

Eric Fryson

From: Jamie Whitlock [jwhitlock@enviroattorney.com]
Sent: Monday, October 01, 2012 3:09 PM
To: Filings@psc.state.fl.us
Cc: Michael Lawson; Lisa Bennett; Erik Sayler; Charles Rehwinkel; Joseph McGlothlin; Vicki G. Kaufman; Jon C. Moyle, Jr.; Bryan S. Anderson; Jessica Cano; Captain Samuel Miller; Ken Hoffman; Paul Lewis, Jr.; Jay Brew; F. Alvin Taylor; Schef Wright; Randy B. Miller; John T. Burnett; John LaVia; Matthew Bernier; Blaise N. Gamba; J. Michael Walls; Gary Davis; ljacobs50@comcast.net; Penny Frisby; J. R. Kelly
Subject: Docket 120009-EI - SACE Post-Hearing Statement and Brief
Attachments: Post-Hearing Statement and Brief (2012).pdf

Electronic Filing

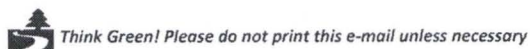
- a. Person responsible for this electronic filing:

James S. Whitlock
Davis & Whitlock, P.C.
PO Box 649
Hot Springs NC 28743
828-622-0044
jwhitlock@enviroattorney.com

- b. Docket No. 120009-EI
In re: Nuclear Cost Recovery Clause
- c. Document being filed on behalf of SACE
- d. There are a total of 23 pages
- e. The document attached for electronic filing is SACE's Post-Hearing Statement and Brief.

James S. Whitlock
Davis & Whitlock, P.C.
61 North Andrews Avenue
PO Box 649
Hot Springs, NC 28743
P: (828) 622-0044
F: (828) 622-7610
www.enviroattorney.com

The information contained in this electronic transmission is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, do not read it. Please immediately notify the sender that you have received this communication in error and then destroy the documents.



DOCUMENT NUMBER-DATE

06592 OCT-1 2012

FPSC-COMMISSION CLERK

10/1/2012

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

DOCKET NO. 120009-EI
FILED: October 1, 2012

**POST-HEARING STATEMENT AND BRIEF OF THE SOUTHERN ALLIANCE FOR
CLEAN ENERGY ("SACE")**

James S. Whitlock
Gary A. Davis
DAVIS & WHITLOCK, P.C.
61 North Andrews Avenue
PO Box 649
Hot Springs, NC 28779
jwhitlock@enviroattorney.com
gadavis@enviroattorney.com

E. Leon Jacobs, Jr.
WILLIAMS & JACOBS
2510 Miccosukee Road
Suite 104
Tallahassee, FL 32308
ljacobs50@comcast.net

Attorneys for SACE

DOCUMENT NUMBER-DATE

06592 OCT-1 2012

FPSC-COMMISSION CLERK

Pursuant to the First Order Revising Order Establishing Procedure, Order No. PSC-12-0341-PCO-EI, issued June 29, 2012, and the Prehearing Order, Order No. PSC-12-0455-PHO-EI, issued August 31, 2012, the Southern Alliance for Clean Energy (“SACE”) respectfully submits its Post-Hearing Statement and Brief.

STATEMENT OF BASIC POSITION

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 qualified this finding by holding that while a utility does not have to simultaneously engage in all of these activities to remain eligible for cost recovery, it “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).

In the current docket, as was the case in Docket 110009-EI, the activities of PEF and FPL since January of 2011 related to the LNP and the Turkey Point 6 & 7 reactors (“proposed new nuclear projects”) fail to demonstrate this requisite intent to build. In sharp contrast, the utilities’ activities plainly demonstrate that both PEF and 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 on the part of the utilities is to create the option to construct by attempting to obtain the necessary licenses and approvals to operate these proposed new nuclear projects - should it become feasible at some point in the future. This option creation approach

does not satisfy the intent to build requirement, as the statute, and the Commission's interpretation of the same, doesn't contemplate such an approach. As a result, neither PEF nor FPL is eligible for cost recovery in Docket 120009-EI for costs related to these proposed new nuclear projects.

