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June 8, 2005

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BY HAND DELIVERY

Blanca Bayó
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 041393-EI

Dear Ms. Bayó:

Enclosed for filing are the original and fifteen copies of Progress Energy Florida's Post-Hearing Brief in Support of its Petition for Approval of Two Unit Power Sales Agreements for Cost Recovery Purposes.

By copy of this letter, I am providing a copy of the document to the persons listed on the attached certificate of service by U.S. Mail.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,

Gary V. Perko

Gary V. Perko

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BEFORE THE 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: June 8, 2005

PROGRESS ENERGY FLORIDA'S POST-HEARING BRIEF IN SUPPORT OF ITS PETITION FOR APPROVAL OF TWO UNIT POWER SALES AGREEMENTS FOR COST RECOVERY PURPOSES

Progress Energy Florida, Inc. ("Progress Energy", "PEF" or the "Company"), submits its Post-Hearing Statement of Issues and Positions, Findings of Fact and Conclusions of Law, and Brief in support of its Petition for approval of two Unit Power Sales ("UPS") agreements with Southern Company Services, Inc. ("Southern Company") for cost recovery purposes.

INTRODUCTION

In this proceeding, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("White Springs") challenges the Commission's proposed agency action to approve two UPS Agreements (the "Agreements") between Progress Energy and Southern Company. Under the Agreements, Progress Energy will purchase 74 MW of coal capacity from Plant Scherer in Georgia and 350 MW of gas-fired combined cycle capacity from Plant Franklin in Alabama. [Tr. 33, Waters; Confidential Exhibit Nos. 5 and 6] Both Agreements have roughly five year terms extending from June 1, 2010 through December 31, 2015. [Id.]

The Agreements will replace existing UPS agreements that have substantially benefited Progress Energy customers. [Tr. 26, Waters] Under the new Agreements, Progress Energy will retain some, though not all, of the coal-fired generation included in the existing UPS agreements. In relative terms, Progress Energy will retain the same amount of coal capacity that Florida

Power & Light Company ("FPL") retained under its new UPS Agreements that the Commission approved earlier this year. [Tr. 232, Waters]

STATEMENT OF BASIC POSITION

As the Commission stated when it approved FPL's new UPS agreements, the Commission has "the expertise to make a decision based on the economic impact of the new UPS agreements and the benefits they will bring to . . . ratepayers." Order No. PSC-05-0084-FOF-EI, p.5, issued in Docket No. 050001-EI (Jan. 24, 2005). In this case, like the FPL matter, the evidence demonstrates that Progress Energy's new UPS Agreements are needed to maintain the Company's twenty (20) percent reserve margin and that they will provide important economic and strategic benefits to Progress Energy customers. [Tr. 26, Waters]

Based on an annual revenue-requirements analysis, the Agreements are projected to result in savings of $44 million over their five-year terms. [Tr. 45-46, Waters] A value-of-deferral analysis performed over an extended 45-year time period, when Progress Energy's resource plan is less certain, shows projected net costs between $5 and $11 million, which is a relatively small amount considering the overall value of these purchases. [Tr. 37, 46-47, 221 Waters; Confidential Exhibit No. 7]

As more fully discussed below, the Agreements also will provide significant strategic benefits including: (a) fuel diversity by providing more coal capacity than Progress Energy's self-build option; (b) the ability to maintain transmission access to the southeastern region and thereby maintain access to lower cost energy in those hours when the purchased units are not scheduled to operate; (c) increased reliability by allowing Progress Energy to maintain a transmission path to a large resource pool outside Florida and by adding a natural gas supply independent of the supplies used by the Company's units in Florida; (d) cost certainty by utilizing existing resources which have greater assurance of cost and performance than units that would need to be constructed; (e) a right-of-first refusal that provides Progress Energy the ability to obtain additional coal capacity from Southern Company should it become available; and (f) planning flexibility by providing an option to extend the combined cycle capacity for an additional two years, which might be used to meet additional load growth, defer investment in additional combined cycle generation, or allow time for new technologies to develop. [Tr. 38-40, Waters] The Agreement also spans a time-frame that allows for further consideration of the addition of coal-fired capacity on the Progress Energy system. [Tr. 40, Waters]

Progress Energy has provided ample evidence regarding the economic impact of the new Agreements and the benefits they will bring to the Company's ratepayers. Therefore, the Commission has sufficient information to find that Progress Energy's entry into the Agreements is reasonable and prudent action to maintain its 20 percent reserve margin. Accordingly, Progress Energy respectfully requests that the Commission approve the Agreements for cost recovery purposes.

STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: **Did PEF adequately consider alternatives to the proposed UPS agreements?**

PEF: **Yes. PEF's marketers constantly look for appropriate purchases. PEF analyzed coal options, but they cannot meet 2010 needs. Recent RFPs produced no coal proposals and the Franklin agreement compares favorably to recent RFP responses. Nothing suggests additional analysis would be fruitful. Requiring an RFP would put this opportunity at risk.**

White Springs asserts that Progress Energy should have issued a Request for Proposals ("RFP") or performed some other undefined "comprehensive process" in the hope of obtaining more coal capacity. However, the Commission's "Bid Rule" does not require utilities to issue an

RFP before entering into purchase power agreements of this nature. See Rule 25-22.082, Fla. Admin Code; No. PSC-04-1276-FOF-EI, p.3, issued in Docket No. 040001-EI (Dec. 23, 2004). Moreover, there is no evidence to suggest that an RFP process or additional analysis would produce a better choice to meet Progress Energy's 2010 need. Instead, the evidence shows that the opportunity presented by the Agreements would have been at risk if Progress Energy delayed negotiations with Southern Company while it pursued an RFP. [Tr. 233-34, Waters]

The decision to enter these Agreements was not made in a vacuum. Progress Energy's wholesale marketing department constantly tests the market to identify purchase and sale opportunities. [Tr. 235, Waters] The Company has evaluated the feasibility of constructing coal-fired generation, but it is not feasible to site, license and construct a new pulverized coal plant to meet the Company's June, 2010 need for firm capacity. [Tr. 34, Waters] Furthermore, Progress Energy has not received any proposals for coal capacity in response to recent RFPs and there are no existing coal-fired resources that would compete with these Agreements. [Tr. 34, 241, Waters] Thus, the Company would not expect to receive any offers for coal capacity in response to an RFP. [Tr. 235, Waters] As for combined cycle capacity, the costs of the Franklin portion of the purchase compares favorably to the responses to Progress Energy's most recent RFP for Hines Unit No. 4. [Id.; Confidential Exhibit No. 16] If anything, new bids likely would be higher in cost due to recent increases in materials costs.[1] [Tr. 235, Waters] There is simply no reason to believe that further solicitation of the market would produce a more favorable alternative. [Tr. 241, Waters]

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[1] Even with the new Agreements, Progress Energy plans to issue an RFP for its next combined cycle unit identified in the Company's 2005 Ten Year Site Plan, and at that time the wholesale power market will have an opportunity to submit alternatives. [Tr. 236, Waters]

Moreover, requiring an RFP could place the Agreements at great risk because Southern Company is under no obligation to either hold this offer or to bid into an RFP and wait to see if it is the winning bidder. [Tr. 156-57, 233-35, Waters] To the contrary, there is every reason to believe that Southern Company will continue to search for a buyer because these assets will be "uncovered" by any existing power sale or retail rate base once the current UPS agreements expire. [Tr. 156-57, 234, Waters] At least some of the potential buyers (i.e., municipalities, cooperatives, and out-of-state utilities) are not subject to Commission review of the contract for cost recovery, and would not have to delay a purchase by conducting an RFP process. [Tr. 157-58, Tr. 234, Waters] Thus, requiring Progress Energy to issue an RFP in this case would jeopardize this opportunity and the advantages it presents, including access to coal energy. [Tr. 233-34, Waters]

ISSUE 2: **Is PEF's cost-effectiveness analysis reasonable and supported by the evidence?**

PEF: **Yes. PEF's economic analyses utilized the same industry standard models and assumptions typically used for developing Ten Year Site Plans. The evidence demonstrates that the base plan used in PEF's analyses appropriately represents the most cost effective plan that PEF would pursue absent the purchases under the UPS Agreements.**

