

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED-FPSC
09 AUG 10 PM 1:52

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

090009

COMMISSION
DOCKET NO. 090009-EDN
FILED: August 10, 2009

THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
PREHEARING STATEMENT

The Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, and pursuant to Order No. PSC-09-0137-PCO-EI, Order Establishing Procedure, hereby submits its Prehearing Statement in regards to the above-styled docket.

APPEARANCES

E. Leon Jacobs, Jr.
Williams & Jacobs, Jr.
1720 S. Gadsden Street, MS 14, Suite 201
Tallahassee, Florida 32301

Gary A. Davis
Gary A. Davis & Associates
61 North Andrews Avenue
PO Box 649
Hot Springs, NC 28779

James S. Whitlock
Gary A. Davis & Associates
61 North Andrews Avenue
PO Box 649
Hot Springs, NC 28779

WITNESSES

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
COM _____ ECB (circled) _____	The long-term feasibility of completion of the proposed FP &L Turkey Point 6 & 7 project and PEF's Levy Units 1 & 2 project; the prudence of incurring additional costs and/or recovering those costs from ratepayers on these projects	8, 8A, 16, 17, 23, 23A, 23B, 30, 31
GCL 2 _____		
OPC _____		
RCP 2 _____		
SEC _____		
SGA I _____		
ADM _____		
CLK _____		

DOCUMENT NUMBER-DATE
08226 AUG 10 08
FPSC-COMMISSION CLERK

Arnold Gundersen	The long-term feasibility of completion of the proposed FP &L Turkey Point 6 & 7 project and PEF's Levy Units 1 & 2 project; the prudence of proceeding with these projects in face of likely scheduling delays and other uncertainties and the impact on the cost of the projects based on these uncertainties	8, 8A, 21, 21A, 23, 23A, 23B
------------------	---	------------------------------

PREFILED EXHIBITS

<u>Exhibit</u>	<u>Sponsoring Witness</u>	<u>Description</u>
MNC-1	Cooper	Impact of Declining Demand on Summer Peak Load
MNC-2	Cooper	Natural Gas Wellhead, Henry Hub and Futures Prices
MNC-3	Cooper	Projected Natural Gas Prices Compared to NYMEX Futures Prices
MNC-4	Cooper	Projections of Carbon Compliance Costs
MNC-5	Cooper	Estimates of Potential Mid-Term Efficiency Savings
MNC-6	Cooper	Estimates of Cost of Alternatives to Meet Electricity Needs
MNC-7	Cooper	Impact of Climate Policy on Peak Load: FPL
MNC-8	Cooper	Impact of Climate Policy on Peak Load: Progress
MNC-9	Cooper	Estimates of Nuclear Reactor Overnight Costs: 2001-2009
MNC-10	Cooper	Nuclear Operators, Reactors Cancellations and Moody's Downgrades
MNC-11	Cooper	Standard and Poor's Credit Profile Considerations
MNC-12	Cooper	Diversity of Resource Under Various Technology Scenarios
MNC-13	Cooper	The 1\$/KW Cost Factor

MNC-14	Cooper	The Narrow Margin in FPL's Breakeven Analysis
AG-2	Gundersen	NuStart Letter
AG-3	Gundersen	Moody's 2009
AG-4	Gundersen	Regulatory Risks
AG-5	Gundersen	COMSECY-09-0003
AG-6	Gundersen	NRC Jaczko Speech
AG-7	Gundersen	2007 ANS Annual Meeting
AG-8	Gundersen	Finnish Nuclear Trouble

STATEMENT OF BASIC POSITION

Rule 25-6.0423, F.A.C. explicitly and unequivocally requires FPL and PEF to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing the project at issue, in this case, the Turkey Point 6 & 7 project and the Levy Units 1 & 2 project ("projects").¹ As evidenced by the prefiled testimony of witnesses for FPL and PEF, as well as discovery conducted in this matter, both FPL and PEF have failed to meet their burden to demonstrate the long-term feasibility of these projects.

FPL, because it is unsure of the updated estimated cost of the Turkey Point 6 & 7 project, attempts to demonstrate long-term feasibility through the creation of a new methodology, which, amongst other problems, impermissibly limits the scope of review to a question of whether or not to build nuclear reactors, and in so doing excludes other reasonable alternatives which may be less costly. PEF, in contrast, has failed to even *attempt* to demonstrate long-term feasibility, and instead relies on statements of its witnesses that they are considering issues relevant to long-term

¹ The Rule further requires that a utility file a "detailed statement of project cost" which is sufficient to support a Commission finding of prudence. Rule 25-6.0423(8). Neither utility has done so in this matter.

feasibility. Ultimately, both FPL and PEF have failed to take into account dramatically changed circumstances as well as other uncertainties which have made completion of these projects infeasible.

