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**Subject:** Post-Hearing Brief in Docket No. 041393-EI

**Attachments:** WO_399491_1.DOC

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a. The person making this filing is: James M. Bushee, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, DC 20004-2415, telephone 202-383-0100, fax 202-637-3593, e-mail james.bushee@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 34 pages in the attached document.

e. The document is Post-Hearing Brief of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs in this proceeding.

Thank you for your attention to this matter.

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**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<br>Filed: June 8, 2005 |
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**POST-HEARING BRIEF OF**
**WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.**
**D/B/A PCS PHOSPHATE – WHITE SPRINGS**

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## Summary of Position

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

**WHITE SPRINGS' POSITION:** * No. The evidence demonstrates that PEF failed to reasonably consider alternatives to the UPS agreements. PEF did not engage in an RFP or other process to identify supply alternatives and failed to demonstrate that it engaged in prudent utility planning to assure the proper mix of lowest cost resources. *

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

**WHITE SPRINGS' POSITION:** * No. PEF failed to demonstrate that its "base case" and "altered case" can reasonably be expected to produce the least cost or best alternative. PEF has only demonstrated that the altered case may produce short-term benefits when compared solely to its base case. *

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

**WHITE SPRINGS' POSITION:** * No. PEF first claimed savings under the proposed UPS agreements of $133 million, and subsequently reduced that claim by $90 million. At hearing, Mr. Waters undermined the reliability of this analysis. Furthermore, PEF's own evidence demonstrates a net detriment to consumers of between $5 and $11 million. *

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

**WHITE SPRINGS' POSITION:** * No. For example, costs associated with transmission will not be known until the System Impact Study is completed. Similarly, PEF has not performed any natural gas price sensitivity analysis. Record evidence shows that natural gas prices are volatile and PEF has a very poor record of predicting natural gas prices. *

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

**WHITE SPRINGS' POSITION:** * No. The claimed non-price benefits are illusory. PEF has conducted no analysis on potential coal capacity available from other sources, PEF's claim of reliability due

to import rights is unreasonable and misleading, and PEF's planning flexibility claim is unsupported by evidence. *

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

**WHITE SPRINGS' POSITION:** * PEF's stockholders should bear the risk that the claimed benefits will fail to materialize, because PEF entered into transmission arrangements associated with these agreements prior to Commission approval. PEF management, as a sophisticated party to the contract negotiations, should remain accountable for contracting decisions resulting in less-than expected benefits. *

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

**WHITE SPRINGS' POSITION:** * There is great uncertainty concerning whether sufficient reliable transmission will be available. Southern has not completed its System Impact Study of PEF's redirected transmission service request. Thus, there is no evidence either that transmission will be available to support the proposed agreements or that, if available, it will be cost-effective. *

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

**WHITE SPRINGS' POSITION:** * Although PEF's evidence appears to demonstrate that the agreements will postpone the need for other generation, that does not support the reasonableness of the proposed agreements. Adding additional capacity from any source – whether self-build, other PPAs or demand side management – would equally postpone the need for other generation. *

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

**WHITE SPRINGS' POSITION:** * No. PEF failed to demonstrate that the UPS agreements are reasonable and prudent, given that PEF did not consider alternatives to the agreements, failed to reasonably demonstrate the purported cost savings and economic efficiencies of the proposed agreements, and failed to demonstrate that the agreements are lowest-cost considering all factors. *

**BEFORE THE**
**FLORIDA PUBLIC SERVICE COMMISSION**

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**POST-HEARING BRIEF OF**
**WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.**
**D/B/A PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to Rule 28-106.215, Florida Administrative Code, and the Prehearing Officer's May 31, 2005 "Prehearing Order" (Order No. PSC-05-0601-PHO-EI) ("Prehearing Order"), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("White Springs") hereby files its Post-Hearing Brief and Statement of Issues and Position.

## I. INTRODUCTION

In this proceeding Progress Energy Florida ("PEF") has petitioned the Commission to pre-approve two unit power sales ("UPS") agreements with Southern Company for cost recovery purposes. As we demonstrate below, PEF has failed to demonstrate that the proposed agreements are reasonable and prudent. In fact, the evidence demonstrates that PEF executed the agreements without meaningfully considering available alternatives; the agreements are not economically prudent; the claimed "non-price" benefits are illusory; and PEF would impose all of the risks associated with the proposed agreements on its retail customers.