Further, Rule 25-6.0423(5)(c)5, F.A.C., requires PEF and FPL to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing these proposed new nuclear projects. The analyses submitted by the utilities purporting to demonstrate feasibility notwithstanding, the fact of the matter is that the great uncertainty and risk surrounding the completion of these proposed new nuclear projects, which SACE has brought to the Commission's attention in four consecutive nuclear cost recovery dockets, has rendered these proposed new projects infeasible. As this uncertainty and risk continues to increase, as it has every year, cost estimates for the proposed reactors continue to dramatically increase and projected in service dates continue to slip further into the future. Natural gas prices remain at or near historical lows and forecasts project this as a long term trend. Moreover, there is no greenhouse gas legislation/cost of carbon on the horizon, and long term forecasts also project lower carbons costs, if any. These two key drivers in any feasibility analysis, standing alone, make new nuclear generation cost prohibitive and infeasible as compared to other sources of generation. PEF and FPL have belatedly recognized this fact, as evidenced by their "option creation" approaches, where all major capital expenditures, as well as all activities in any way related to construction, have been deferred until some unknown point in the future. However, PEF and FPL ratepayers are already on the hook for hundreds of millions of dollars spent on these proposed new reactors which will likely never be constructed, and this is exactly what the long term feasibility requirement was intended to prevent.

It is the responsibility of the Commission to fix “fair, just and reasonable” rates for Florida ratepayers. § 366.03, Fla. Stat. In Docket 120009-EI, because FPL and PEF have failed to demonstrate the requisite intent to construct these proposed new nuclear projects, or the long-term feasibility of completing these projects, the utilities have failed to demonstrate that the costs for which they seek recovery are reasonable and/or prudent. As a result, the Commission should deny both FPL and PEF’s requested cost recovery related to these proposed new nuclear projects, as is it would be unfair, unjust, and unreasonable for the Commission to allow the utilities to recover additional expenses from Florida ratepayers, until PEF and FPL themselves demonstrate the requisite intent to build the proposed new reactors, as well as the feasibility of completing them.

STATEMENT OF ISSUES AND POSITIONS

Issue 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes? (Staff – in lieu of OPC’s proposed issue 2)

SACE Position: *Agree with OPC.*

Progress Energy Florida, Inc., Issues

PEF – Legal/Policy

Issue 2: Does the Commission have the authority to disallow recovery of any AFUDC equity on the Crystal River Unit 3 Uprate project in 2012 and 2013 due to the delay caused by the lack of implementation of a final decision to repair or retire Crystal River Unit 3? If yes, should the Commission exercise this authority and what amount should it disallow, if any? (OPC – contested)

SACE Position: *Stipulated.*

Issue 3: Does the Commission have the authority to defer all determinations of prudence and reasonableness for the Crystal River Unit 3 Uprate project (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority? (OPC – contested)

SACE Position: *Agree with OPC.*

PEF – Levy Units 1 & 2 Project

Issue 4: Do PEF’s activities since January 2011 related to Levy Units 1 & 2 qualify as “siting, design, licensing, and construction” of a nuclear power plant as contemplated by Section 366.93, F.S.?

SACE Position: *No. PEF’s activities since January 2011 fail to demonstrate the requisite intent to build the LNP. PEF has further pushed out projected operation dates for the LNP and remains focused solely on obtaining a COL from the NRC to create the option to build the LNP should it become feasible in the future. Section 366.93, Fla. Stat. and Commission precedent do not contemplate such an approach. As a result, PEF is not engaged in the “siting, design, licensing, and construction” of the LNP, and is not eligible for recovery of costs related to the LNP.*

Discussion:

Pursuant to Order No. PSC-11-0095-FOF-EI, PEF must, in order to be eligible for recovery of LNP-related costs pursuant to §366.93, Fla. Stat., demonstrate its intent to build the LNP. In the instant Docket, PEF has failed to meet this threshold requirement of cost recovery eligibility, as PEF’s activities since January of 2011 plainly demonstrate that PEF intends to do nothing more than obtain a COL for the LNP. In fact, PEF’s activities are far more probative of intent *not* to build the LNP. Thus, the Commission should deny recovery of all LNP-related costs, as PEF’s option creation approach does not meet the intent to build requirement and thus PEF is not eligible for cost recovery relating to the LNP.

Since January of 2011, PEF simply has not conducted activities related to the LNP that could support a finding of intent to build by this Commission. In January of 2012, PEF entered into a Stipulation and Settlement Agreement (“Settlement Agreement”) with certain intervenor parties, which was subsequently approved by the Commission.¹ Ex. 13. As it pertains to the LNP, the Settlement Agreement provides that the parties to the Settlement Agreement do not oppose PEF (1) obtaining a COL from the NRC, (2) terminating the EPC Agreement, and (3) recovering all costs associated with these activities. TR 441; Ex. 13 at 3 of 29. Moreover, the

¹ Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, Docket 120022-EI.

