

Ruth Nettles

090009-EI

From: Triplett, Dianne [dtriplett@carltonfields.com]
Sent: Thursday, October 22, 2009 9:47 AM
To: Filings@psc.state.fl.us
Cc: Bryan.Anderson@fpl.com; Lisa Bennett; jbrew@bbrslaw.com; Jennifer Brubaker; john.burnett@pgnmail.com; jessica.cano@fpl.com; gadavis@enviroattorney.com; alex.glenn@pgnmail.com; Ljacobs50@comcast.net; vkaufman@kagmlaw.com; paul.lewisjr@pgnmail.com; shayla.mcneill@tyndall.af.mil; jmcwhirter@mac-law.com; RMiller@pcsphosphate.com; jmoyle@kagmlaw.com; Charles Rehwinkel; eroach@mcguirewoods.com; Stright, Lisa; ataylor@bbrslaw.com; Tibbetts, Arlene; Jamie Whitlock; Anna Williams; Keino Young; Walls, J. Michael; Triplett, Dianne; Bernier, Matthew R.; Costello, Jeanne
Subject: Filing Docket 090009-EI
Attachments: PEF mtn to strike SACE req off recogn.pdf

Docket 090009

In re: Nuclear Power Plant Cost Recovery Clause

1. This filing is made by

Dianne Triplett

Carlton Fields, P.A.

4221 W. Boy Scout Boulevard, Suite 1000

Tampa, Florida 33607-5780

Direct: 813.229.4917

Fax: 813.229.4133

dtriplett@carltonfields.com

2. This filing consists of Progress Energy Florida, Inc.'s Motion to Strike SACE's Request for Official Recognition of Action by the Nuclear Regulatory Commission
3. This filing consists of 6 pages.
4. This filing is been made on behalf of Progress Energy Florida, Inc.

CARLTON FIELDS
ATTORNEYS AT LAW

Dianne Triplett
Attorney At Law

4221 W. Boy Scout Boulevard, Suite 1000
Tampa, Florida 33607-5780

direct 813.229.4145
fax 813.229.4133
dtriplett@carltonfields.com
www.carltonfields.com

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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 22, 2009

**PROGRESS ENERGY FLORIDA, INC.'S MOTION TO STRIKE THE SOUTHERN
ALLIANCE FOR CLEAN ENERGY'S REQUEST FOR OFFICIAL RECOGNITION OF
ACTION BY THE NUCLEAR REGULATORY COMMISSION**

Progress Energy Florida, Inc. ("PEF" or the "Company") files this Motion to Strike the Southern Alliance for Clean Energy's Request for Official Recognition of Action by the Nuclear Regulatory Commission ("Request"), because the Request is untimely given the closing of the record and the Request includes statements and arguments unsupported by the NRC communication which is the subject of the Request. In support of its Motion to Strike, PEF states:

1. On March 6, 2009, this Commission issued the Order Establishing Procedure, Order Number PSC-09-0137-PC0-EI, which set forth the controlling dates for the 2009 Nuclear Cost Recovery Clause ("NCRC") docket. Consistent with those dates, the Company filed true-up testimony and projected and actual/estimated testimony in support of its NCRC projects. Interveners filed testimony in response to this testimony, and the Company filed rebuttal testimony. The Commission held a hearing from September 8 through 10, and the parties submitted post-hearing briefs in support of their positions. The Commission voted on October 16, 2009 with respect to the outstanding issues in the proceeding. It is now, just days after the

Commission's final vote on this matter, that SACE is attempting to essentially re-open the record and insert new evidence into a proceeding that has already been closed.

2. Specifically, SACE is requesting that the Commission take official recognition of an NRC communication dated October 15, 2009 to Westinghouse Electric Company ("Westinghouse"). SACE claims that the communication is relevant to the future feasibility of PEF's Levy units. (Request at ¶ 1). SACE further argues that the Commission instructed that future filings include issues related to the progress and status of the plants. (Id.). SACE includes no transcript cites to support its assertion that the Commission directed that future filings be made to present matters that might affect the future feasibility of the units. A review of the transcript from the October 16, 2009 agenda conference shows that the Commission discussed updated information in the feasibility analysis, but it is clear that the Commission expected the updated information in future feasibility filings. (Tr. 45-47). It is also clear that such filings would be made on May 1 of next year, which is consistent with the NCRC rule. (Tr. 59; Rule 25-6.0423(5)(c)(5), F.A.C.).

3. In any event, SACE's Request is improper because the record for Docket 090009-EI is closed. The Commission adjourned the evidentiary hearing on September 10, 2009. Taking official recognition of a document is available through the *evidence* code (Sections 90.201-90.207, Florida Statutes), so it is clearly inappropriate for the Commission to take official recognition when the time for taking any evidence is closed. Although the NCRC proceeding is an ongoing or continuing docket, it is customary practice for the Commission to treat each year's proceeding like a separate proceeding, as evidenced by the opening of a new docket each year

and requiring parties to re-affirm their party status each year.¹ SACE's Request is untimely and improper and should be stricken by this Commission.