White Springs respectfully urges the Commission to decline to pre-approve the proposed agreements for cost recovery. While the Commission need not prohibit PEF from executing the agreements, it should not provide any guarantee or assurance that PEF can recover all of the costs of these agreements from its customers until such time as PEF proves the agreements are reasonable and prudent. PEF will have that opportunity when it first seeks cost recovery in 2010.

If PEF truly believes that the agreements are prudent, then it should go forward with the agreements. If PEF is not confident that the agreements are reasonable, it should find a better alternative – it has as long as five years to do so – and provide its customers and the Commission with an adequate opportunity for review before asking for their guarantees.

White Springs asked that the Commission set this matter for hearing because it was concerned that PEF's proposed UPS agreements are not reasonable and prudent. White Springs is one of PEF's largest customers, purchasing approximately $20 million of power annually,[1] and operates in a very competitive industry. Therefore, White Springs would be adversely affected by any imprudent or unreasonable costs that are included in PEF's electric rates. Because the proposed agreements would commit PEF to pay a substantial amount in fixed costs over their five-year term (that confidential number is provided at Brubaker Direct, page 15), plus substantial fuel costs and potentially other significant costs, White Springs is particularly concerned that the Commission first require PEF to demonstrate that the proposed UPS agreements are reasonable and prudent before approving cost recovery.

PEF suggested, in its response to White Springs' Request for Hearing, that upon review of the confidential analyses underlying the application the matter should be resolved informally.[2] In fact, those confidential analyses underscored that the proposed UPS agreements are anything but reasonable and prudent. In its petition to the Commission and in three rounds of testimony, PEF has failed to meet its burden of proving that the proposed agreements are reasonable and prudent. White Springs affirmatively demonstrated the many flaws in PEF's analysis through the testimony of its witness Maurice Brubaker. Moreover, White Springs' cross-examination of

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[1] Brubaker Direct at 2.

[2] Progress Energy Florida's Answer to Petition for Hearing and Request for Expedited Schedule at ¶ 9 (Apr. 13, 2005).

PEF's witness Waters at the June 2, 2005 hearing illustrated the fundamental lack of credibility of PEF's evidence.

PEF acknowledges, as it must, that it has the burden to demonstrate that the proposed agreements are just and reasonable.[3] That burden is particularly heavy in this proceeding because PEF concedes at the outset that the proposed agreements would have a long-term net cost to its customers. The Commission should disregard PEF's clever attempts to argue that White Springs has not shown that a better deal could be had; it is PEF's burden to demonstrate prudence and not White Springs' or the Commission's burden to identify better alternatives. Nor should the Commission accept the flawed notion that the alleged short-term benefits, which PEF so carelessly overstated in its application, somehow justify the long-term net costs.

Importantly, PEF cannot satisfy its evidentiary burden by pointing to the recent Commission order in a Florida Power & Light ("FP&L") proceeding[4] and claiming that the matter was somehow resolved there. On numerous occasions in the course of this proceeding PEF has suggested that because the Commission approved a UPS agreement between Southern Company and FP&L that it should approve the PEF agreements. Because PEF concedes the obvious – that the FP&L case involves different parties and different agreements – that argument is not tenable. Indeed, were PEF correct it would mean that the Commission has provided carte blanche for Florida utilities to enter into UPS agreements with Southern Company without having any concern for Commission scrutiny of whether the terms were reasonable and whether

[3] Commissioner Deason observed that "I think it's probably generally agreed that the burden rests with Progress as far as these particular contracts and trying to present them to the Commission for an up-front approval." 4 Tr. 271. *See, also, In re: Application for Staff-Assisted Rate Case in Brevard County by Service Management Systems, Inc.*, Docket No. 021228-WS, Order No. PSC-03-1342-PAA-WS (Nov. 24, 2003); *see also Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982).

[4] Order No. PSC-05-0084-FOF-EI.

there were better alternatives. Accordingly, the Commission must act on the record evidence in this proceeding alone.