It is the responsibility of the Commission to fix "fair, just and reasonable" rates for Florida ratepayers. Fla. Stat. § 366.06. In this docket, because FPL and PEF have failed to demonstrate the long-term feasibility of completing these projects, the utilities have as a result failed to demonstrate that the costs for which they seek recovery for 2009 and 2010 are prudent. As a result, the Commission should deny both FPL and PEF's requested cost recovery for 2009 and 2010, as is it would be imprudent for the Commission to allow the utilities to incur further expenses or recover those expenses from Florida ratepayers.

STATEMENT OF ISSUES AND POSITIONS

Legal and Policy Matters

ISSUE 1: Should over or under collections in the Capacity Cost Recovery Clause be included in the calculation of recoverable costs in the NCRC?

SACE Position: No position at this time.

ISSUE 2: When a utility elects to defer recovery of some or all of the costs that the Commission approves for recovery through the Capacity Cost Recovery Clause, what carrying charge should accrue on the deferred balance?

SACE Position: No position at this time.

ISSUE 3: Should FPL and PEF be permitted to record in rate base the incremental difference between Allowance for Funds Used During Construction (AFUDC) permitted by Section 366.93, F.S. and their respective most currently approved AFUDC, for recovery when the nuclear plant enter commercial operation?

SACE Position: No position at this time.

FPL Project Management and Oversight

ISSUE 4: Should the Commission find that for the years 2006 and 2007, FPL's accounting and costs oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project?

SACE Position: No position at this time.

ISSUE 5: Should the Commission find that for the years 2006 and 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project?

SACE Position: No position at this time.

ISSUE 6: Should the Commission find that for the year 2008, FPL's accounting and costs oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

SACE Position: No position at this time.

ISSUE 7: Should the Commission find that for the year 2008, FPL's project management, contracting, and oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

SACE Position: No position at this time.

ISSUE 7A: Is FPL's decision in 2008 to pursue an alternative to an Engineering Procurement Construction (EPC) contract for the Turkey Point 6 & 7 project prudent and reasonable?

SACE Position: No position at this time.

FPL's Project Feasibility

ISSUE 8: Should the Commission approve what FPL has submitted as its annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C?

SACE Position: No. The "breakeven" analysis proffered by FPL in an attempt to demonstrate long-term feasibility was created because FPL is unsure of the updated estimated cost of the Turkey Point 6 & 7 reactors. Rule 25-6.0423(8) F.A.C, explicitly requires that FPL submit a

detailed statement of project cost. This omission makes FPL's "breakeven" analysis of little import to the Commission in determining the long-term feasibility of the Turkey Point 6 & 7 units.

Furthermore, FPL's "breakeven" analysis improperly narrows the scope of review of any prudent feasibility analysis, as it simply asks the question of whether or not to build nuclear reactors. It does not ask whether other alternatives would be less costly.

Finally, the "breakeven" framework created by FPL is flawed because it makes crucial assumptions about escalation and excess capacity which are incorrect, thus distorting the true picture of long-term feasibility to the Commission.

ISSUE 8A: If the Commission does not approve FPL's long term feasibility analyses of Turkey Point 6 & 7, what further action, if any, should the Commission take?

SACE Position: The commission should deny cost recovery for FPL's 2009 and 2010 costs.

ISSUE 9: Should the Commission approve what FPL has submitted as its annual detailed analyses of the long-term feasibility of completing the EPU project, as provided for in Rule 25-6.0423, F.A.C?

SACE Position: No position at this time.

FPL's Extended Power Uprate Project

ISSUE 10: What system and jurisdictional amounts should the Commission approve as FPL's final 2008 prudently incurred costs for the Extended Power Uprate project?

SACE Position: No position at this time.

ISSUE 11: Are FPL's 2008 actual, 2009 actual/estimated and 2010 projected EPU project costs separate and apart from the nuclear costs that would have been necessary to provide safe and reliable service had there been no EPU project?

SACE Position: No position at this time.

ISSUE 12: What system and jurisdictional amounts should the Commission approve as FPL's reasonable actual/estimated 2009 costs for the Extended Power Uprate project?

SACE Position: No position at this time.

ISSUE 13: What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2010 costs for the Extended Power Uprate project?

SACE Position: No position at this time.

FPL's Turkey Point 6 & Project

ISSUE 14: What system and jurisdictional amounts should the Commission approve as FPL's final 2006 and 2007 prudently incurred costs for the Turkey Point Units 6 & 7 project?

SACE Position: No position at this time.

ISSUE 15: What system and jurisdictional amounts should the Commission approve as FPL's final 2008 prudently incurred costs for the Turkey Point Units 6 & 7 project?