Progress Energy presented the results of two comparative economic analyses using the same industry standard models and assumptions typically used for developing the Company's Ten Year Site Plans. [Tr. 35, Waters] Progress Energy first developed a "base" or "self-build" plan which identifies the costs that would be incurred if the Southern Company purchase was not available. [Id.] This plan was developed in two steps: first, the amount and timing of resources required to meet the minimum 20 percent reserve margin requirement was quantified; then the self-build alternatives were compared in an economic optimization to determine the most cost-effective self-build plan over the planning horizon, typically twenty years. [Id.] The proposed purchase was then placed in the system and the two steps were repeated, producing an economically optimal plan that includes the proposed purchase.[2] [Id.] Progress Energy then compared the costs of these two plans using a revenue-requirements analysis to assess the impacts over the five-year term of the Agreements, as well as a value-of-deferral analysis to assess impacts over a longer forty-five year horizon. [Id.; Tr. 36-37, 221-22, Waters]

White Springs' witness, Mr. Brubaker, generally agreed that Progress Energy's approach of comparing the "base" and alternative UPS resource plans was conceptually proper. [Tr. 207-08, Brubaker] However, he opined that Progress Energy failed to demonstrate that the "base" plan represents the "least cost" expansion plan for meeting the Company's load expectations. [Tr. 174-75, Brubaker] This opinion apparently was based, at least in part, on the fact that the Company's base plan includes four coal units that were not included in its Ten Year Site Plan as of December 31, 2004. [Tr. 173-74, Brubaker] As Progress Energy's witness, Mr. Waters, explained, the obvious reason that the coal units were not included in the Ten year Site Plan is that the document, by definition, covers the ten-year period 2005-2014, and the coal units are not included in the base plan used in this analysis until 2015. [Tr. 223-224, Waters] However, Progress Energy determines optimal plans for a 20-year planning horizon, so the base plan used in this case was optimized for the period 2004 through 2023. [Tr. 224, Waters]

As Mr. Waters also explained, Mr. Brubaker's narrow emphasis on "least cost" is inappropriate. The objective of the planning process is not simply to identify the plan that represents "least cost" over a given period. [Id.] There are many other factors which may

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[2] The "self-build" or "base" plan and the alternative UPS resource plans are presented in Exhibit No. 15.

influence the selection of resources to meet customer needs; and the Commission has considered non-price factors in previous decisions, including the recent approval of FPL's new UPS agreements. [Id.]; see also, Order No. PSC-05-0084-FOF-EI, issued in Docket No. 050001-EI (Jan. 24, 2005). Even Mr. Brubaker conceded on cross-examination that resource planning involves professional judgment [Tr. 212, Brubaker] and that factors other than price are important in evaluating purchased power agreements. [Tr. 214, Brubaker] Furthermore, because timing of costs and benefits is a consideration in resource planning decisions, the definition of "least cost" may depend on the time frame selected for the comparison. [Tr. 223-24, Waters] Thus, the appropriate standard for the base plan is the most cost effective plan that Progress Energy would pursue absent the purchases in the new Agreements. [Tr. 224, Waters] The evidence demonstrates that the Company used such a "base" plan in evaluating the new Agreements. [Id.]

ISSUE 2A: **Are the claimed savings associated with the agreements supported by the evidence?**

PEF: **Yes. PEF's comparative analyses of the self-build and alternative UPS resource plans are based on industry standard techniques with which the Commission is familiar. The annual revenue-requirements analysis demonstrates projected savings of $44 million over the term of the Agreements. However, projected savings are not a prerequisite for Commission approval.**

As noted above, Progress Energy presented the results of two economic analyses of the Agreements: a revenue-requirements analysis to assess economic impacts over the five-year term of the Agreements; and a value-of-deferral analysis to assess impacts over a long-term 45-year horizon. [Tr. 45-46, 221-22, Waters] The results of the revenue-requirements analysis showed projected savings of $44 million over the five-year term of the Agreements. [Tr. 46, Waters; Exhibit No. 8] Over the extended 45-year time period, when Progress Energy's resource plan is less certain, the value-of-deferral analysis showed projected net costs between $5 and $11 million which is a relatively small amount considering the size of these purchases. [Tr. 37, 46-47, Waters; Confidential Exhibit No. 7]