Ultimately, the Commission is required to review a utility rate proposal to ensure that it is fair, just and reasonable to consumers. Fla. Stat. § 366.06 (2005). Given PEF's failure to demonstrate the reasonableness and prudence of its agreements and its indifference to the interests of its retail customers, the Commission should decline to approve the proposed agreements for cost recovery and simply leave PEF at risk when it seeks recovery of its costs under the agreements beginning in 2010. That would be entirely fair given that it is PEF that has put the Commission in the position of having to act hastily in order to meet an artificially-constructed deadline of PEF's own making. Given that PEF has expressed confidence that the agreements are reasonable and prudent, it should not fear Commission review of the agreements when all of the facts are on the table and when there is ample time for a thorough review.

## II. ARGUMENT

### A. PEF Failed to Adequately Consider Alternatives to the UPS Agreements. [Issue No. 1]

PEF failed to do what it has acknowledged it was required to do. Mr. Waters explained that his obligation was to "do what's best for customers. If there's an opportunity I will pursue it."[5] Yet, the record overwhelmingly demonstrates that PEF failed not only to pursue opportunities but even to look for them. The record further demonstrates that PEF ignored the impact that the proposed UPS agreements would have on its customers. PEF was only diligent when it came to ensuring that its customers bore all risks associated with the proposed agreements and that its shareholders were fully insulated.

[5] 2 Tr. 134.

### 1. PEF Failed to Conduct an RFP or Other Methodical Investigation.

As a threshold matter, PEF did not have to execute the proposed UPS agreements; it chose to do so. PEF was not in any way bound to execute an agreement with Southern, but in fact it was free to select any available resource.[6] Nor were there any practical considerations that compelled it to contract with Southern without even considering other alternatives. Inexplicably, PEF failed even to look to see what alternatives were available.

PEF concedes that it did not conduct a request for proposals ("RFP") or other methodical investigation of alternatives to the proposed agreements.[7] While it is true that PEF was not required by law to conduct an RFP, that does not mean that it would not have been prudent to have done so. As Mr. Brubaker testified:

> Yes, it would have been appropriate and prudent for PEF to do so. Good practice when considering entering into transactions of this magnitude, representing over 400 megawatts of capacity and with a cost (estimated by PEF) over the five-year term of the contract of nearly [confidential] in fixed costs, plus fuel, would be to conduct a thorough review of the market to ascertain if there are any other options available which should be considered.

Brubaker Direct at 15.

Importantly, the opinion that PEF should have performed an RFP was shared by at least one PEF employee with significant responsibilities for the PEF cost-benefit analysis underlying PEF's application in this proceeding. In a July 1, 2004 email, PEF's Mr. Dan Roeder explained that

> [a]s I mentioned during the conference call, I don't see the need to rush into doing this deal. It doesn't start until 2010. So there should be plenty of time to find alternatives (an RFP would probably be the best way to go).

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[6] 2 Tr. 120.
[7] 2 Tr. 128.

Exhibit 19. Despite Mr. Waters' testimony that Mr. Roeder is a competent employee and that he has "great confidence in his abilities,"[8] Mr. Roeder's counsel was ignored.

Significantly, even while PEF vigorously denies that it should have used an RFP to determine whether there are more attractive alternative sources of power, its own affiliate – Progress Energy Carolinas ("PEC") – decided that, even though it was not required to conduct an RFP, it should do so in order to identify a resource for approximately 282 MW of power for deliveries beginning in December 2009. Mr. Waters acknowledged that PEC was not required to conduct an RFP for that 282 MW but nevertheless did so, and he was in a position to know because he supervises the PEC employee with lead responsibility for the PEC RFP.[9] Despite the fact that Mr. Waters supervises the PEC individual responsible for the PEC RFP, and therefore presumably thought an RFP was advisable for PEC, Mr. Waters did not see a need for PEF to conduct an RFP to identify potential alternatives to the UPS agreements notwithstanding Mr. Roeder's recommendation. In these circumstances, PEC appears more concerned with obtaining the best deal for its customers than does PEF.

PEF's argument that it did not think that an RFP was necessary because the proposed UPS agreements were really an extension of the existing UPS agreement with Southern is easily discarded. The proposed UPS agreements involve different parties, different units and different pricing schemes than the existing single UPS agreement,[10] and therefore cannot fairly be characterized as an extension of an existing agreement. Similarly, PEF's argument that it had to act or lose the UPS agreements to other parties is idle speculation and does not in any way minimize the fact that PEF acted imprudently by failing to meaningfully investigate alternatives.