Settlement Agreement provided for recovery (subject to true-up) of \$350 million for PEF to complete these activities, which number was based upon PEF's estimated cost of *cancellation* of the entire LNP. TR 441. As conceded by PEF witness Elnitsky, the intent of the settlement agreement was to provide "flexibility" to the company – which includes the option to cancel the project. TR 444. The Commission's approval of the Settlement Agreement in effect ensures that PEF can continue on its "option creation" approach, and moreover cancel the EPC Agreement and the entire LNP, and recover all costs associated with these activities, regardless of whether or not the costs were prudently incurred. This Settlement Agreement, in and of itself, demonstrates that PEF does not have the requisite intent to build the LNP. Moreover, it demonstrates that PEF, at best, intends to obtain a COL for the LNP and then simply hope that the increased risk and uncertainty surrounding new nuclear generation resolves favorably. If it doesn't, PEF will simply cancel the EPC and/or the LNP.

Furthermore, after Commission approval of the Settlement Agreement in March of 2012, PEF announced yet another delay in the projected in-service dates of the LNP. TR 369. PEF attributed this three year delay to "increased near term risk and uncertainty;" however, PEF witness Elnitsky conceded that the company has no assurances that pushing out the LNP by three years will be enough time for this near term risk and uncertainty to resolve favorably for new nuclear generation. TR 435. This three year delay pushed out the projected in-service dates from 2021 and 2022 to 2024 and 2025, and constitutes an eight year delay from what PEF represented to the Commission in 2008. TR 432. This delay also resulted in construction work being deferred further out into the future. TR 463. Moreover, this three year delay resulted in a \$1.2 billion increase in the estimated cost of the LNP as compared to its 2011 estimate, resulting in a revised cost estimate of \$18.8 billion. TR 425. In fact, since 2008, the estimated cost of the

LNP has risen by approximately \$5 billion, or roughly \$1 billion a year. TR 432. Including AFUDC, the revised estimated cost of the LNP is a staggering \$24 billion. TR 433.

PEF's activities since January of 2011 fail to demonstrate intent to build the LNP. Beyond the activities discussed above, PEF witness Elnitsky testified that PEF's activities related to the LNP in 2012 and 2013 will continue to be almost exclusively focused on the work associated with obtaining a COL. TR 463. At best, PEF's activities continue to demonstrate nothing more than the intent to obtain a COL in order to create the option to build the LNP, should the increasing risk and uncertainty surrounding new nuclear generation resolve favorably at some point in the future – a risk that other large utilities across the country aren't willing to take – with their shareholders' money. *See* Ex. 117 (Excelon cancels proposed Victoria County reactors due to “unfavorable economic outlook”); Ex. 126 (GE CEO says nuclear power “really hard to justify” due to economic conditions). The Commission should protect PEF ratepayers and find that PEF is not eligible for recovery of costs related to the LNP under §366.93, Fla. Stat., and the Commission's interpretation of the same.

Issue 5: Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 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. PEF has failed to complete and properly analyze a realistic feasibility analysis which properly takes into account all of the factors that have resulted in the great uncertainty and risk adversely impacting new nuclear generation generally, and the LNP in particular, including, but not limited to: historically low natural gas prices, lack of a cost of carbon; continued depressed economic conditions; and the true impact of efficiency and renewables. The Commission should deny cost recovery for PEF's 2012 and 2013 costs related to the LNP.*

Discussion:

As part of its annual consideration of a utility's Petition for cost recovery, the Commission is required to evaluate the long-term feasibility of completion of a proposed project.

Rule 25-6.0423(5)(c)5, F.A.C., provides:

By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant.

This review forces utilities to regularly review whether their investment decisions borne by the ratepayers continue to be justified in light of changing economic, technological, and regulatory conditions. This review is part of the *quid pro quo* for the extraordinary financial incentive provided to the utility through the cost recovery clause, because the utilities are spending their ratepayers' money, with no real risk to their own bottom lines. PEF's 2012 feasibility analysis (both the qualitative and the quantitative analyses) fails to demonstrate that completion of the LNP is feasible in the long-term. Therefore, the Commission should deny PEF's estimated 2012 and projected 2013 costs related to the LNP.