4. The Request should also be stricken because the pleading includes improper and incorrect arguments as to the meaning and interpretation of the NRC letter and press release, which SACE attaches as Exhibits A and B. To the extent that SACE is requesting the Commission to take official recognition of *its interpretation* of the NRC's action, based on Exhibits A and B, PEF objects to that as improper for official recognition under Section 90.202, Florida Statutes. If the Commission is inclined to officially recognize anything (which PEF does not believe it should), it should only recognize the documents attached as Exhibits A and B. SACE's interpretation of what those documents mean is not supported by the documents and thus should not be recognized by this Commission.

5. Not only are SACE's comments about the documents inappropriate for official recognition, but several of SACE's assertions are also unsupported by the documents themselves. For example, SACE asserts that the impact of the documents "fundamentally affects the NRC's certification of the AP1000 as a whole" (para. 3) and that FPL and PEF's COLA applications are "substantially affected." (para. 4). SACE also claims that the COLA applications are "likely suspended pending the outcome of the shield building review and the AP1000 certification in general." (para. 4). The NRC letter and press release, however, specifically state that the impact on the AP1000 certification review schedule will be established after discussion with Westinghouse about its plans to address the NRC's determination. (Exs. A and B). This highlights the danger of this Commission taking official recognition of what amounts to SACE's


¹ The Commission follows this same practice with other ongoing dockets, such as the fuel and environmental cost recovery clauses.

attorney making unsupported and incorrect arguments about documents that speak for themselves.

WHEREFORE, PEF respectfully requests that this Commission strike SACE's Request for Official Recognition as untimely, and, if the Commission desires to officially recognize the NRC documents, PEF further requests that the Commission only recognize the actual documents and not SACE's characterization of those documents.

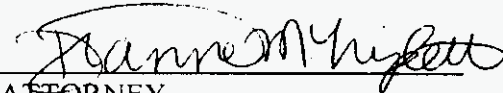
Respectfully submitted,

R. ALEXANDER GLENN
General Counsel
JOHN BURNETT
Associate General Counsel
PROGRESS ENERGY SERVICE
COMPANY, LLC
Post Office Box 14042
St. Petersburg, FL 33733-4042
(727) 820-5587/Fax: (727) 820-5519


JAMES MICHAEL WALLS
Florida Bar No. 0706242
DIANNE M. TRIPLETT
Florida Bar No. 0872431
MATTHEW R. BERNIER
Florida Bar No. 0059886
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
(813) 223-7000/Fax: (813) 229-4133

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 22nd day of October, 2009.


ATTORNEY

MR. PAUL LEWIS, JR.
Progress Energy Florida, Inc.
106 East College Avenue, Ste. 800
Tallahassee, FL 32301-7740
(850) 222-8738 / FAX: (850) 222-9768
Email: paul.lewisjr@pgnmail.com

JOHN W. MCWHIRTER
McWhirter Law Firm
Post Office Box 3350
Tampa, FL 33601-3350
(813) 224-0866 / FAX: (813) 221-1854
Email: jmcwhirter@mac-law.com

CHARLES REHWINKEL
Associate Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us

BRYAN S. ANDERSON
JESSICA CANO
Florida Power & Light
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 691-7101 / FAX: (561) 691-7135
Email: bryan.anderson@fpl.com
Jessica.cano@fpl.com

KEINO YOUNG
LISA BENNETT
JENNIFER BRUBAKER
ANNA WILLIAMS
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee 32399
(850) 413-6218 / FAX: (850) 413-6184
Email: kyoung@psc.state.fl.us
lbennett@psc.state.fl.us
Jbrubake@psc.state.fl.us
awilliams@psc.state.fl.us

JAMES W. BREW
F. ALVIN TAYLOR
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
(202) 342-0800 / FAX: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

VICKI GORDON KAUFMAN
JON C. MOYLE, JR.
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828 / FAX: (850) 681-8788
Email: vkaufman@kagmlaw.com
jmoyle@kgmlaw.com

E. LEON JACOBS, JR.
Southern Alliance for Clean Energy, Inc.
c/o Williams Law Firm
1720 S. Gadsden Street MS 14, Ste. 20
Tallahassee, FL 32301
(850) 222-1246 / FAX: (850) 599-9079
Email: Ljacobs50@comcast.net

HONORABLE CHARLES S. DEAN
Senate Majority Whip
411 Tomkins Street
Inverness, FL 34450
Phone: (352) 860-5175

RANDY B. MILLER
White Springs Agricultural Chemicals, Inc.
P.O. Box 300
White Springs, FL 32096
Email: RMiller@pcsphosphate.com

GARY A. DAVIS
JAMES S. WHITLOCK
Gary A. Davis & Associates
P.O. Box 649
Hot Springs, NC 28743
(828) 622-0044
Email: gadavis@enviroattorney.com
jswitlock@enviroattorney.com

CAPTAIN SHAYLA L. MCNEILL
AFLOA/JACL-ULT
AFCESA
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403
(850) 283-6663 / FAX: (850) 283-6219
Email: shayla.mcneill@tyndall.af.mil

HONORABLE MIKE FASANO
8217 Massachusetts Avenue
New Port Richey, FL 34653
(727) 485-5885 / FAX: (727) 841-4453

EDGAR M. ROACH, JR.
McGuire Woods
2600 Two Hanover Square
P.O. Box 27507 (27611)
Raleigh, NC 27601
(919) 755-6690 / Fax: (919) 755-6593