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[8] 1 Tr. 50.
[9] 2 Tr. 129.
[10] 1 Tr. 55-56.

PEF also failed to consider whether some or all of the power to be provided under the proposed UPS agreements might be provided more reasonably using other alternatives. For example, PEF did not determine whether power might be available from existing QF facilities for the 2010-2015 time frame.[11] Nor did it consider whether there might be additional demand-side management resources beyond those contained in the ten-year site plan.[12]

**2. PEF Failed to Investigate Coal Alternatives.**

PEF did not give serious consideration to replacing the existing coal-fired UPS agreement with either coal-based purchased power contracts or by constructing its own coal facility. In fact, in response to a White Springs' request for all documents and communications related to PEF's consideration of building or acquiring coal-fired capacity to replace the capacity provided under the existing UPS agreement with Southern, PEF responded that there are no such documents.[13]

Despite PEF's recognition of the volatility in natural gas prices over the last five years[14] and the ever-increasing reliance of PEF and other Florida utilities on natural gas-fired generation, PEF's failure to consider seriously the availability of coal-fired resources is imprudent and, indeed, inexplicable. Mr. Brubaker testified that:

> I believe that it was particularly important that PEF undertake these considerations after the gas price spikes that occurred beginning in 2000. That event, coupled with subsequent spikes and escalating price levels, and the continued construction of gas-fired electric generation capacity (by merchants and others) certainly gave rise to concerns that natural gas prices would be

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[11] 2 Tr. 133.
[12] *Id.*
[13] Brubaker Direct at 11.
[14] 2 Tr. 95.

> both high and volatile. I believe PEF should have devoted more attention to analyzing the comparative risks and economics of natural gas and coal-fired generation.

Brubaker Direct at 11.

Essentially, PEF's argument is that they know what is in the market so there is no need for them to look. Mr. Waters testified that he is in touch with PEF's wholesale market personnel. Were there any significant communications, however, PEF would have produced evidence of such communications in response to a request that it produce all documents relating to PEF consideration of building or acquiring coal-fired capacity to replace the capacity provided under the existing UPS agreement. Tellingly, PEF responded that there are no such documents.

PEF's attempt to justify its inaction by arguing that no coal proposals were submitted in response to the recent Hines 3 and 4 RFPs is equally weak. The Hines 3 and 4 RFPs were not undertaken in connection with the expiration or replacement of the existing UPS agreement.[15] Respondents were essentially asked to bid against PEF's proposed self-build natural gas-fired combined cycle plants. Nor did those RFPs ask for capacity in the 2010 to 2015 time frame.[16] Thus, it is not surprising that there were no coal-fired proposals. Moreover, because of the timing of the Hines RFPs and the date upon which power deliveries were to commence it would have been physically impossible for there to be proposals for new coal units.[17] That is, the RFPs were conducted three to four years ahead of the resource need and therefore unless a new coal unit was already well underway it could not be available.

The Commission should not be misled by PEF's attempts to mischaracterize White Springs' testimony concerning coal generation. Although Mr. Waters initially characterized Mr. Brubaker's testimony as saying that PEF should have added coal capacity, on cross-examination

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[15] 2 Tr. 128.
[16] 2 Tr. 127.
[17] *Id.*

he conceded that Mr. Brubaker actually testified that PEF should have aggressively considered coal as an option.[18] It is PEF's failure even to meaningfully evaluate a coal option that is imprudent.

It appears that PEF effectively assumed away coal alternatives to the proposed agreements. By assuming an unduly long lead time for coal units, PEF itself precluded a coal alternative to the UPS agreements. PEF assumed that it would take eight years to site and construct a coal generation unit. Yet, a February 2005 Burns & McDonnell study performed for PEF, which evaluated options for developing a new solid fuel generation facility in Florida,[19] concluded that a coal plant could be constructed in seven years.[20] PEF's own Mr. Roeder cast further doubt upon the validity of an eight-year lead time in an email in which he assumed that a coal plant could be constructed by 2009, or one year before PEF would need the power to be provided under the UPS agreements. Mr. Roeder explained that: "If it takes six years to build a coal unit, that makes 2009 the first year that it can come into the plan."[21] Of course, even using Mr. Waters' pessimistic estimate, PEF could have had a coal alternative had it simply planned ahead. To have a coal unit in 2010, PEF would have had to begin the process by 2002 using Waters' eight-year estimate.[22] Moreover, PEF never considered whether it would make sense to bring coal on line in 2013 and use shorter UPS agreements as a bridge.[23]

