SUPREME COURT OF FLORIDA

SOUTHERN ALLIANCE FOR
CLEAN ENERGY,

Appellant,

vs.

CASE NO.: SC11-2465
L.T. No.: 110009-EI

ART GRAHAM, ETC., ET AL.,

Appellees.
_____/

ON APPEAL FROM THE FLORIDA PUBLIC SERVICE COMMISSION

AMENDED AMICUS CURIAE BRIEF OF THE VILLAGE OF PINECREST, FLORIDA IN SUPPORT OF APPELLANT SOUTHERN ALLIANCE FOR CLEAN ENERGY

WILLIAM C. GARNER
Florida Bar No. 577189
BRIAN P. ARMSTRONG
Florida Bar No. 888575
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070
(850) 224-4073 Facsimile

COUNSEL FOR AMICUS CURIAE,
VILLAGE OF PINECREST, FLORIDA

TABLE OF CONTENTS

PAGE No.

TABLE OF CITATIONS

PAGE

Cases

Table of Citations Cont. **PAGE**

Statutes

Table of Citations Cont. **PAGE**

Other Authorities

Laws of Florida

Florida Constitution

STATEMENT OF INTEREST

The Village of Pinecrest (Pinecrest or Village) is a Florida municipality located within Miami-Dade County authorized under Florida law to exercise governmental power for the protection of the health, safety and welfare of its approximately 19,000 residents, and to conduct the daily operations necessary to meet that responsibility. Pinecrest, at a significant cost, obtains the electricity needed for its operations from Florida Power & Light Company (FPL), which also exclusively serves the Village's residents and businesses. The Village asked to appear as amicus curiae in this case to address the constitutionality of the nuclear cost recovery statute, as codified in Sections 366.93, and 403.519(4), Florida Statutes. Appellants have identified a critical flaw in the statute in that it confers on the Florida Public Service Commission an impermissible level of discretion in determining rates for customers of companies, like FPL, that are intended beneficiaries of the statute. The Village believes that it and its residents and businesses, as rate-paying consumers and as persons also potentially impacted by FPL's proposed transmission lines associated with its new nuclear power plant project at Turkey Point, would be substantially affected by the resolution of this issue, and that numerous other local governments and their constituencies are likewise affected. Accordingly, this appeal presents

issues of statewide importance. Pinecrest believes its participation will assist the Court in resolving the issues in this case.

SUMMARY OF THE ARGUMENT

The Florida Public Service Commission (Commission) is charged under Section 366.06, Florida Statutes, with fixing fair, just and reasonable rates. This standard has a history reaching back more than a century with origins in the Common Law. It has been universally codified by state legislatures and Congress, and defined and interpreted by courts at every level. To apply this standard, courts and regulatory commissions must balance the interests of customers and shareholders.

The nuclear cost recovery law codified in Sections 366.93 and 403.519(4), Florida Statutes, allows advanced nuclear cost recovery ("ANCR") in rates without a fair, just and reasonable determination and thus constitutes an impermissible delegation of legislative authority.

Essentially, to approve the ANCR requested by the utilities, the Commission has interpreted the nuclear cost recovery law to avoid application of the fair, just and reasonable standard. When the fair, just and reasonable standard is removed, the balancing of customer and shareholder interests also is removed.

Absent even minimal standards to govern ANCR, the Commission is left with unbridled discretion to set policy and assumes the function reserved to the Legislature under Article II, Section 3 of the Florida Constitution. As a result, the Commission has rendered inconsistent interpretations of the nuclear cost recovery law which would flaunt the fair, just and reasonable standard of ratemaking should it be applied.

STANDARD OF REVIEW

Whether the nuclear cost recovery statute is unconstitutional on its face as an unlawful delegation of legislative power prohibited by Article II, Section 3 of the Florida Constitution is a question of law, and therefore, the standard of review as to this issue should be *de novo*.