White Springs submitted no credible evidence to refute Progress Energy's economic analyses. To the contrary, its witness, Mr. Brubaker, performed alternative analyses which essentially confirmed Progress Energy's projections. Like the Company, Mr. Brubaker projected net costs of approximately $11 million over 45 years. [Tr. 213, Brubaker] Over the five-year term of the Agreements, Mr. Brubaker projected net savings of $37 million, which he admitted was not materially different from the Company's projection of $44 million. [Id.] Mr. Brubaker vaguely questioned the production cost model outputs and assumptions that he carried forward from the Company's analysis.[3] [Id.] However, he provided no evidence to suggest that those outputs or assumptions were flawed. Mr. Brubaker also stated that an error in the Company's original five-year analysis led him to "wonder" if other aspects of the Company's analyses "would benefit from further scrutiny and vetting." [Tr. 210, Brubaker] However, the Company corrected the error through supplemental testimony [Tr. 45-48, Waters; Exhibit No. 8] and Mr. Brubaker provided no evidence that the revised analysis was flawed.

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[3] Specifically, Mr. Brubaker stated that he "did not have the time or ability to look into the production cost models" [Tr. 210, Brubaker] and that he had not been provided any of the model inputs or outputs. [Tr. 173, Brubaker]. As Mr. Waters explained, however, White Springs was provided the forecasts and input data used in the analyses, as well as summary output files. [Tr. 225, Waters] Progress Energy could not provide the Strategist production cost model used in the analyses because it was used under a license which prohibits its disclosure. [Id.] Progress Energy nevertheless provided saved model output files that could be used in the model. [Id.] However, Mr. Brubaker has no training with the Strategist model and has never run it before. [Tr. 212-13, Brubaker]. He also never attempted to seek access to the model. [Tr. 216, Brubaker]

In contrast to Mr. Brubaker's criticisms, which are based on innuendo and supposition, Progress Energy's economic analyses are fully supported by the record. Those analyses show the potential for significant savings over the term of the Agreements and relatively small costs over the long-term 45-year horizon. In any event, projected cost savings are not a prerequisite for Commission approval. When it recently approved FPL's new UPS agreements with Southern Company, the Commission recognized that non-price benefits of the type discussed below justified approval notwithstanding a "premium" of $69-93 million in projected costs. See Order No. PSC-05-0084-FOF-EI, p.3, issued in Docket No. 050001-EI (Jan. 24, 2005). White Springs presented no evidentiary basis for departing from this policy. See Southern States Utilities v. PSC, 714 So.2d 1046, 1055 (Fla. 1st DCA 1999) (Change in PSC policy requires adequate explanation or supporting evidence); In re Mid-County Services, Inc., Order No. PSC-99-1912-FOF-SU (1999) ("Chapter 120, Florida Statutes, requires us to explain deviations from prior policy, and that such deviations be supported by the record.").

ISSUE 2B: **Has PEF adequately identified and justified costs that will be borne by ratepayers?**

PEF: **Yes. PEF appropriately accounted for the costs of the Agreements, including capacity, energy, O&M, fuel transportation and transmission costs. PEF's analyses provide a true representation of the expected impact on PEF's customers. The costs are justified based on PEF's economic analyses and the strategic benefits the Agreements will provide.**

Based on the best available information, Progress Energy's economic analyses appropriately accounted for the costs of the Agreements, including capacity costs, energy costs, operation and maintenance ("O&M") expenses, fuel transportation costs and transmission costs. [Tr. 230, Waters] As such, the analyses present a true representation of the economic impact of the Agreements on the Company's customers. [Id.] The costs of the Agreements are justified based on the economic analyses discussed above and the strategic benefits the Agreements will provide to Progress Energy and its customers.

At hearing, White Springs claimed that Progress Energy failed to appropriately account for certain costs, including potential transmission upgrade costs, start costs for the Franklin unit, and natural gas costs. For the reasons discussed below, however, Progress Energy and its customers are adequately protected against potential transmission upgrade costs; and the Company's treatment of start and natural gas costs was appropriate.