PEF's own inaction also precluded it from considering coal-fired capacity as an alternative to the proposed UPS agreements. Despite the potential advantages of coal generation, PEF has done no more than a "scan of Florida to find suitable sites from a transportation issue

[18] 4 Tr. 258-59.
[19] 2 Tr. 104. Ex. 21.
[20] 2 Tr. 98.
[21] 2 Tr. 122-23; Ex. 25.
[22] 2 Tr. 121.
[23] 2 Tr. 131-32.

from a water perspective, from a transmission perspective."[24] Even that limited screening was not done until the start of 2005.[25] PEF has done no site-specific environmental work nor has it done any initial permitting work on any site.[26] Had PEF done any meaningful preliminary work on coal options it could have made constructing its own capacity a realistic option to replace the capacity under the existing UPS agreement.

Nor did PEF conduct a meaningful inquiry into the availability for purchased power from a coal unit. Although PEF was obviously willing to purchase power from a natural gas-fired resource located outside of Florida, it did not meaningfully consider whether it could have contracted for coal resources, other than the proposed Scherer agreement, outside of Florida. PEF conceded that it has not comprehensively reviewed what coal capacity might be available outside Florida.[27] PEF failed to take that simple step despite the fact that it is aware that there are coal plants in planning stages in Florida.[28]

PEF's own Burns & McDonnell study[29] established that coal is the low cost technology. For example, Figure 4 – 7 in that study shows that for 500 MW Brownfield sites with alternative technologies and fuels, the high cost technology would be a natural gas-fired combined cycle unit[30] – Southern Power Company's Franklin unit uses this technology. In contrast, the lowest cost unit would be the circulating fluidized bed, "pet coke" brownfield unit.[31] Mr. Waters testified that the cost differential between the two technologies is roughly 20 percent.[32] The

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[24] 2 Tr. 104.
[25] 2 Tr. 104.
[26] 2 Tr. 104-05.
[27] 2 Tr. 125.
[28] 2 Tr. 126.
[29] Ex. 21.
[30] 2 Tr. 100-101.
[31] 2 Tr. 101.
[32] 2 Tr. 101.

Burns & McDonnell Study confirmed a similar result in a comparison of technologies for 1000 MW units.[33]

### B. PEF's Cost-Effectiveness Analysis Is Not Reasonable and Not Supported by Evidence. [Issue No. 2, 2A and 2B]

The PEF cost-effectiveness analysis provided in support of the proposed UPS agreements does not withstand even limited scrutiny. An email by PEF's employee Mr. Roeder sums up the overall problem with the proposed agreements:

> I do not see any evidence that supports that this is a good deal or that even Southern thinks that the pricing is lower cost than ours. . . . Our analysis has shown that this is not an economic deal, other considerations aside; therefore someone else is going to have to carry the water on this one.

Ex. 19; 2 Tr. 91. His colleague Mr. Kramer, from PEF's Treasury Department, characterized that message as "Well said." 2 Tr. 92.

PEF concedes that over the long term the proposed agreements will impose a net cost of $5–11 million on its customers.[34] That is confirmed by White Springs' witness Brubaker, who explained that

> Exhibit SSW-3 shows that over a 45-year period, consisting of the approximately five-year term of the proposed UPS agreements, followed by a 40-year term to capture end effects, the proposed transaction is not beneficial to consumers, relative to what PEF describes as its alternative base plan. On a net present value basis, Exhibit SSW-3 shows that PEF expects the result of entering into the UPS agreements, as compared to pursuing its base plan, would be a net detriment to consumers in the range of $5 million to $11 million. Thus, on its face, and by PEF's own admission, the proposed transactions are not as favorable to consumers as what PEF describes as its base plan.

Brubaker Direct at 4.

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[33] 2 Tr. 102.
[34] 1 Tr. 58.