ARGUMENT

I. HISTORICAL BACKGROUND

Consumer protection is the manifest purpose of public utility and common carrier rate regulations.[1] For more than a century American courts have reviewed rate regulations enacted under state police powers to determine whether such regulations are reasonably related to this obvious governmental interest.[2]

However, a review of the history of public utility rate regulation reveals an inherent tension between the utility customer's right to be free from unreasonable exactions of funds by a utility[3] and the right of a utility

---

[1] *Federal Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 583 (1942).

[2] *See*, e.g., *Chicago, M. & St. P. Ry. v. Minnesota*, 134 U.S. 418 (1890) (holding that the railroad is not free from the legislative enactment granting the railroad commission the power to regulate rate, but that rates set by the commission are reviewable by the court); *Wilcox v. Consolidated Gas Co.*, 212 U.S. 19 (1909) (finding regulatory acts did not deprive company of reasonable rates of return).

[3] *Smyth v. Ames*, 169 U.S. 466, 544, note 3 (1898); *State ex rel. Watts Engineering Co. v. Public Service Com.*, 191 S.W. 412 (Mo. 1917); *Atl. City Sewerage Co. v. Bd. of Public Util. Comm'rs*, 26 A. 2d 71, 76 (N.J. 1942); *Klamath Off-Project Water Users, Inc. v. PacifiCorp*, 240 P. 3d 94 (Or. Ct. App. 2010).

investor to just compensation for its investment in the utility.[4] When analyzing these conflicting interests, courts consistently have inquired whether the rates established are ultimately "fair, just and reasonable."[5] Although this standard has its origins in the Common Law,[6] it has been universally codified with only minor deviation. The fair, just and reasonable standard constrains both legislatures and the regulatory commissions to which they customarily delegate rate setting authority. Courts consistently have found that whatever method has been chosen for calculating appropriate rates for a utility,[7] if the rates set effectively balance the utility investors' interest in achieving a reasonable rate of return against the customers' interest in paying a reasonable price for the service, then the rates are "fair, just and reasonable."[8]

---

[4] *Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Gulf Power Co. v. Bevis*, 296 So. 2d 482 (Fla. 1974).

[5] *Duquesne Light Co. v. Barasch,* 488 U.S. 299 (1989); *Fed. Power Com. v. Hope Natural Gas Co.*, Supra, note 4; *Fed. Power Comm'n v. Natural Gas Pipeline Co.*, Supra, note 1; *Gulf Power v. Bevis*, Supra, note 4.

[6] *Munn v. Illinois*, 94 U.S. 113, 133-135 (1877).

[7] Applying the rate base "prudent investment" theory or the "used and useful" theory (among others), for example.

[8] *Gulf Power v. Bevis*, Supra, note 4.

It is the universal acceptance of this fair, just and reasonable standard coupled with the long experience courts and regulators have in its application which enables a legislature to delegate to a state utility commission some degree of discretion in exercising the legislative power of rate setting.

Florida's regulatory law reflects these ideals. In enacting Florida's public utility regulatory law in 1951, the Legislature invoked its police powers to protect the public's welfare from inevitable abuses if a natural monopoly were to be allowed to act only in its self-interest, declaring:

> The regulation of public utilities as defined herein is declared to be in the public interest and this Act shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.[9]

By this declaration the Legislature identified the manifest purpose of Florida's public utility regulatory law: the protection of the public welfare. Where a regulatory program cannot by some rational interpretation be said to protect the public welfare, it has ceased to serve its legitimate purpose.

[9] Ch. 26545, Laws of Fla. (1951).

In 1951, by delegating in Section 366.06, Florida Statutes, to the Florida Public Service Commission (Commission) the authority to "determine and fix fair, just and reasonable rates . . . ." the Legislature expressly recognized the constitutional dimensions of rate regulation and the concomitant balancing act the Commission is to perform.[10] The Commission thus has been continually bound by the standard of fair, just and reasonable rates, and is constitutionally required to balance the competing interests of customers and shareholders.[11]

A. The Rate-Setting Process Established in the Nuclear Cost-Recovery Law.

A brief explanation of the two step process for including the utilities' nuclear costs, ultimately, in base rates is warranted. Under the ANCR, the utility annually files with the Commission costs incurred and projected for each year which are alleged to be associated with nuclear plant and related transmission projects. The utility then requests that such costs be recovered through the capacity cost recovery clause.