Qualitative Feasibility

PEF undertakes a qualitative feasibility analysis in order to assess the feasibility of completing the LNP, which consists mainly of an evaluation of enterprise risks facing the LNP. In 2012, PEF concluded that there were increased enterprise risks facing the LNP, *i.e.*, increased risk and uncertainty, and this conclusion resulted in the decision to further push out the projected in-service dates for the LNP. TR 375. As testified by PEF witness Elnitsky, the cost of natural gas and the lack of a cost of carbon are two key drivers in a feasibility analysis, and low natural gas prices and the lack of a cost of carbon adversely affect the cost-effectiveness of new nuclear generation. TR 450-451. Thus, PEF, due to (1) historically low natural gas prices and (2) the lack of a cost of carbon, concluded that:

Issuance of the [Full Notice to Proceed] next year to commence full scale LNP construction is not supported by near term, lower natural gas prices and delayed carbon cost impacts....

TR 375. However, as discussed *supra*, PEF witness Elnitsky testified at the hearing that the company has no assurances that pushing out the LNP by three years will be enough time for this risk and uncertainty to resolve favorably for new nuclear generation. TR 435. In fact, PEF witness Elnitsky admitted that nuclear power is “really hard to justify” in the near term. TR 456. Moreover, Mr. Elnitsky testified that other utilities disagree with PEF’s long term forecasts in term of the price of natural gas and the cost of carbon, and as a result have cancelled proposed new nuclear projects because completion is not feasible. TR 461; Ex. 117; Ex. 126.

With the two most influential drivers in PEF’s feasibility analysis showing that completion of the LNP is not feasible, Mr. Elnitsky testified that PEF’s conclusion that the LNP was still feasible was, and had to be, based on long term projections that differ greatly from current reality. TR 454. They also differ from the long term projections of other major utilities. TR 461. As a result, PEF, once again, resorted to delaying in service dates because completion of the LNP is not currently feasible.² The Commission should not continue to allow PEF to continue to simply delay the LNP in hopes that completion of the project will become feasible. Ultimately, PEF’s qualitative feasibility analysis fails to demonstrate that completion of the LNP is feasible in the long term as required by Rule 25-6.0423(5)(c)5, F.A.C.

Quantitative Feasibility

PEF submitted an updated CPVRR analysis which it claimed demonstrated that the LNP is economically feasible. However, the CPVRR demonstrated that, in the low fuel reference case (reflecting current conditions) the LNP was the preferred resource plan only if a high cost of carbon was assumed. TR 461; Ex. 11. Similarly, the CPVRR demonstrated that if no cost of carbon was assumed (reflecting current conditions), then fuel prices would have to be high for

² This delay of course had the effect of increasing the estimated cost of the LNP to over \$24 billion, further calling into question the feasibility of the project.

the LNP to be the preferred resource plan. *Id.* Thus, while PEF contends that the CPVRR demonstrates that the LNP is the preferred resource plan in a majority of cases, these cases are based on long term projections that differ from current reality and moreover differ from what other major utilities are forecasting. Ex. 17, 26. Furthermore, PEF does not assess the relative likelihood of any of the fuel and gas scenarios it models in its CPVRR. TR 461-462. It goes without saying that such an assessment would greatly improve the relevance, and reliability, of the CPVRR and moreover would greatly enhance the Commission's ability to weigh the CPVRR analysis and make a more accurate determination on long term feasibility.

Ultimately, from both a qualitative and quantitative standpoint, PEF has failed to demonstrate that completion of the LNP is feasible. This Commission should not, as the cost of the LNP continues to increase to astronomical levels, and projected in-service dates continue to be pushed out, continue to accept PEF's feasibility analyses, which are based on long term projections that not only differ greatly from current reality, but also differ from the projections of other major utilities across the country. Put simply, it is difficult to imagine PEF ever admitting to the Commission that completion of the LNP is not feasible in the long term.

Issue 6: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

SACE Position: *No Position.*

Issue 7: What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

SACE Position: *No Position.*

Issue 8: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

SACE Position: *No. PEF has pushed out the projected in-service dates for the LNP even further, and the estimated cost of the LNP has again dramatically increased. Reasonable and prudent project management, contracting, accounting, and cost oversight would have

prevented such an outcome. The Commission should deny cost recovery for PEF's 2011, 2012 and 2013 costs related to the LNP.*

Discussion:

See Discussion under Issue 4 *supra*.

Issue 9: What system and jurisdictional amounts should the Commission approve as PEF's final 2011 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

SACE Position: *None. PEF failed to demonstrate the requisite intent to build in Docket 110009-EI, and thus was not engaged in the "siting, design, licensing, and construction" of the LNP, and thus is not eligible for recovery of these 2011 costs related to the LNP.*

Discussion:

See Discussion under Issue 4 *supra*.