(a) Potential Transmission Upgrades

White Springs attempts to make much out of the fact that Southern Company is in the process of performing a System Impact Study ("SIS") associated with Progress Energy's request to redirect its "roll-over" transmission rights from Plant Miller, which provides power under the existing UPS agreement, to Plant Franklin, which will provide power under one of the new Agreements. Specifically, White Springs speculates that the SIS may reveal the need for transmission upgrades to accommodate Progress Energy's redirection request. However, Plant Franklin is located between Plant Miller and Progress Energy's system on the same transmission path [Tr. 114, Waters]; and the new Franklin purchases are basically equal in magnitude to the existing Miller purchases. [Tr. 42, Waters] Thus, there is no reason to believe that redirection of Progress Energy rollover rights will present a problem as White Springs speculates. [Id.]

Moreover, if Progress Energy is asked to pay transmission costs that exceed the applicable rate under Southern Company's Open Access Transmission Tariff ("OATT"), Southern Company may offer to offset the additional costs or offer alternative transmission at the OATT rate. [Tr. 228-29, Waters; Confidential Exhibit No. 5, Article 7.4; Confidential Exhibit No. 6, Article 7.4] If Southern Company is unwilling or unable to do so, Progress Energy has additional remedies under the Agreements. [Id.][4] Thus, Progress Energy and its customers are adequately protected even if the SIS indicates a need for transmission upgrades.

(b) Start Costs

As Mr. Waters explained at hearing, there was no reason to include start costs for the Franklin combined cycle capacity in the Company's economic analyses. That is because the analyses compared the Franklin purchase with the self-build option, which called for similar combined cycle capacity. To provide an apples-to-apple comparison, the analyses would have to include start costs for both the Franklin purchase and the self-build option. Because there would be no material difference in the expected number of starts for the Franklin combined cycle unit and the self-build combined cycle unit, however, inclusion of start costs in the analysis would have no real net effect on the economics. [Tr. 69-70, 84, Waters]. White Springs attempted to use a late-filed exhibit to show that Progress Energy would incur substantial start costs under the Franklin Agreement. [Late-filed Exhibit No. 18] However, as Mr. Waters explained at hearing, the exhibit was based on a hypothetical number of starts that do not comport with Progress Energy's experience or what he would expect for the Franklin unit. [Tr. 81-83, Waters]. Moreover, as explained above, White Springs' focus on Franklin start costs in isolation is inappropriate because the self-build option would be expected to experience a similar number of starts and associated costs. [Tr. 70, 84, Waters] Consideration of start costs, therefore, would not alter the outcome of PEF's economic analyses. [Tr. 70, Waters]

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[4] The specific remedial provisions in Article 7.4 of the Scherer and Franklin Agreements have been designated as confidential proprietary information and, therefore, are not fully detailed here.

(c) Natural Gas Costs

At hearing, White Springs introduced the natural gas forecast used in Progress Energy's economic analyses, as well as additional forecasts made after the analyses were performed. [Confidential Exhibit Nos. 22, 23, 24] Because the gas price forecasts increased over time, White Springs apparently contends that Progress Energy's analyses failed to appropriately account for rising natural gas prices and that the Company should have performed a sensitivity analysis concerning natural gas prices. However, whether or not natural gas prices increase over the term of the Agreements is beside the point. As Mr. Waters explained at hearing, rising natural gas prices would equally affect the Franklin portion of the UPS purchases and the self-build plan. [Tr. 96, Waters] Importantly, the UPS purchases include a coal portion from Plant Scherer while the self-build option only includes gas-fired capacity. [Tr. 96-97, Waters] Thus, if natural gas prices increase, the economics of the new UPS Agreements would improve as compared to the self-build option. [Id.]

ISSUE 3: Are PEF's claimed "non-price" benefits of the UPS agreements supported by the evidence and reasonable?

PEF: Yes. The evidence demonstrates the Agreements will provide important non-price benefits, including fuel diversity, transmission access to economy purchases and sales, increased reliability, cost certainty, potential access to additional coal capacity, and planning flexibility.

As explained below, the evidence fully supports the important strategic benefits that the new Agreements will provide to Progress Energy and its customers. White Springs failed to present any credible evidence to suggest that the Agreements will provide no strategic benefits.

