

SUPREME COURT OF FLORIDA

SOUTHERN ALLIANCE FOR
CLEAN ENERGY,

Appellant,

v.

CASE NO.: SC11-2465

L. T. No.: 110009-EI

ART GRAHAM, ETC., ET AL.,

Appellees.

**VILLAGE OF PINECREST, FLORIDA'S, MOTION
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

The VILLAGE OF PINECREST, FLORIDA, by and through its undersigned counsel, pursuant to Fla. R. App. P. 9.370, hereby moves for leave to appear as Amicus Curiae in the above cause and to file a brief in support of Appellant SOUTHERN ALLIANCE FOR CLEAN ENERGY, and states:

1. This appeal relates to Order No. PSC-11-0547-FOF-EI – a Final Order of the Florida Public Service Commission (PSC) approving nuclear cost recovery amounts for Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF) – and the PSC's erroneous interpretation and application of the Nuclear Cost Recovery Statutes, sections 366.93 and 403.519(4), Florida Statutes. At issue in this appeal is the proper interpretation and application of these provisions, and whether they unconstitutionally violate Florida's non-delegation

doctrine by failing to articulate clear enough standards for the PSC's implementation of the law. This case presents issues of great public importance and statewide implication as the issues in this case ultimately affect the cost of electricity available for use by local governments, businesses and residents throughout the service areas of the State's two largest investor-owned electric utilities. These two utilities combined provide service to more than 6 million customer accounts and have a combined service area encompassing all or part of 58 of Florida's 67 counties.

2. The VILLAGE OF PINECREST, FLORIDA, (PINECREST) is a Florida municipality located within Miami-Dade County serving a population of approximately 19,000 residents. Situated along U.S. 1 south of the City of Miami between the City of Coral Gables and the Village of Palmetto Bay, PINECREST obtains electric service from a single provider, FPL. FPL, like PEF, generates a significant amount of the electricity it supplies from the operation of nuclear power plants. Like PEF, FPL proposes to increase its nuclear power production through upgrades to existing nuclear power plants and through the construction of new nuclear power plants. In furtherance of its nuclear power plant development, FPL petitions the PSC annually for rate increases to recover its alleged costs associated with preliminary planning of additional nuclear generating capacity. The petitions filed by FPL and PEF seeking PSC review and approval of a final true-up for 2009

and 2010 costs and approval of actual and projected 2011 and 2012 costs related to their respective nuclear projects are at issue in the present case.

3. PINECREST, its businesses and residents are substantially affected by the issues presented in this appeal. PINECREST uses the electricity purchased from FPL for Village operations such as police, public works, administrative, and other typical governmental and public services. The cost of electricity is a significant annual expense to PINECREST and the other political subdivisions within the FPL and PEF service areas. The outcome of this case will greatly affect the cost of electricity for all Florida counties and municipalities, their businesses and residents, including PINECREST and its businesses and residents, who receive electric utility service from either FPL or PEF and who pay rates established by the PSC through the annual Nuclear Cost Recovery Clause rate mechanism under color of authority from sections 366.93 and 403.519(4), Florida Statutes.

4. In addition, FPL proposes that massive transmission lines being licensed in association with the development of FPL's new nuclear power plants be constructed directly through PINECREST and several similarly situated municipalities in Miami-Dade County. The PSC Orders at issue authorize FPL to recover the costs of development of these transmission line projects under the Nuclear Cost Recovery Statute together with costs incurred in pursuit of Florida Department of Environmental Protection site certification for these proposed

transmission lines. Under color of authority from the statutes at issue in this case, the PSC has approved cost recovery for the associated costs without any assurances that FPL will ultimately build the new nuclear power plants at issue.

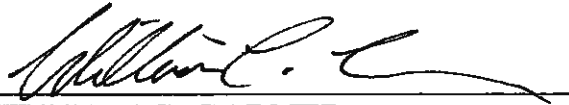
5. PINECREST believes that its participation, on its own behalf and in furtherance of the health, safety and welfare of its businesses and residents, will assist the Court in resolving the issues on appeal. PINECREST will offer a consumer's perspective in addition to the SOUTHERN ALLIANCE FOR CLEAN ENERGY's focus on the promotion of environmentally sustainable energy sources. Moreover, participation by PINECREST will assist the Court in understanding the range of impacts its decision will have on a class of parties uniquely impacted by the PSC's application of the Nuclear Cost Recovery Statutes.

6. The undersigned has contacted counsel for Appellant, SOUTHERN ALLIANCE FOR CLEAN ENERGY, and represents that counsel consents to the granting of this motion to appear as amicus curiae. The undersigned has also contacted counsel for the PSC, PEF and FPL. Counsel for the PSC does not object, however, counsel for both FPL and PEF have indicated their objection to the granting of this motion and to PINECREST appearing as amicus curiae on behalf of the Appellant, SOUTHERN ALLIANCE FOR CLEAN ENERGY.

WHEREFORE, the VILLAGE OF PINECREST, FLORIDA, respectfully requests that this Court grant it leave to appear as amicus curiae and to file a brief

in support of Appellant, SOUTHERN ALLIANCE FOR CLEAN ENERGY, in this matter.

Respectfully submitted,



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 15th day of March, 2012:



WILLIAM C. GARNER

SERVICE LIST

GARY A. DAVIS
JAMES S. WHITLOCK
Gary A. Davis and Associates
P.O. Box 649
61 North Andrews Avenue
Hot Springs, NC 28743

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

MARY ANNE HELTON
SAMANTHA M. CIBULA
KEINO YOUNG
ANNA WILLIAMS
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

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

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

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