Issue 10: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

SACE Position: *None. PEF's activities since January of 2011 fail to demonstrate the requisite intent to build the LNP. As such, PEF is not engaged in the "siting, design, licensing, and construction" of the LNP, and thus is not eligible for recovery of costs related to the LNP. Furthermore, PEF has failed to demonstrate that completion of the LNP is feasible in the long term.*

Discussion:

See Discussion under Issues 4 & 5 *supra*.

Issue 11: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Levy Units 1 & 2 project?

SACE Position: *None. PEF's activities since January of 2011 fail to demonstrate the requisite intent to build the LNP. As such, PEF is not engaged in the "siting, design, licensing, and construction" of the LNP, and thus is not eligible for recovery of costs related to the LNP. Furthermore, PEF has failed to demonstrate that completion of the LNP is feasible in the long term.*

Discussion:

See Discussion under Issues 4 & 5 *supra*.

PEF – Crystal River Unit 3 Uprate Project

Issue 12: Should the Commission approve what PEF has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

SACE Position: *Stipulated.*

Issue 13: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

SACE Position*Agree with OPC.*

Issue 14: Were all of the actual Crystal River Unit 3 Uprate project expenditures prudently incurred or expended in 2011 in the absence of a final decision to repair or retire Crystal River Unit 3 in 2011?

SACE Position: *Agree with OPC.*

Issue 15: What system and jurisdictional amounts should the Commission approve as PEF's 2011 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?

SACE Position*Agree with OPC.*

Issue 16: Is it reasonable for PEF to incur or expend all of the estimated and projected Crystal River Unit 3 Uprate project expenditures in 2012 and 2013 in the absence of a final decision to repair or retire CR3?

SACE Position: *Stipulated.*

Issue 17: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?

SACE Position: *Agree with OPC.*

Issue 18: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Crystal River Unit 3 Uprate project?

SACE Position: *Agree with OPC.*

Issue 19: What is the total jurisdictional amount to be included in establishing PEF's 2013 Capacity Cost Recovery Clause factor?

SACE Position: *The total jurisdictional amount will be a fall out from other decisions. There should be no recovery of LNP related costs, as PEF has failed to demonstrate the requisite intent to build and as such is not engaged in the "siting, design, licensing, and construction" of the LNP.*

Discussion:

See Discussion under Issues 4 & 5 *supra*.

Florida Power & Light Company Issues

FPL – Turkey Point Units 6 & 7 Project

Issue 20: Do FPL’s activities since January 2011 related to 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 2011 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 should it become feasible in the future. Section 366.93, Fla. Stat. and Commission precedent do not contemplate such an approach. As a result, FPL is not 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.*

Discussion:

Pursuant to Order No. PSC-11-0095-FOF-EI, FPL must, in order to be eligible for recovery of TP 6 & 7-related costs pursuant to §366.93, Fla. Stat., demonstrate its intent to build TP 6 & 7. In the instant Docket, FPL has failed to meet this threshold requirement of cost recovery eligibility, as FPL’s activities since January of 2011 plainly demonstrate that FPL intends to do nothing more than obtain a COL for TP 6 & 7. Thus, the Commission should deny recovery of all TP 6 & 7-related costs, as FPL’s option creation approach does not meet the intent to build requirement and thus FPL is not eligible for cost recovery as it pertains to TP 6 & 7.

In 2011, FPL’s activities pertaining to TP 6 & 7 focused solely on licensing and permitting efforts. TR 149; TR 870-871. Similarly, the focus of FPL’s activities in 2012 and 2013 will be on licensing and permitting.³ TR 822. Furthermore, despite the fact that the projected in service dates for TP 6 & 7 are now before those of the LNP, *i.e.*, 2022 and 2023, FPL still has not entered into an EPC or EP & C Agreement. TR 878. Moreover, even with these projected in service dates, FPL recently negotiated yet another extension to its Forging

³ FPL witness Scroggs testified that the \$20 million dollars for which FPL is seeking recovery of in 2013 pertaining to TP 6 & 7 is solely for licensing costs. TR 870-871.

Reservation Agreement, making eight or nine extensions to date. TR 878. In fact, one can review FPL's testimony, both prefiled and live, and not find one activity discussed that demonstrates intent to build TP 6 & 7. It follows that FPL's activities since January of 2011 simply are not indicative of utility who intends to build two new nuclear reactors and thus are insufficient to demonstrate the intent to build TP 6 & 7.