(a) Enhanced fuel diversity

Under the new Agreements, a portion of the purchased energy will come from coal-fired generating capacity, providing low-cost energy and serving to reduce the price volatility of

Progress Energy's fuel mix. [Tr. 38, Waters] Absent the new Agreements, Progress Energy would have no right to any of Southern Company's coal-fired generation after the existing agreements expire on May 31, 2010. [Id.; Tr. 26, Waters] With the new Agreements, however, Progress Energy will have rights to 74 MW of Southern Company's coal generation. [Tr. 38, Waters] Moreover, the new Agreements will defer the need for a new gas-fired unit during the 2010-2015 term. [Tr. 38-39, Waters] Thus, the new Agreements will increase the projected amount of coal generation in Progress Energy's resource plan. [Tr. 39, Waters]

White Springs' witness misses the point when he argues that this benefit assumes that no coal generation would be available during the term of the Agreements (i.e., between 2010 and 2015). [Tr. 197, Brubaker] He ignores the need for additional capacity in 2010 when the current agreements expire. [Tr. 242, Waters] Whether or not more coal capacity is available sometime after 2010, the evidence demonstrates that it is not available in time to meet Progress Energy's need in 2010. [Tr. 34, Waters] The evidence also demonstrates that the Agreements provide 74 MW more coal capacity than the gas-fired self-build plan. It is indisputable that some coal is better than none.

(b) Transmission Access to Economy Energy

The UPS Agreements allow Progress Energy to exercise its roll-over rights to maintain transmission access to the Southern system and beyond. [Tr. 39, Waters] This will provide access to potential economy energy purchases and sales in those hours when the units specific to the purchase are not scheduled. [Id.] White Springs' witness, Mr. Brubaker, dismisses this benefit out-of-hand because, in theory, Progress Energy could continue contracting for the transmission even without the Agreements. [Tr. 197-98, Brubaker] However, he offers no analysis that this would produce a net savings to customers. As Mr. Waters explained, economy purchases might somewhat offset the transmission costs, but they are not likely to completely pay for transmission access. [Tr. 226, Waters] Confidential Exhibit No. 7 shows that the net present value (NPV) of the transmission costs is approximately $28 million, while the NPV of the economy savings is between $6 and $12 million. Thus, there would be a shortfall of $22 to $16 million and Mr. Brubaker provides no evidence that additional economy savings would make up the difference. [Tr. 226, Waters]

(c) Increased reliability

By allowing Progress Energy to maintain transmission access to a large resource pool, the Agreements enhance system supply reliability when the Scherer or Franklin units might be unavailable. [Tr. 39, Waters] The Agreements further enhance reliability because the Franklin unit will be served from a separate gas supply system than Progress Energy's units in Florida. [Id.] White Springs' witness does not dispute the reliability benefit associated with the independent gas supply; but he dismisses the reliability benefits of maintaining the transmission path to Southern Company based on his assumption that Progress Energy would continue to have access to import rights at the Florida-Georgia interface even without the UPS Agreements. [Tr. 197-98, Brubaker] As Mr. Waters explained, however, if Progress Energy does not utilize the interface with firm purchases, others likely will lay claim to the Company's allocation. [Tr. 227, 152-53 Waters]

(d) Cost certainty

By utilizing existing generating facilities, the Agreements provide cost certainty because existing resources provide greater assurance of cost and performance than might be obtained from units that would need to be constructed. [Tr. 39, Waters]

(e) Potential Access to Additional Coal Resources

In connection with the Agreements, Progress has secured a right-of-first refusal to the output of additional coal capacity in the Southern Company system, should that capacity be offered to the wholesale market. [Id.] [5]

(f) Planning flexibility

The Franklin Agreement provides for extension of the combined cycle capacity for an additional two years, which might be used to meet additional load growth, defer investment in additional combined-cycle generation, or allow time for new technologies to develop. The Agreement also spans a time frame that allows further consideration of the addition of coal-fired capacity on the Progress Energy system. [Tr. 39-40, Waters]

White Springs again seeks to dismiss the benefits associated with cost certainty, the right-of-first refusal, and planning flexibility simply by noting that they may or may not happen or that they have not been quantified. [Tr. 170, 196-98, Brubaker] However, non-price factors are, by definition, non-quantifiable, at least in the same manner as the overall economics of the Agreements. But non-quantifiable benefits are benefits nonetheless. [Tr. 227, 240 Waters] As this Commission recognized when it approved FPL's UPS agreements, non-price benefits may justify approval even when the agreements are projected to result in net costs. See Order No. PSC-05-0084-FOF-EI, issued in Docket No. 050001-EI (Jan. 24, 2005).

