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Subject: Docket 120009-EI - SACE Prehearing Statement
Attachments: Prehearing Statement 120009 (SACE).pdf

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- 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 13 pages

- e. The document attached for electronic filing is SACE's Prehearing Statement.

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In re: Nuclear Cost Recovery Clause)
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DOCKET NO. 120009-EI
FILED: August 6, 2012

**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-12-0078-PCO-EI, Order Establishing Procedure, as modified by Order No. PSC-12-0341-PCO-EI, First Order Revising Order Establishing Procedure, hereby submits its Prehearing Statement in regards to the above-styled docket.

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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 further found 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, under the guise of caution and concern for ratepayers, 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 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 three 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. Moreover, natural gas prices remain depressed and there is no greenhouse gas legislation on the horizon, and these two key drivers in any feasibility analysis, standing alone, make new nuclear generation cost prohibitive and impractical 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. § 366.06, 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

Generic Legal Issue

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: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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 remains focused solely on obtaining a COL from the NRC to create the option to build the LNP and has continued to defer all activities related to actual construction. 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.

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 impacting the LNP, including, but not limited to: depressed natural gas prices, absence of a cost of carbon; other economic conditions; and the true impact of efficiency and renewable. The Commission should deny cost recovery for PEF’s 2012 and 2013 costs related to the LNP.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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

SACE Position: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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.

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.

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.

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.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: **SACE Position:** No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: **SACE Position:** No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: **SACE Position:** No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: **SACE Position:** No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

PEF – Final Fall-out Issue

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

SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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 and has continued to defer all activities related to actual construction. 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.

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 impacting TP 6 & 7, including, but not limited to: depressed natural gas prices, absence of a cost of carbon; other 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.

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 at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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 at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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.

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.

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.

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.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

Issue 28A: Based on the evidence, under current circumstances, should the Commission evaluate the economic feasibility of the Turkey Point and St. Lucie Extended Power Uprate activities separately? (OPC – contested)

SACE Position: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.

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: **SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.**

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: **SACE Position: No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.**

FPL – Final Fall-out Issue

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

SACE Position: **No position at this time. SACE reserves the right to amend this position in accordance with the provisions of Order No. PSC-12-0078-PCO-EI.**

STIPULATED ISSUES

None.

PENDING MOTIONS/OTHER MATTERS

None at the time of filing of this Prehearing Statement.

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 Order No. PSC PSC-12-0078-PCO-EI, Order Establishing Procedure, as modified by Order No. PSC-12-0341-PCO-EI, First Order Revising Order Establishing Procedure.

Dated: August 6, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE
Docket No. 120009-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing **PREHEARING STATEMENT** has been furnished by electronic mail (e-mail) ad/or U.S. Mail this the 6th day of August, 2012.

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