In sharp contrast, FPL's activities clearly demonstrate that FPL has no intent other than to obtain a COL for TP 6 & 7, and then hope that the current risk and uncertainty which makes new nuclear generation infeasible markedly changes. In fact, FPL witness Scroggs characterized FPL's activities relating to TP 6 & 7 as "creating the opportunity" for new nuclear generation. TR 871. Similarly, FPL consultant Reed characterized FPL's activities relating to TP 6 & 7 as "maintaining the option" to construct these proposed reactors. TR 133. Moreover, FPL witness Scroggs testified that FPL has not committed to constructing TP 6 & 7, TR 878, and FPL consultant Reed also testified that no decision to build TP 6 & 7 has been made to date. TR 151. Perhaps the most telling thing is the fact that FPL readily points out that it has only spent \$206 million, or 1% of the total project cost, to date on TP 6 & 7. TR 808. If FPL intended to build TP 6 & 7, and place the units in service in 2022 and 2023, the company would have expended far more funds to date in order to effectuate this intent. As FPL's activities since January of 2011 demonstrate nothing more than the intent to obtain a license, the Commission should find that FPL is not eligible for recovery of TP 6 & 7 costs.

Issue 21: Should the Commission approve what FPL has submitted as its 2012 annual detailed analyses 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 properly takes into account all of the factors that have resulted in the great uncertainty and risk adversely impacting new nuclear generation generally and TP 6 & 7 in particular, including, but not limited to: depressed natural gas prices, absence of a cost

of carbon; continued depressed economic conditions; and the true impact of efficiency and renewable. The Commission should deny cost recovery for FPL's 2012 and 2013 costs related to TP 6 & 7.*

Discussion:

As part of its annual consideration of a utility's Petition for cost recovery, the Commission is required to evaluate the long-term feasibility of completion of a proposed project.

Rule 25-6.0423(5)(c)5, F.A.C., provides:

By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant.

This review forces utilities to regularly review whether their investment decisions borne by the ratepayers continue to be justified in light of changing economic, technological, and regulatory conditions. This review is part of the *quid pro quo* for the extraordinary financial incentive provided to the utility through the cost recovery clause, because the utilities are spending their ratepayers' money, with no real risk to their own bottom lines. FPL's 2012 feasibility analysis fails to demonstrate that completion of these reactors is feasible in the long-term. Therefore, the Commission should deny FPL's estimated 2012 and projected 2013 costs related to the LNP.

Qualitative Feasibility

FPL's 2012 qualitative feasibility analysis consists of nothing more than one page of cursory discussion of non-economic factors affecting the feasibility of TP 6 & 7. TR 834. Mr. Scroggs does not conduct any type of analysis of these factors, and certainly not a "detailed analysis" as required by Rule 25-6.0423(5)(c)5, F.A.C. Furthermore, at the hearing, it was brought out that the NRC chastised FPL in a May 2012 letter and informed the company that "substantial modifications" to its COLA will be required, and, after the NRC analyzes these modifications, a new review schedule will be issued. TR 865-866; Ex. 116. This failure to provide the NRC will accurate information adversely affects the feasibility of completing TP 6 &

7, and this should have been analyzed by Mr. Scroggs and presented to the Commission. Ultimately, the lack of any qualitative analysis, and the omission of analysis of the impacts of the May 2012 letter, especially given the great uncertainty and risk adversely affecting the development of new nuclear generation, warrants Commission disapproval of FPL's feasibility analysis.

Quantitative Feasibility

FPL witness Sim sponsored an updated CPVRR for the quantitative portion of FPL's feasibility analysis; however, this CPVRR, like PEF's, fails to present the Commission with a realistic picture of the feasibility of completing TP 6 & 7, and further fails to demonstrate that completion is feasible in the long term. FPL witnesses Scroggs and Sim confirmed that the projected fuel savings for FPL's customers over the life of the TP 6 & 7 reactors was \$58 billion – down from a projected \$90 billion in 2010. TR 871-872; 1252. This represents a decrease of over \$30 billion in projected fuel savings compared to what was projected by FPL in 2010. TR 872. FPL witness Sim testified that the cost of natural gas and the cost of carbon were two of the primary drivers of any economic feasibility analysis, TR 1251, and further conceded that gas prices were at historical low, and that long term projections showed gas prices trending lower. TR 1248-1249; Ex. 82. Similarly, FPL witness Sim testified that long term trends for cost of carbon were trending negatively for new nuclear generation. TR 1251.⁴ *Id.* Based on all of the above factors, Witness Sim conceded that the economic feasibility of TP 6 & 7 was declining. TR 1252-1253.