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[5] Progress Energy provided copies of two right-of-first-refusal letter agreements in response to Staff's First Request for Production of Documents (No. 1), which was entered into the record as part of Confidential Composite Stipulated Exhibit No.3. One letter agreement concerned capacity from Plant Scherer Unit 3 and was contingent on Southern Company's determination that a third party was not obligated to purchase the capacity. The other letter agreement concerned capacity from Plant Miller and did not contain such a contingency. As discussed in Progress Energy's response to Staff Interrogatory No. 7, which was also entered into the record in Composite Stipulated Exhibit No 2, the Scherer capacity is no longer available, but Progress Energy still retains a right-of-first refusal for the Miller capacity.

<u>ISSUE 4</u>: Who should bear the risk if PEF's claimed cost and "non-price" benefits are not realized, PEF's customers or its stockholders?

<u>PEF:</u> Under long-standing Commission policy, prudently incurred capacity and fuel costs are directly passed through to customers. If the Commission approves the UPS Agreements as reasonable and prudent, PEF should be authorized to recover the energy and capacity costs associated with the Agreements when actual expenses are presented for cost recovery.

Under long-standing Commission policy, prudently incurred capacity and fuel costs are directly passed through to customers under the capacity and fuel cost recovery clauses. <u>See generally</u>, PSC-05-0187-PCO-EI, p.7, issued in Docket No. 041291-EI (Feb. 17, 2005) (Noting the Commission's establishment of "pass-through mechanisms for certain costs in the form of the continuing fuel and capacity cost recovery clauses"). If the Commission approves the UPS Agreements as reasonable and prudent, Progress Energy should be authorized to recover the energy and capacity costs associated with the Agreements when the actual expenses are presented for cost recovery in the annual cost recovery clause proceedings. At that time, the Commission can review the actual expenses against the terms and conditions of the contract to ensure that they were prudently incurred. [Tr. 53, 250, Waters] For example, if Progress Energy presented transmission costs above Southern Company's OATT tariff rates for the power purchased under the Agreements, it would have to justify those additional expenditures as reasonable and prudent in light of the contractual remedies provided in the Agreements. [Tr. 254-56, Waters] White Springs presented no evidentiary basis for departing from the Commission's established policy. <u>See</u> <u>Southern States Utilities v. PSC</u>, *supra*; <u>In re Mid-County Services, Inc</u>., *supra*..

ISSUE 5: **Is there sufficient reliable transmission available to support the proposed agreements on the Southern system?**

PEF: **Yes. The existing and new purchases are basically equal in magnitude. The Franklin purchase involves a different source, but there is no reason to believe that redirection of PEF's "rollover" transmission rights cannot be implemented. If sufficient transmission is unavailable, PEF has remedies, including contract termination under certain circumstances.**

As discussed above, the magnitude of the new UPS purchases is essentially the same as the existing purchases. [Tr. 42, Waters] Although the Franklin purchase delivers power from a different source than the current Miller purchase, Plant Franklin is located between Plant Miller and Progress Energy's system on the same transmission path. [Tr. 114, Waters] Thus, there is no reason to believe that redirection of Progress Energy's rollover transmission rights to Plant Franklin cannot be accommodated. Moreover, if the amount of transmission is less than certain threshold levels specified in the Agreements, Progress Energy has the right to terminate the purchases. [Tr. 41, Waters; Confidential Exhibit Nos. 5 and 6, Articles 7.4.5][6] Thus, Progress Energy and its customers are adequately protected in the event that adequate transmission cannot be accommodated.

ISSUE 6: **Has PEF demonstrated that the UPS agreements would postpone the need for other generation?**

PEF: **Yes. PEF's analyses demonstrate the Agreements will defer two combined cycle units. Indeed, White Springs admits that "PEF's evidence appears to demonstrate that the UPS Agreements will postpone the need for other generation."**

The record demonstrates that the new UPS Agreements will defer two combined cycle units: one from May 2010 to May 2011; and the other from May 2012 to May 2018. Indeed,

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[6] The specific thresholds in Article 7.4.5 of the Scherer and Franklin Agreements have been designated as confidential proprietary information and, therefore, are not detailed here.