---

[10] The Legislature characterizes the rate-setting standard as a "just, reasonable and compensatory" standard in Section 366.041, Florida Statutes. A virtually synonymous standard is the "fair, just and reasonable" standard found in Section 366.06, Florida Statutes, discussed in more depth in this brief.

[11] *Gulf Power v. Bevis*, Supra, note 4.

After the nuclear project and transmission facilities are placed into service and actually serving customers, the utility accumulates all the nuclear costs incurred which previously were being recovered through the capacity cost recovery charge, together with the utility's projected operating expenses for the first twelve months of service. The utility then incorporates these investments and costs into its rate base and operating expenses, together with all of its other capital investments and operating costs for its gas plants, coal plants, etc.

The accumulated capital investments and operating costs comprise the utilities revenue requirements. The fair, just and reasonable standard is not, and has never, been applied to alleged nuclear investments and project expenses as of this time. Rather, this revenue requirement is then filed with the Commission and, as Section 366.93(4), Florida Statutes, mandates, "the utility shall be allowed to increase its base rate charges by the projected annual revenue requirements" of the nuclear project. Thus, the utility's revenue requirements associated with the nuclear project, which never have seen application of the fair, just and reasonable rate standard, are combined with the utility's other revenue requirements and associated rates.

B. The Failure to Identify a Fair, Just and Reasonable Rate Standard Or Similar Standard Renders the Nuclear Cost Recovery Law Unconstitutional.

The fair, just and reasonable rates standard, until passage of the nuclear cost recovery law, has been applied in every aspect of setting rates for Florida's utilities. The standard applies in traditional file-and-suspend rate cases pursuant to Section 366.06, Florida Statutes. In addition, more than half of the rates customers pay to FPL and PEF are established outside of the file-and-suspend process through the use of various cost recovery clauses.[12] Some of these rate adjustment clauses allow utilities more immediate recovery of those operating costs which are subject to significant and rapid changes in amount outside of the utility's control, such as the perennially volatile price of generating fuel.

The Legislature more recently has extended these clauses to include a utility's expedited recovery of large capital investments, such as capital invested to retrofit power plants to comply with environmental regulations.[13] The critical distinction between the nuclear cost recovery law being challenged and the statute authorizing the environmental cost recovery mechanism is the express application by statute of the fair, just and

[12] Florida Public Service Commission, *Report to the Legislature on Utility Revenue Decoupling* (2008) (http://www.floridapsc.com/publications/pdf/electricgas /Decoupling Report_To_Legislature.pdf)

[13] § 366.8255, Fla. Stat. (2011).

reasonable rate standard.[14] The environmental cost recovery statute explicitly references Section 366.06, Florida Statutes, where the fair, just and reasonable standard is codified.

The additional Commission-established cost recovery clauses were established expressly in reliance on the Commission's general rate setting authority under Section 366.06, Florida Statutes, and thus also are governed by that section's requirement that rates be fair, just and reasonable.

In stark contrast, the nuclear cost recovery law contains no reference to the fair, just and reasonable standard, nor Section 366.06, Florida Statutes. In fact, the Commission has interpreted the nuclear cost recovery law's silence in this regard to mean that the fair, just and reasonable rate standard does not apply to nuclear investments and costs.[15]

In concluding that it did not have the authority to force a utility to share the risk of recovery of its nuclear investments and costs, the Commission found as follows:

> Here, our authority pursuant to Section 366.06, F.S., to set fair, just, and reasonable rates does not control cost recovery, because the Florida Legislature enacted Section 366.93, F.S., to

[14] § 366.8255(4), Fla. Stat. (2011).

[15] *In re nuclear cost recovery clause*, 11 F.P.S.C. 2:44 (2011).