Despite the declining economic feasibility of TP 6 & 7, FPL's updated CPVRR analysis purported to show that TP 6 & 7 remained the preferred resource plan, as opposed to an all gas

⁴ Specifically, witness Sim testified that CO2 costs were starting significantly later, and that the costs were lower on a year by year basis as compared to what FPL has previously projected.

plan, in 5 of 7 scenarios. Ex. 91; TR 1251. However, as was the case with PEF, FPL did not perform any assessment or analysis of the relative likelihoods of any of these fuel and environmental compliance scenarios, which certainly skews the analysis. Moreover, it is difficult to comprehend how, given that the two key drivers in the feasibility analysis, natural gas prices and cost of carbon, are both trending negatively for new nuclear generation in the long term, FPL can maintain that TP 6 & 7 is still preferable in a majority of scenarios as compared to an all gas generation plan. In fact, based on the “results” of FPL’s CPVRR analysis, it is readily apparent that *nothing* could happen that would result in the CPVRR coming out in favor of the all gas generation plan.

Issue 22: 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: *No position.*

Issue 23: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

SACE Position: *No position.*

Issue 24: Should the Commission find that FPL’s 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

SACE Position: *No. As evidenced by the NRC’s May 4, 2012 letter, FPL has failed to provide accurate information to the NRC relating to its COLA in the areas of safety and environmental review. Reasonable and prudent project management, contracting, accounting, and cost oversight would have prevented such an outcome. The Commission should deny cost recovery for FPL’s 2011, 2012 and 2013 costs related to TP 6 & 7.*

Discussion:

See Discussion under Issues 20 and 21 *supra*.

Issue 25: What system and jurisdictional amounts should the Commission approve as FPL’s final 2011 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 110009-EI, and thus was not engaged in the “siting, design, licensing, and construction” of TP 6 & 7, and thus is not eligible for recovery of these 2011 costs related to TP 6 & 7.*

Discussion:

See Discussion under Issue 20 *supra*.

Issue 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

SACE Position: *None. FPL's activities since January of 2011 fail to demonstrate the requisite intent to build the LNP. As such, FPL is not 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. Furthermore, FPL has failed to demonstrate that completion of TP 6 & 7 is feasible in the long term.*

Discussion:

See Discussion under Issues 20 and 21 *supra*.

Issue 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?

SACE Position: *None. FPL's activities since January of 2011 fail to demonstrate the requisite intent to build TP 6 & 7. As such, FPL is not 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. Furthermore, FPL has failed to demonstrate that completion of TP 6 & 7 is feasible in the long term.*

Discussion:

See Discussion under Issues 20 and 21 *supra*.

FPL – St. Lucie Units 1&2 and Turkey Point Units 3&4 Extend Power Uprate Project

Issue 28: Should the Commission approve what FPL has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing FPL's Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

SACE Position: *Agree with OPC.*

Issue 29: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project?

SACE Position: *Agree with OPC.*

Issue 29A: Should the Commission find that FPL managed the extended power uprate activities at Turkey Point in a reasonable and prudent manner? If not, what action should the Commission take? (OPC – contested)

SACE Position: *Agree with OPC.*

Issue 30: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for FPL's Extended Power Uprate project?

SACE Position: *Agree with OPC.*

Issue 31: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

SACE Position: *Agree with OPC.*

Issue 32: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Extended Power Uprate project?

SACE Position: *Agree with OPC.*

Issue 33: What is the total jurisdictional amount to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor?

SACE Position: *The total jurisdictional amount will be a fall out from other decisions. There should be no recovery of TP 6 & 7 related costs, as FPL has failed to demonstrate the requisite intent to build and as such is not engaged in the "siting, design, licensing, and construction" of TP 6 & 7. Furthermore, FPL has failed to demonstrate that completion of TP 6 & 7 is feasible in the long term. As to EPU costs, the Commission should hold FPL to the current estimate of costs of completing the Turkey Point uprate project.*

CONCLUSION

For the reasons stated herein, SACE urges the Commission to, in order to protect Florida ratepayers:

1. Enter a finding that PEF's activities related to the LNP do not qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.;
2. Enter a finding that PEF is not eligible for cost recovery related to the LNP as PEF has failed to demonstrate its intent to construct the LNP;

