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090009-EI

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**Subject:** Filing Docket 090009  
**Attachments:** Docket 090009 PEF Opposition to SACE's Motion for Leave to Supplement Testimony.pdf



Docket 090009  
EF Opposition t.

<<Docket 090009 PEF Opposition to SACE's Motion for Leave to Supplement Testimony.pdf>> Docket 090009 In re: Nuclear Power Plant Cost Recovery Clause

1. This filing is made by

Jeanne Costello on behalf of Dianne Triplett Carlton Fields, P.A.  
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2. This filing is PEF's Response in Opposition to SACE's Motion for Leave to Supplement Testimony of Arnold Gunderson and Alternative Motion for Extension of Time to File Rebuttal Testimony.

3. This filing is consists of 12 pages.

4. This filing is made on behalf of Progress Energy Florida, Inc.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: NUCLEAR POWER PLANT  
COST RECOVERY CLAUSE

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Docket No. 090009-EI 14  
Submitted for Filing: August 20, 2009

**PEF'S RESPONSE IN OPPOSITION TO SACE'S MOTION FOR LEAVE TO  
SUPPLEMENT TESTIMONY OF ARNOLD GUNDERSON AND ALTERNATIVE  
MOTION FOR EXTENSION OF TIME TO FILE REBUTTAL TESTIMONY**

Progress Energy Florida ("PEF" or the "Company"), hereby files its Response in Opposition to the Southern Alliance for Clean Energy's ("SACE") Motion for Leave to Supplement Testimony of Arnold Gunderson (the "Motion"), and states the following:

**INTRODUCTION**

1. SACE has requested the Prehearing Officer to allow it to file Supplemental Testimony of Arnold Gunderson, in which Mr. Gunderson addresses a letter issued by the Nuclear Regulatory Commission ("NRC") on July 28, 2009. PEF opposes the Motion because it is untimely and will result in undue prejudice to the Company. Specifically, this motion comes less than three weeks before the scheduled hearing in this docket, after the deadlines for filing direct testimony, rebuttal testimony, and for concluding discovery have passed, and after the offering witness has been deposed by PEF. If SACE's Motion is granted, PEF will have to spend time and resources that should otherwise be spent preparing for the final hearing, reviewing additional information (above and beyond what has already been timely provided). Furthermore, PEF will be required to undertake this analysis without the benefits of inquiring into any additional issues that may be raised through discovery or deposition. For these reasons, as more fully discussed below, the Company opposes SACE's Motion.

## RESPONSE TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

2. The Order Establishing Procedure (the “Order”)<sup>1</sup> issued in this docket established the controlling dates for all discovery, including the filing of direct and rebuttal testimony. Specifically, the Order established that the Intervenor’s testimony and exhibits were due to be filed on July 15, 2009, and that all rebuttal testimony and exhibits were due to be filed on August 10, 2009.<sup>2</sup> Additionally, the Order set the deadline for completing discovery on August 21, 2009.

3. SACE timely filed the direct testimony and exhibits of Mr. Gunderson on July 15, 2009, in compliance with the Order.

4. On July 30, 2009, counsel for PEF, via telephone, deposed Mr. Gunderson regarding his direct testimony provided in this docket, pursuant to a Notice of Taking Deposition Duces Tecum (“Notice”). Exhibit A to the Notice requested that the witness bring with him, among other things: “1. All documents reviewed to draft testimony in this docket.” The Notice is attached as Exhibit 1 to this Response. When asked to identify the documents Mr. Gunderson had brought with him to comply with the first numbered paragraph of the Notice, Mr. Gunderson described the July 28, 2009 NRC letter. See Deposition of Gunderson, p.6, lines 7-25 (July 30, 2009).<sup>3</sup> Counsel for PEF then asked Mr. Gunderson how he could have relied on a letter to draft his testimony when that letter was issued after he filed his testimony. See Deposition of Gunderson, p. 8, lines 2-5 (July 30, 2009). However, and contrary to the assertion in the Motion, the content of the letter was not discussed during the deposition; merely the existence of the letter was discussed. Furthermore, because the deposition was telephonic and counsel for PEF

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<sup>1</sup> Order No. PSC-09-0137-PCO-EI (March 6, 2009).

