effective energy efficiency as a primary resource in meeting electricity demand. The Commission's proposed agency action takes state energy efficiency policy backwards. Additionally, pursuant to the order, SACE members in PEF's territory will have a higher cost of service due to continued reliance on new costly generation projects to meet electricity demand, in lieu of more cost-effective energy efficiency options. The Commission's proposed agency action directly affects a substantial number of SACE members and is well within the organization's scope and interest.

10. Disputed Issues of Material Fact.

While SACE does not agree with the material facts the Commission utilized to reach its decision, SACE is not alleging any disputed issues of material fact in this protest in order to focus on the legal infirmity of the Commission's decision.

11. Statement of Ultimate Facts Alleged.

While SACE does not agree with the material facts the Commission utilized to reach its decision, SACE is not alleging any disputed issues of material fact in this protest in order to focus on the legal infirmity of the Commission's decision.

12. Rules and statutes that require reversal or modification of the agency's proposed action include, but are not limited to:

- a. The Commission misapplied § 366.82(7), Fla. Stat. as a de-facto goal setting provision;

- b. The Commission misapplied § 366.82(7), Fla. Stat. to render §§ 366.82(3), (6), Fla. Stat. meaningless;
- c. The Commission misapplied § 366.82(7), Fla. Stat. in denying the PEF program by not requiring PEF to resubmit a modified plan within 30 days; and
- d. The Commission misapplied the financial reward and penalty provision pursuant to § 366.82(8), Fla. Stat.

13. Relief. SACE respectfully requests that:

a. The Commission vacate Commission Order No. PSC-11-0347-PAA-EG; and order the approval the PEF's "Original Goal Scenario" DSM Plan that meets the energy savings goals in Commission Order No. PSC-10-0198-FOF-EG;

b. In the alternative, the Commission should approve the portions of the PEF "Original Goal Scenario" DSM Plan which meet Commission approval and order PEF to submit a modified DSM plan that address specific deficiencies identified by the Commission.

WHEREFORE, SACE respectfully request that the Commission grant the protest petition, provide SACE the opportunity to provide written and oral evidence to the Commission protesting the Commission order solely on legal grounds, and grant the relief requested above.

s/ George Cavros
George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale, FL 33334
Telephone: 954.563.0074
Facsimile: 866.924.2824
Email: george@cavros-law.com

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 electronic mail and US Mail on this 6th day of September 2011, to the following:

Larry Harris, Esq. Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 LHarris@PSC.STATE.FL.US	John T. Burnett Progress Energy Service Company, LLC P.O. Box 14042 St. Petersburg, FL 33733-4042 john.burnett@pgnmail.com
Paul Lewis, Jr. Director of Regulatory Affairs Progress Energy Florida 106 East College Avenue, Suite 800 Tallahassee, Florida 32301 paul.lewisjr@pgnmail.com	Vicki Gordon Kaufman Jon C. Moyle, Jr. Keefe Anchors Gordon & Moyle, PA 118 North Gadsden Street Tallahassee, Florida 32301 vkaufman@kagmlaw.com jmoyle@kagmlaw.com
John W. McWhirter, Jr. P.O. Box 3350 Tampa, Florida 33601-3350 jmcwhirter@mac-law.com	Rick D. Chamberlain Behrens, Taylor, Wheeler & Chamberlain 6 N.E. 63 rd Street, Suite 400 Oklahoma City, OK 73105-1401 rdc_law@swbell.net
James W. Brew, Esq., F. Alvin Taylor, Esq. Brickfield, Burchette, Ritts & Stone, P.C. 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower Washington, DC 20007-5201 jbrew@bbrslaw.com ataylor@bbrslaw.com	Suzanne Brownless 1975 Buford Blvd. Tallahassee, FL 32308 suzannebrownless@comcast.net

s/ George Cavros

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale, FL 33334
Telephone: 954.563.0074
Facsimile: 866.924.2824

Attorney for Southern Alliance for
Clean Energy