3. Disapprove PEF's long-term feasibility analysis submitted in this docket and find that PEF has failed to demonstrate the long-term feasibility of completion of the LNP;
4. Enter a finding that PEF's actual 2011 costs were not prudently incurred;
5. Enter a finding that PEF's estimated 2012 and projected 2013 costs are not reasonable;
6. Deny cost recovery for PEF's actual 2011, estimated 2012, and projected 2013 costs for which recovery is sought in this docket.
7. Enter a finding that PEF must, in all future economic (CPVRR) feasibility analyses, include an assessment of the relative likelihood of each of the various fuel and environmental cost scenarios presented so that the Commission can more effectively evaluate long-term feasibility;
8. Enter a finding that FPL's activities related to TP 6 & 7 do not qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.;
9. Enter a finding that FPL is not eligible for cost recovery related to TP 6 & 7 as FPL has failed to demonstrate its intent to construct TP 6 & 7;
10. Disapprove FPL's long-term feasibility analyses submitted in this docket and find that FPL has failed to demonstrate the long-term feasibility of completion of TP 6 & 7;
11. Enter a finding that FPL's actual 2011 costs were not prudently incurred;
12. Enter a finding that FPL's estimated 2012 and projected 2013 costs are not reasonable;

13. Deny cost recovery for FPL's actual 2011, estimated 2012, and projected 2013 costs for which recovery is sought in this docket;
14. Enter a finding that FPL must, in all future economic (CPVRR) feasibility analyses, include an assessment of the relative likelihood of each of the various fuel and environmental cost scenarios presented so that the Commission can more effectively evaluate long-term feasibility;

Respectfully submitted this 1st day of October, 2012.

/s/ James S. Whitlock
Gary A. Davis
NC Bar No. 25976
James S. Whitlock
NC Bar No. 34304
DAVIS & WHITLOCK, P.C.
61 N. Andrews Avenue
P.O. Box 649
Hot Springs, NC 28779

E. Leon Jacobs, Jr., Esq.
WILLIAMS & JACOBS
1720 S. Gadsden Street, MS 14, Suite 201
Tallahassee, FL 32301

Attorneys for SACE

CERTIFICATE OF SERVICE
Docket No. 120009-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing **POST-HEARING STATEMENT AND BRIEF** has been furnished by electronic mail (e-mail) ad/or U.S. Mail this the 1st day of October, 2012.

Lisa Bennett
Michael Lawson
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee 32399
Phone: (850) 413-6218
Facsimile: (850) 413-6184
Email: lbennett@psc.state.fl.us
mlawson@psc.state.fl.us

J.R. Kelly
Charles Rehwinkel
J. McGlothlin
Erik Sayler
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: 850-488-9330
Email: sayler@erik@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
mcglathlin.joseph@leg.state.fl.us

Vicki G. Kaufman
Jon C. Moyle, Jr.
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: vkaufman@moylelaw.com
jmoyle@moylelaw.com

Bryan S. Anderson
Jessica Cano
Florida Power & Light
700 Universe Boulevard
Juno Beach, FL 33408-0420
Phone: (561) 691-7101
Facsimile: (561) 691-7135
Email: bryan.anderson@fpl.com
jessica.cano@fpl.com

Capt. Samuel Miller
USAF/AFLOA/JACL/ULFSC
139 Barnes Drive, Ste. 1
Tyndall AFB, Fl 32403-5319
Phone: (850) 283-6663
Fax: (850) 283-6219
Email: samuel.miller@Tyndall.af.mil

Kenneth Hoffman
Florida Power & Light
215 South Monroe St., Ste. 810
Tallahassee, FL 32301-1858
Phone: (850) 521-3919
Fax: (850) 521-3939
Email: ken.hoffman@fpl.com

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Avenue, Ste. 800
Tallahassee, FL 32301-7740

James W. Brew
F. Alvin Taylor
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW

Phone: (850) 222-8738
Facsimile: (850) 222-9768
Email: paul.lewisjr@pgnmail.com

Robert Scheffel Wright
John T. LaVia
c/o Gardner Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308
Email: schef@gbwlegal.com

J. Burnett
D. Triplett
A. Glenn
Post Office Box 14042
St. Petersburg, FL 33733
Phone: 727-820-5184
FAX: 727-820-5519
Email: john.burnett@pgnmail.com

J. Michael Walls
Blaise N. Gamba
P.O. Box 3239
Tampa, FL 33601-3239
Phone: 813-223-7000
FAX: 813-229-4133
Email: bgamba@carltonfields.com

8th FL West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

Randy B. Miller
White Springs Agricultural Chemicals, Inc.
PO Box 300
White Springs, FL 32096
Email: rmiller@pscphosphate.com

Matthew Bernier
215 S. Monroe Street, Ste 500
Tallahassee, FL 32301
Email: mbernier@carltonfields.com

Robert H. Smith
11340 Heron Bay Blvd.
Coral Spring, FL 33076
Email: rpjrb@yahoo.com
(via email only)

/s/ James S. Whitlock
Counsel for SACE