> specifically govern nuclear cost recovery in Florida.[16]

For the first time in its history of regulating the rates of Florida's utilities, the Commission determined that it could do so without reference to the guiding standard of fair, just and reasonable rates. Instead, the Commission suggests that, while it has no authority to deny recovery of nuclear costs and investments, it may invoke the Commission's "broad ratemaking powers to set fair, just, and reasonable rates and charges pursuant to Section 366.04, F.S." to allow a utility to adjust the timing of its recovery of such costs and investments.[17] Clearly, the nuclear cost recovery law's failure to invoke the fair, just and reasonable rate standard or some similar standard to guide the Commission's nuclear rate-setting obligation, has resulted in the Commission acting with unbridled discretion and establishing policy in an unconstitutional manner.

II. SECTIONS 366.93 AND 403.519(4), FLORIDA STATUTES, CONSTITUTE AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY BECAUSE THE LEGISLATURE FAILED TO PROVIDE ADEQUATE STANDARDS TO GUIDE THE COMMISSION IN ITS IMPLEMENTATION AND ADMINISTRATION OF THE STATUTE.

---

[16] *Id.*

[17] *Id.*

In enacting the nuclear cost recovery law,[18] and subsequent amendments,[19] the Legislature failed to articulate any standard to guide the Commission in administering the law. In its attempts to administer a law devoid of guidance or standards, the Commission has taken on the mantle of lawmaker by issuing a series of decisions that establish new policy where none is articulated by the Legislature.

Article II, Section 3 of the Florida Constitution provides:

> **Branches of government.—** The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

This Court has read the second sentence of Article II, Section 3 to require the observance of a strict separation of powers. In explaining this mandatory separation of powers this Court said:

> [U]ntil the provisions of *Article II, Section 3 of the Florida Constitution* are altered by the people we deem the doctrine of nondelegation of legislative power to be viable in this State. Under this doctrine fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and

[18] § 366.93, Fla. Stat. (2011) and § 403.519(4)(e), Fla. Stat. (2011) first enacted in Ch. 06-230, §§ 43 and 44, Laws of Fla. (2006).

[19] Ch. 07-117, Laws of Fla. (2007); Ch. 08-227, Laws of Fla. (2008).

> administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.[20]

This Court has made clear that statutes which charge an agency with the implementation of policy must not repose in that agency unfettered discretion so that the agency is not implementing policy but creating it. As early as 1919, this Court opined that:

> The legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law; but may enact a law complete in itself designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.[21]

This Court has maintained this view for nearly a century, expressly invoking the non-delegation doctrine in 1978 in *Askew v. Cross Keys Waterways,*[22] and re-affirming the doctrine in 2004 in *Bush v. Schiavo*.[23]

---

[20] *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978) (emphasis in original).

[21] *Bailey v. Van Pelt*, 82 So. 789, 793 (Fla. 1919).

[22] Supra, note 20.

[23] 885 So. 2d 321 (Fla. 2004).

As discussed previously, until enactment of the nuclear cost recovery law, all rates set by the Commission had been set by reference to the "fair, just and reasonable" rate standard. Though this standard provides the Commission with broad discretion, it nevertheless constrains the Commission to set rates within a zone of reasonableness which may be scrutinized by this Court. If rates are established within this zone, the utility's customers should be paying rates that are no higher than necessary to insure the utility's recovery of costs of doing business, and a fair rate of return on investments.[24]

The nuclear cost recovery law does not limit the Commission's discretion in this way. Indeed, no explicit reference is made to the fair, just and reasonable standard in Sections 366.93 or 403.519, Florida Statutes, nor is other guidance given to the Commission.[25]

---

[24] *Gulf Power v. Bevis*, Supra, note 4.

[25] The unprecedented nature of this unfettered rate relief for utilities is confirmed by the Legislature's concomitant passage of Section 403.519(4)(e), Florida Statutes. Chapter 403 is titled "Environmental Control," and the new Section 403.519(4)(e) virtually restates the Legislature's bestowal in Section 366.93, Florida Statutes, of virtually unbridled discretion on the Commission to raise customer rates to cover a utility's nuclear investments and costs.

An example of guidance which the Legislature has provided to the Commission is found in Section 366.041, Florida Statutes, where the Legislature authorizes the Commission, when setting rates, to give consideration to "the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources . . . ."