<sup>2</sup> Id. at p.8.

<sup>3</sup> The relevant excerpts of the Gunderson deposition are attached as composite Exhibit 2 to this Response.

could not review the letter, counsel for PEF did not have a meaningful opportunity to question Mr. Gunderson as to what his opinions were regarding the content or meaning of the letter.

5. This Commission has refused to grant leave to file supplemental testimony after the applicable testimony due dates have passed, see, e.g., Docket No. 000121-TP; Order No. PSC-01-0994-PCO-TP (April 20, 2001) (denying motion to accept supplemental testimony filed after direct and rebuttal testimony deadlines had passed), and when the filing of the supplemental testimony would unfairly prejudice the opposing party, Docket No. 050863-TP, Order No. PSC-08-0209-PCO-TP (Mar. 28, 2008) (denying motion to supplement testimony upon a finding that it would unduly prejudice the opposing party); cf. Docket No. 940620-GU, Order No. PSC-95-0518-FOF-GU (April 26, 1995) (granting leave to file supplemental testimony only upon a finding that doing so would be fair and allow for the orderly examination of issues).

6. In this case, the deadlines for filing direct and rebuttal testimony have both passed, and it is clear that the filing of this supplemental testimony at this late juncture would prejudice PEF by requiring it to commit resources to analyzing the late-filed supplemental information at a time when all available resources are necessary for preparing for the upcoming hearing. In addition, the deadline for serving discovery on SACE with respect to this supplemental testimony and exhibit has passed.<sup>4</sup> The hearing in this proceeding begins September 8, 2009, just over three weeks from the filing of the Motion. As SACE has offered no justification for the late-filing of this testimony in contradiction of the Order, see Order No. PSC-08-0209-PCO-TP, at 2 (noting that the movant had failed to justify why the late-filed testimony should be admitted with less than three weeks remaining before the scheduled hearing), and its

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<sup>4</sup> Because discovery must be completed by August 21, 2009, PEF must have served discovery on SACE by July 31, 2009 to allow for the twenty day response time to pass. Having just received the supplemental testimony, PEF is unable to take any additional discovery with respect to the new testimony and exhibit.

admission would prejudice the Company's position in this case, SACE's motion should be denied.

WHEREFORE, for the reasons set forth above, PEF respectfully requests the Prehearing Officer to deny SACE's Motion for Leave to File Supplemental Testimony.

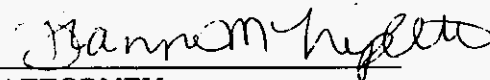
Respectfully submitted,

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**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 14th day of August, 2009.

  
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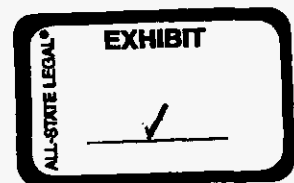
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## SCHEDULE A

The deponent should bring with him the following documents:

1. All documents reviewed to draft testimony in this docket. The deponent may instead bring a list of all such documents reviewed, provided that all the documents were produced by PEF in the course of discovery in this proceeding.
2. All time records (with PEF-specific work broken out separately) reflecting work done to develop the PEF-specific testimony, including but not limited to expense statements, timesheets, invoices, fee credits, and expense reports.
3. All bills rendered to Southern Alliance for Clean Energy ("SACE") for the services provided by you and/or Fairewinds Associates, Inc. for the purpose of developing the PEF-specific testimony.
4. Any and all agreements between you and SACE regarding the PEF-specific testimony, including but not limited to engagement agreements, consulting agreements, and documents reflecting the scope of the work you and/or Fairewinds Associates, Inc. were to perform.
5. Any and all reports, other than the pre-filed testimony, that you and/or Fairewind Associates, Inc. prepared or drafted with respect to the Levy Nuclear Project and/or the CR3 Uprate project.





BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant  
Cost Recovery Clause

Docket No. 090009-EI  
Submitted for Filing:  
July 28, 2009

Telephonic Deposition of ARNOLD  
GUNDERSEN, held in Burlington, Vermont on July  
30, 2009, beginning at 9 a.m., before JoAnn Q.  
Carson, a Notary Public, within and for the  
State of Vermont.

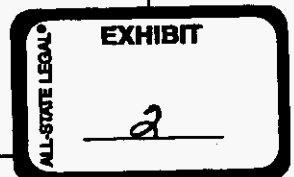
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I N D E X

Deponent	Page
Arnold Gundersen -----	4
Examination by Ms. Triplett -----	4

Exhibits	Description	Page
One	Invoice No. 115	7
Two	July 28, 2009 Letter	7

(Original exhibits are attached to the org. deposition.)

1           A.       The next thing I have is an invoice which you  
2 requested dated Thursday, July 23rd to Attorney Whitlock  
3 which you requested.

4           Q.       Okay.

5           A.       And the last thing I have is a letter dated  
6 July 28th and it is from Sara Kirkwood, Counsel for the  
7 NRC staff, to the Administrative Law Judges on Levy  
8 County, and your firm, I believe, is already carboned on  
9 it. I'm not sure.

10                    Anyway, John O'Neill, Esquire, Robert Haemer,  
11 Esquire, Counsel for Progress Energy Florida, but they are  
12 at Pillsbury Winthrop. They already have copies of this,  
13 but it's a one-page letter plus two pages of certification  
14 of service, and it explains that the NRC plans to extend  
15 the review dates for Levy County. Both the safety review  
16 will be extended and the environmental review will be  
17 extended.

18           Q.       Great, and that's dated July 28th, 2009?

19           A.       Yes, and it's written to the three  
20 Administrative Law Judges; Alex Karlin, William Murphy,  
21 and Anthony Baratta, and signed electronically by Sara  
22 Kirkwood, Counsel for the NRC staff.

23           Q.       Okay. Thank you. Is that letter -- you said  
24 July 28th. Is that of 2009?

25           A.       Yes.

1 Q. Okay. Let's go -- can we mark -- the invoice  
2 that was dated July 23rd, can we mark that as Exhibit  
3 Number One?

4 (A document was marked Exhibit One  
5 for identification.)

6 BY MS. TRIPLETT:

7 Q. And then can we go ahead and mark that July  
8 28th, 2009 letter as deposition Exhibit Number Two?

9 (A document was marked Exhibit Two  
10 for identification.)

11 BY MS. TRIPLETT:

12 Q. Thank you. Mr. Gundersen, could you please  
13 explain why you brought with you the July 28th, 2009  
14 letter meaning which -- which portion of the subpoena  
15 duces tecum do you think that the letter falls into?  
16 Which number?

17 A. I thought it had to do --

18 Q. Are you just looking through?

19 A. Yeah, I'm sorry, I spoke over you.

20 Q. That's okay. Take your time. I just wanted  
21 to make sure you heard.

22 A. Yes. I was looking at Schedule A and the  
23 process of evaluating licensing delays is still dynamic,  
24 and after my report was done this letter came out and  
25 basically confirms my analysis that there will be further

1 licensing delays.

2 Q. But you did not review this letter to draft  
3 your testimony because the letter was issued after you  
4 submitted your testimony; is that right?

5 A. That's correct.

6 Q. And you were retained by SACE in this matter;  
7 is that right?

8 A. Yes, that's correct.

9 Q. The Southern Alliance for Clean Energy?

10 A. Yes.

11 Q. And what was your assignment in this matter?

12 A. I was contacted by SACE to determine if  
13 schedule delays were in fact a possibility on the Levy  
14 County unit.

15 Q. Were you asked to do anything else?

16 A. No. My -- I was asked to look at the schedule  
17 and the likelihood of delay.

18 Q. And who from SACE contacted you, sir?

19 A. Their attorney, Gary Davis.

20 Q. And do you understand, sir, that you were to  
21 file your complete opinion on the issues you were asked to  
22 review in your prefiled testimony?

23 A. I -- you emphasize complete. I understand I  
24 was to provide my prefiled testimony, yes.

25 Q. Well, you were -- you will understand that