White Springs has admitted that "PEF's evidence appears to demonstrate that the UPS Agreements will postpone the need for other generation." Order No. PSC-05-0601-PHO-EI, at p. 12. Even though White Springs originally raised this issue, it now contends the issue "has no bearing on the reasonableness of the proposed agreements." Id. White Springs apparently bases its new position on its claim that the base plan and alternative UPS resource plans presented by Progress Energy are not cost effective. Id. As discussed above in connection with Issue No. 2, however, Progress Energy has demonstrated that the base plan is the most cost-effective self-build option without the UPS purchases. Progress Energy also has demonstrated that the alternative UPS plan is projected to result in cost-savings over the term of the Agreements and will provide the important strategic benefits discussed above.

ISSUE 7: **Should the Commission approve the UPS agreements for cost recovery purposes?**

PEF: **Yes. PEF demonstrated that the Agreements are economical and will provide important strategic benefits. There is no reason to delay. PEF and its customers are protected if the SIS concludes that transmission upgrades are necessary; and speculation regarding pending FERC investigations do not provide a basis for delay.**

Like the opponents of FPL's recently approved UPS agreements, White Springs claims that Progress Energy has not provided sufficient evidence to justify approval of its new Agreements. For the reasons discussed above, however, that claim is demonstrably untrue. The evidence demonstrates that the Agreements are economical, and will provide substantial non-price benefits to Progress Energy and its customers, such as enhanced fuel diversity and the ability to retain transmission rights that will provide access to economy energy. Although the evidence demonstrates that the Agreements will provide substantial savings over their 2010-1015 term, contrary to White Springs suggestion, savings are not a prerequisite to approval. As the

Commission recognized when it recently approved FPL's agreements, the strategic benefits associated with these Agreements are sufficient to justify approval notwithstanding a "premium" in the form of projected net costs. See Order No. PSC-05-0084-FOF-EI, p.3, issued in Docket No. 050001-EI (Jan. 24, 2005).

Contrary to White Springs' assertion, there is no reason to delay. White Springs' speculation regarding the disposition of the Federal Energy Regulatory Commission's pending investigations concerning the Southern Company system is just that – speculation -- and it does not provide a basis for delay or otherwise warrant consideration in this proceeding. See Duval County School Bd. v. Spruell, 665 So. 2d. 262 (Fla. 1st DCA 1996) (Court refused to speculate as to results of future agency action). In addition, as discussed above, Progress Energy and its customers are adequately protected if the pending SIS concludes that transmission upgrades are necessary to accommodate the purchases. The more appropriate concern is that the SIS will be completed with no system upgrades required. At that point, Southern Company will affirm the transmissions service, and Progress Energy will have fifteen days to decide whether to accept service.[7] Because the SIS currently is in process and could be completed at any time, delaying the decision on the UPS Agreements would introduce the risk that Progress Energy could have to decide on transmission without knowing whether the Agreements themselves have been approved. [Id.] Delay is simply not necessary or advisable.

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[7] [Tr. 248, Waters] Specifically, Section 19.3 of the Southern Company OATT provides: "The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn." [Exhibit No. 14 ("Original Sheet No. 57")]

CONCLUSION

As the Commission stated when it approved FPL's UPS agreements earlier this year, the Commission has "the expertise to make a decision based on the economic impact of the new UPS agreements and the benefits they will bring to . . . ratepayers." Order No. PSC-05-0084-FOF-EI, p. 5, issued in Docket No. 050001-EI (Jan. 24, 2005). In accordance with that precedent, Progress Energy has demonstrated that its new UPS Agreements are economical, and will provide substantial non-price benefits to the Company and its customers. Accordingly, Progress Energy respectfully requests that the Commission enter a Final Order: (i) finding that the UPS agreements with Southern Company represent reasonable and prudent action to maintain the Company's twenty percent reserve margin; and (ii) approving recovery of the energy and capacity costs associated with the agreements, subject to a finding that actual expenditures are reasonable and prudent when they are submitted for recovery.

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CERTIFICATE OF SERVICE

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