SACE Position: No position at this time.

ISSUE 16: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2009 costs for FPL's Turkey Point Units 6 & 7 project?

SACE Position: None. FPL has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C, therefore no such cost could be reasonably and prudently estimated and/or incurred.

ISSUE 17: What system and jurisdictional amounts should the Commission approve as reasonably projected 2010 costs for FPL's Turkey Point Units 6 & 7 project?

SACE Position: None. FPL has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C, therefore no such cost could be reasonably and prudently projected and/or incurred.

FPL's Capacity Cost Recovery Clause Amount

ISSUE 18: What is the total jurisdictional amount to be included in establishing FPL's 2010 Capacity Cost Recovery Clause factor?

SACE Position: No position at this time.

PEF Project Management and Oversight

ISSUE 19: Should the Commission find that for the years 2006 and 2007, PEF's accounting and costs oversight controls were reasonable and prudent for Levy Units 1 & 2 project?

SACE Position: No position at this time.

ISSUE 20: Should the Commission find that for the years 2006 and 2007, PEF's project management, contracting, and oversight controls were reasonable and prudent for Levy Units 1 & 2 project?

SACE Position: No position at this time.

ISSUE 21: Should the Commission find that for the year 2008, PEF's project management, contracting, and oversight controls were reasonable and prudent for Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

SACE Position: No. In regard to the Levy Units 1 & 2 project, PEF unreasonably and imprudently relied upon the assumption that the NRC would grant PEF a LWA as requested in its COLA, and made fundamental contracting, scheduling, and cost assumptions based on this assumption. Now that the LWA request has been withdrawn due to NRC concerns with the request, the schedule for the Levy Units 1 & 2 project has been significantly delayed which will result in increased costs.

ISSUE 21A: Was it reasonable and prudent for PEF to execute its EPC contract at the end of 2008? If the commission finds that this action was not reasonable and prudent, what actions, if any, should the Commission take?

SACE Position: No. PEF unreasonably and imprudently relied upon the assumption that the NRC would grant PEF a LWA as requested in its COLA, and made fundamental contracting, scheduling, and cost assumptions based on this assumption. Now that the LWA request has been withdrawn due to NRC concerns about the request, the schedule for the Levy Units 1 & 2 project has been significantly delayed which will result in increased costs.

SACE believes that the Commission should deny cost recovery for PEF's 2009 and 2010 costs.

ISSUE 22: Should the Commission find that for the year 2008, PEF's accounting and costs oversight controls were reasonable and prudent for Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

SACE Position: No position at this time.

PEF's Project Feasibility

ISSUE 23: Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of continuing construction and completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C., and Order No. PSC-08-0518-FOF-EI (Determination of Need Order)?

SACE Position: No. PEF has simply not submitted *any* analysis regarding the long-term feasibility of continuing construction and completing the Levy Units 1 & 2 project as required by Rule 25-6.0423 or Order No. PSC-08-0518-FOF-EI.

The testimony filed by PEF to date presents little tangible evidence that it is conducting any ongoing analysis in regards to feasibility. Rather, PEF seeks to rely on statements of its witnesses that PEF is considering the feasibility issue and its components, which certainly does not meet its burden under the Rule or the Order.

ISSUE 23A: If the Commission does not approve PEF's long term feasibility analysis of Levy Units 1 & 2, what further action, if any, should the Commission take?

SACE Position: The commission should deny cost recovery for PEF's 2009 and 2010 costs.

ISSUE 23B: What further steps, if any, should the Commission require PEF to take regarding the Levy Units 1 & 2?

SACE Position: At a minimum, PEF should have to demonstrate that Levy Units 1 & 2 are the least-cost alternative of supplying power when the project is reasonably expected to come online.

ISSUE 24: Should the Commission approve what PEF has submitted as its annual detailed analysis 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.?

SACE Position: No position at this time.

PEF's Crystal River Unit 3 Uprate Project

ISSUE 25: What system and jurisdictional amounts should the Commission approve as PEF's final 2008 prudently incurred costs for the Crystal River Unit 3 Uprate project?

SACE Position: No position at this time.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as PEF's reasonably estimated 2009 costs for the Crystal River Unit 3 Uprate project?

SACE Position: No position at this time.

ISSUE 27: What system and jurisdictional amounts should the Commission approve as PEF's reasonably projected 2010 costs for the Crystal River Unit 3 Uprate project?

SACE Position: No position at this time.

PEF's Levy Units 1 & 2 Project

ISSUE 28: What system and jurisdictional amounts should the Commission approve as PEF's final 2006 and 2007 prudently incurred costs for the Levy Units 1 & 2 project as filed in Docket No. 080009-EI?

SACE Position: No position at this time.

