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From: Frank, Dan [Daniel.Frank@sablaw.com]
Sent: Wednesday, May 11, 2005 12:09 PM
To: Filings@psc.state.fl.us
Subject: Answer in Opposition for filing in Docket No. 041393-EI
Attachments: WO_391738_1.DOC

Please accept for e-filing the attached document.

a. The person making this filing is: Daniel E. Frank, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, DC 20004-2415, telephone 202-383-0100, fax 202-637-3593, e-mail daniel.frank@sablaw.com.

b. The docket number is: 041393-EI, In re: Petition for approval of two unit power sales agreements with Southern Company Services, Inc. for purposes of cost recovery through capacity and fuel cost recovery clauses, by Progress Energy Florida, Inc.

c. This document is filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs.

d. There are a total of 5 pages in the attached document.

e. The document is the Answer of White Springs Agricultural Chemicals, Inc. in Opposition to Progress Energy Florida, Inc.'s Motion to File Supplemental Testimony.

Thank you for your attention to this matter.

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FDSC-COMMISSION OF ENVIRONMENTAL PROTECTION

ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of two unit power sales agreements with Southern Company Services, Inc. for purposes of cost recovery through capacity and fuel cost recovery clauses, by Progress Energy Florida, Inc.

Docket No. 041393-EI

Filed: May 11, 2005

ANSWER OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
IN OPPOSITION TO PROGRESS ENERGY FLORIDA, INC.'S
MOTION TO FILE SUPPLEMENTAL TESTIMONY

White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“White Springs”) hereby files its Answer in Opposition to Progress Energy Florida, Inc.’s (“Progress Energy”) Motion for Leave to File Revised Supplemental Testimony.

Introduction

1. In reviewing these pleadings, it is important that the Prehearing Officer view this matter from the proper perspective: Progress Energy’s proposed “corrections” in its Supplemental Testimony did not come about by happenstance. The error that Progress Energy seeks to correct – specifically, *the reduction by \$89 million (fully two-thirds) of projected savings over the five-year term of the unit power sales agreements* – resulted from White Springs’s review and questioning of the workpapers underlying Progress Energy’s direct testimony. It would be patently unfair and a violation of due process to allow Progress Energy to file late testimony just days before White Springs’s direct testimony is due.

2. The fundamental flaw uncovered by White Springs and which Progress Energy seeks to “correct” calls into question the entire economic analysis upon which

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Progress Energy's case is based. Further discovery and analysis may disclose additional errors, omissions and weaknesses. For these reasons, as we set forth in a concurrently filed motion, Progress Energy's Petition should be dismissed without prejudice to its re-filing once an accurate and complete analysis – ripe for review by the Commission – has been undertaken. At a minimum, the procedural schedule should be suspended to allow for additional discovery and analysis.¹ In support thereof, White Springs states the following:

Answer in Opposition

3. On May 10, 2005, Progress Energy filed a Motion for Leave to File Revised Supplemental Testimony along with Supplemental Testimony prepared by Progress Energy witness Samuel S. Waters. The Motion and Testimony claim that, subsequent to the filing of Mr. Waters's original Direct Testimony in this proceeding on April 15, 2005, Progress Energy discovered that certain inputs in Mr. Waters's analysis of cost savings during the term of the unit power sales agreements at issue were incorrect. Progress Energy purports to correct these errors in the Supplemental Testimony, and indicates that the revisions proffered do not change any of the conclusions in Mr. Waters's original Direct Testimony.

4. It would be fundamentally unfair and a denial of due process to allow Progress Energy to file Supplemental Testimony that substantially changes the cost-effectiveness analysis underlying its petition just days before White Springs's direct

¹ White Springs is filing contemporaneously with this Answer an "Emergency Motion to Suspend Procedural Schedule or, Alternatively, to Dismiss Petition."

testimony is due (on Friday, May 13). The April 20, 2005 Order Establishing Procedure provided an expedited procedural schedule that required White Springs to complete discovery necessary to prepare its direct case and prepare its testimony within only 23 days from the date of the Order. Now, just days before White Springs's direct testimony is due, Progress Energy essentially seeks permission to amend its petition by filing Supplemental Testimony and Exhibits that would fundamentally alter the cost-effectiveness analysis underlying its original petition. White Springs cannot reasonably be expected to fully analyze that testimony and respond in its direct testimony. Moreover, White Springs would not have an opportunity to conduct discovery on the Supplemental Testimony in time to respond in its direct testimony. While Progress Energy has attempted to provide certain materials underlying its proposed Supplemental Testimony, that material was provided in a form that could be accessed by White Springs only on the morning of May 11, 2005.

5. The obvious unfairness of Progress Energy's attempt to amend its petition in the guise of filing Supplemental Testimony at this late date is exacerbated by the fact that Progress Energy has not provided much of its discovery responses within the time frame specified in the Order Establishing Procedure.² To be quite clear, it appears that Progress Energy has attempted to respond in good faith and with reasonable expedition. That, however, does not alter the fact that White Springs has been disadvantaged by

² The Order Establishing Procedure in this matter, Order No. PSC-05-0432-PCO-EI, requires that all responses to discovery requests be served on the requesting party within seven days of service of the requests. White Springs served discovery requests on Progress Energy on April 29, 2005; responses were due on May 6, 2005. Progress Energy served a partial response on White Springs on May 6, and has continued to serve partial responses to White Springs discovery requests through May 10.

having to review and analyze late discovery responses during the limited time that it has been afforded to prepare its direct testimony.

6. Accordingly, White Springs respectfully urges the Prehearing Officer to deny Progress Energy's Motion.

Wherefore, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests that the Prehearing Officer deny Progress Energy's Motion and reject Progress Energy's Supplemental Direct Testimony.

Respectfully submitted,

/s/ Daniel E. Frank

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May 11, 2005

Certificate of Service

I hereby certify that a true and correct copy of the foregoing “Answer of White Springs Agricultural Chemical, Inc. in Opposition to Progress Energy Florida, Inc.’s Motion to File Supplemental Testimony” has been furnished by electronic mail and U.S. Mail this 11th day of May, 2005 to the following:

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