Instead, the Commission has exercised unbridled discretion to authorize rates solely to "promote utility investment in nuclear power plants."[26] The Commission has read this clause as a license to establish rates in such a fashion as to guarantee the construction of nuclear power plants. Thus, the Commission has to this date failed to deny to FPL or PEF recovery of any claim for costs associated with the development of the new nuclear power plants.[27]

---

[26] § 366.93(2), Fla. Stat. (2011).

[27] In Order No. PSC-11-0095-FOF-EI, FPL withdrew its request to recover lobbyist registration expenses through the nuclear cost pass-through after a PSC witness testified that it is Commission practice to disallow lobbying costs. The Commission has found on numerous occasions that lobbying costs should be borne by utility investors since there is no evidence that

The Commission has rejected proposals made by customer representatives in nuclear cost recovery proceedings on the basis that the fair, just and reasonable rates standard does not apply. For example, customer representatives requested implementation of a "risk sharing" measure designed to "provide an incentive for a utility to complete a nuclear project within an appropriate, established cost threshold."[28] The Commission rejected the request, finding that the fair, just and reasonable rate standard could not be applied to limit the utilities' recovery of nuclear costs. The Commission concluded that the Legislature expressly excluded the application of the fair, just and reasonable rates standard when it required the Commission to, by rule, establish alternative cost recovery mechanisms that "promote utility investment in nuclear . . . power plants and allow for the recovery in rates of all prudently incurred costs . . . ."[29]

This is in stark contrast to the situation in which a utility has requested a means to facilitate recovery of its nuclear costs. Curiously, in approving the utility's request to defer recovery of certain nuclear costs to a later date,

---

customers receive any benefits from such expenditures. *In re nuclear cost recover clause*, 11 F.P.S.C. 11:254 (2011).

[28] *In re nuclear cost recovery clause*, Docket No. 100009-EI, Post-Hearing Staff Recommendation.

[29] *In re nuclear cost recovery clause*, 09 F.P.S.C. 1:222 (2009).

the Commission found authority for deferral is "derived from our broad ratemaking powers to set fair, just, and reasonable rates and charges pursuant to Section 366.04, F.S.,[30] and that such deferral does not conflict with the ultimate directive of Section 366.93, F.S., to allow recovery of all prudently incurred costs."[31] Thus, the Commission has taken the position that the fair, just and reasonable standard applies where a utility requests additional time to recover nuclear costs, but cannot be applied when a customer representative challenges whether nuclear costs should be recovered in rates at all. The Commission is necessarily "say[ing] what the law shall be," a role prohibited to it by the Florida Constitution.[32]

Should the proposed nuclear units ever enter commercial service,[33] the nuclear cost recovery law, again, will force the Commission to make policy in an unconstitutional manner. Section 366.93(4), Florida Statutes, requires the Commission to summarily authorize an adjustment in base rates upon the

---

[30] Note that the authority the Commission describes is derived from Sections 366.041, 366.05 and 366.06, Florida Statutes, not Section 366.04, Florida Statutes.

[31] *In re nuclear cost recovery clause*, Supra, note 15.

[32] *Sarasota County v. Barg*, 302 So. 2d 737 (Fla. 1974) (quoting *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209 (Fla. 1968)).

[33] An eventuality which is far from certain to occur. See the Southern Alliance for Clean Energy's Initial Brief on the Merits.

nuclear power plant (or associated facilities) being placed into service. No provision of the nuclear cost recovery law addresses whether the fair, just and reasonable rates standard, or any other standard, should apply in setting the new base rate under this section.[34] The Commission will be forced to determine whether the fair, just and reasonable rate standard should apply when nuclear related costs and investments are combined with the utility's other costs and investments in base rates.

The implications of the Commission's determination are far-reaching. A Commission interpretation that the statute prohibits it from applying the fair, just and reasonable rate standard will eliminate the balancing of interests which would otherwise occur outside of the nuclear context.