ISSUE 29: What system and jurisdictional amounts should the Commission approve as PEF's final 2008 prudently incurred costs for the Levy Units 1 & 2 project?

SACE Position: No position at this time.

ISSUE 30: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2009 costs for PEF's Levy Units 1 & 2 project?

SACE Position: None. PEF has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C. Therefore, no such costs could be reasonably estimated and moreover could not be prudently incurred.

ISSUE 31: What system and jurisdictional amounts should the Commission approve as reasonably projected 2010 costs for PEF's Levy Units 1 & 2 project?

SACE Position: None. PEF has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C. Therefore no such cost could be reasonably projected and moreover could not be prudently incurred.

PEF's 2010 Capacity Cost Recovery Clause Amount

ISSUE 32: Should the Commission approve PEF's alternative cost recovery proposal, as set forth in PEF's Petition and supporting Testimony, as to recovery of NCRC costs?

SACE Position: No position at this time.

ISSUE 32A: If the answer to Issue 32 is yes, what is the total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor?

SACE Position: No position at this time.

ISSUE 32B: If the answer to Issue 32 is no, what is the total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor?

SACE Position: No position at this time.

STIPULATED ISSUES

None.

PENDING MOTIONS/OTHER MATTERS

SACE intends to file a Motion for Leave to Supplement the prefiled testimony of Arnold Gundersen to include information, which has come to light since the filing of Mr. Gundersen's prefiled testimony, which supports opinions previously offered by Mr. Gundersen.

PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

SACE has no pending requests or claims for confidentiality.

OBJECTIONS TO WITNESS' QUALIFICATIONS AS AN EXPERT

None at this time.

COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

SACE has complied with all applicable requirements of the Order Establishing Procedure in this docket.

Dated: August 10, 2009

Respectfully Submitted,

/s/ James S. Whitlock
James S. Whitlock, Esq.
NC Bar No. 34304
Gary A. Davis & Associates
61 North Andrews Avenue
PO Box 649
Hot Springs, NC 28779
(828) 622-0044

CERTIFICATE OF SERVICE
Docket No. 090009

I HEREBY CERTIFY that a true and correct copy of the foregoing REQUEST FOR REPRESENTATION BY QUALIFIED REPRESENTATIVE has been furnished by electronic mail (e-mail) and/or U.S. Mail this the 10th day of August, 2009.

Captain Shayla L. McNeill
AFLOA/JACL-ULT
AFCESA
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403
shayla.mcneill@tyndall.af.mil

Brickfield Law Firm
James W. Brew/F. Alvin Taylor
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007
jbrew@bbrslaw.com

Carlton Fields Law Firm
J. Michael Walls/Diane M. Tripplett
P. O. Box 3239
Tampa, FL 33601-3239
mwalls@carltonfields.com

Florida Power & Light Company
Mr. Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
wade_litchfield@fpl.com

Office of Public Counsel
J. R. Kelly/C. Beck/C. Rehwinkel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

PCS Administration (USA), Inc.
Karin S. Torain
Suit 400

1101 Skokie Boulevard
Northbrook IL 60062
KSTorain@potashcorp.com

Progress Energy Florida, Inc.

Mr. Paul Lewis, Jr.
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740
paul.lewisjr@pgnmail.com

Progress Energy Service Company, LLC

John T. Burnett/R. Alexander Glenn
P. O. Box 14042
St. Petersburg, FL 33733-4042
john.burnett@pgnmail.com

Southern Alliance for Clean Energy, Inc.

c/o Williams Law Firm
E. Leon Jacobs, Jr.
1720 S. Gadsden Street MS 14, Suite 20
Tallahassee, FL 32301
Ljacobs50@comcast.net

White Springs Agricultural Chemicals, Inc.

Randy B. Miller
P. O. Box 300
White Springs, FL 32096
RMiller@pcsphosphate.com

Florida Industrial Power Users Group

John W. McWhirter, Jr.
c/o McWhirter Law Firm
P. O. Box 3350
Tampa, FL 33601
jmcwhirter@mac-law.com

Honorable Charles S. Dean

Senate Majority Whip
311 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Honorable Mike Fasano

8217 Massachusetts Ave.
New Port Richey, FL 34653

Keefe Law Firm

Vicki Gordon Kaufmann/Jon C. Moyle, Jr.
118 North Gadsden Street
Tallahassee, FL 32301
vkaufman@kagmlaw.com

Mark Ballast

2965 Longbrooke Way
Clearwater, FL 33760
X7525w@yahoo.com

Saporito Energy Consultants

Thomas Saporito
P. O. Box 8413
Jupiter, FL 33468-8413
SaporitoEnergyConsultants@gmail.com

/s/James S. Whitlock
James S. Whitlock
Counsel for SACE