III. CONCLUSION

For the above reasons, amicus curiae, Village of Pinecrest, urges this Court to declare the nuclear cost recovery law, as first enacted in Chapter

[34] See, Section 366.93(4), Florida Statutes, which requires the Commission to allow the utility to increase its base rate charges by the projected annual revenue requirements of the nuclear power plant based on the annual revenue requirements of the plant for the first 12 months of operation. The Legislature has offered no guidance whether standards provided in Sections 366.041 and 366.06, Florida Statutes, shall apply in this context. Presumably the Commission will be required to interpret the statute years from now when, or if, the proposed nuclear power plants are placed into service, thus once again establishing policy where the Legislature failed to do so.

2006-230, Laws of Florida, and subsequently amended, unconstitutional on its face or in the alternative, unconstitutional as applied by the Florida Public Service Commission. The Village further requests that this Court remand the matter to the Commission with instructions to conduct proceedings as may be necessary to determine the amount of refunds to customers as may be due.

Respectfully Submitted,

\s\
WILLIAM C. GARNER
Florida Bar No. 577189
BRIAN P. ARMSTRONG
Florida Bar No. 888575
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
850-224-4070
850-224-4073 (Facsimile)

COUNSEL FOR AMICUS CURIAE VILLAGE OF PINECREST, FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the attached Service List, this 13th day of April, 2012.

\s\
WILLIAM C. GARNER

SERVICE LIST

GARY A. DAVIS
JAMES S. WHITLOCK
Davis & Whitlock, P.C.
P.O. Box 649
61 North Andrews Avenue
Hot Springs, NC 28743

E. LEON JACOBS, JR.
Williams & Jacobs
2510 Miccosukee Road, Suite 104
Tallahassee, FL 32308

MARY ANNE HELTON
SAMANTHA M. CIBULA
KEINO YOUNG
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

J. R. KELLY
CHARLES J. REHWINKEL
JOSEPH A. MCGLOTHLIN
ERIK L. SAYLER
Office of Public Counsel
c/o the Florida Legislature
111 W. Madison Street, Suite 812
Tallahassee, FL 32399

JOHN T. BURNETT
Progress Energy Service
Company, LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042

PAUL LEWIS, JR.
Progress Energy Florida, Inc.,
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740

STEPHEN H. GRIMES
D. BRUCE MAY, JR.
ELIZABETH L. BEVINGTON
KEVIN W. COX
Holland & Knight LLP
Post Office Drawer 810
Tallahassee, FL 32302

J. MICHAEL WALLS
BLAISE N. HUHTA
Carlton Fields Law Firm
P.O. Box 3239
Tampa, FL 33601

MATTHEW BERNIER
Carlton Fields Law Firm
215 S. Monroe Street, Suite 500
Tallahassee, FL 32301

BRYAN S. ANDERSON
JESSICA CANO
Florida Power & Light Co.
700 Universe Boulevard,
Juno Beach, FL 33408-0420

VICKI GORDON KAUFMAN
JON C. MOYLE, JR.
Florida Industrial Power Users Group
c/o Keefe Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

JAMES W. BREW
F. ALVIN TAYLOR
Brickfield, Burchette, Ritts
Stone, P.C.
Eighth Floor, West Tower
1025 Thomas Jefferson Street, NW
Washington, DC 20007

RAOUL G. CANTERO
DAVID P. DRAIGH
White & Case LLP
Southeast Financial Center
200 South Biscayne Boulevard
Suite 4900
Miami, Florida 33131-2352

KAREN S. WHITE, Staff Attorney
c/o AFLSA/JACL-ULT
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

RANDY B. MILLER
White Springs Agricultural
Chemicals, Inc.
P.O. Box 300
15843 Southeast 78th Street
White Springs, FL 32096

MATTHEW J. FEIL
Gunster Law Firm,
215 S. Monroe Street, Suite 601
Tallahassee, FL 32301

JACOB A. BRAINARD
402 S. Monroe Street, Room 1001
Tallahassee, FL 32399

CERTIFICATE OF FONT SIZE COMPLIANCE

I HEREBY CERTIFY that the foregoing Amicus Curiae Brief of the Village of Pinecrest, Florida, in Support of Appellant Southern Alliance for Clean Energy complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

\s\
WILLIAM C. GARNER