Indeed, Mr. Roeder, the employee responsible for portions of PEF's cost-effectiveness analysis, and of whom Mr. Waters stated that he has "great confidence in his capabilities,"[35] warned that the proposed agreements were not cost effective. Mr. Roeder further warned that some other grounds would have to be found to support the agreements, and that someone else would have to be found to "carry the water."[36]

Incredibly, during the hearing PEF itself refuted its own cost-benefit analysis. Responding to a question concerning the $90 million error discussed below, PEF conceded that it has put new procedures in place to minimize chances for such an error in the future. Mr. Waters explained that:

> our current level of review is much more substantial than it was with this particular analysis. This is not – this was an analysis, as I said, that I requested in addition to the normal analysis. The normal process which gave us the 5 to 11 million cost is normally employed for corporate review, and it is extensively reviewed And, I think we, going forward, will be implementing that on any of the other analyses, also.[37]

In this one statement Mr. Waters appears to have conceded that the analysis supporting PEF's claimed short-term benefits is unreliable and that the long-term analysis that shows a cost of $5-11 million dollars is much more reliable. Given that admission, PEF's claimed short-term benefits lack credibility and cannot support that the agreements are reasonable. Moreover, the Commission should disregard as not credible PEF's argument that those claimed short-term benefits are somehow more certain than the long-term costs. That alone justifies the Commission denying PEF's application.

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[35] 1 Tr. 50.
[36] 2 Tr. 91, discussing Ex. 19.
[37] 1 Tr. 62.

Even accepting PEF's cost-effectiveness analysis at face value, for the sake of argument, PEF has not provided sufficient information for the parties or the Commission to determine whether in fact its calculations are complete. For example, PEF simply could not find the information underlying its $133 million cost benefit claim.[38] Thus, PEF was unable to respond to Staff interrogatory Nos. 22 and 23 because it could not locate the necessary information.

As Mr. Brubaker explained:

> With respect to the claim that the front-end benefits are substantial, amounting to $133 million (revised to $44 million) over the five-year term of the contracts, even if we accept all of PEF's calculations as appropriate and relevant, extending the time horizon one more year (*i.e.*, to one year beyond the end of the contract term) the same information and calculations demonstrate that these claimed benefits are materially overtaken by extra costs which would not have been incurred under the base plan, reducing the cumulative present value savings of the revenue requirement to about $16 million. After just three more years, it is zero and then negative for about the next 20 years.

Brubaker Direct at 5-6.

### 1. PEF's Petition Overstated the Benefits of the Agreements by $90 million.

It its petition, PEF claimed short-term benefits of $133 million, and argued that the certainty of these near-term benefits should overcome the less certain longer-term costs associated with the agreements. Only when White Springs reviewed discovery materials provided by PEF did it become obvious that PEF had overstated these benefits by $90 million, or 66 percent. Only then did PEF concede that it overstated the benefits in its initial application.[39]

PEF's $90 million mistake raises numerous concerns. First, are there other flaws in the PEF analysis that could not be uncovered during the very limited time available for discovery and review of the PEF analysis? PEF conceded that this analysis was not as rigorous as those

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[38] 1 Tr. 61-63. PEF was unable to track down the spreadsheets that were the basis for the $133 million figure.
[39] 1 Tr. 62.

performed in other contexts.[40] Second, how can the Commission approve the proposed agreements based on PEF's, at best, careless analysis that PEF's own witness appears to have refuted? Third, although PEF does not regard $90 million as significant,[41] to the customers that pay PEF's rates a $90 million error is significant. At a minimum, under these circumstances the Commission should protect PEF's retail customers by declining to guarantee PEF full risk for recovery of costs under the proposed UPS agreements.

**2. PEF's "Base Case," Against Which it Evaluated the Proposed Agreements, Is Not the Least Cost or Best Alternative.**

Because PEF has not demonstrated that its base case is reasonable, PEF's cost-effectiveness analysis is essentially meaningless. What PEF has done is simply to compare the proposed agreements against a "base case" that is not a least cost or best scenario.

> PEF started with a base case, to which I have alluded previously. This base case is a series of capacity additions that PEF claims it would make in the absence of the proposed UPS agreements. However, the base case itself is one that has not been demonstrated to be a least cost plan that PEF would execute in the absence of the UPS contracts or other alternatives which may exist.

Brubaker Direct at 6.

A critical flaw in PEF's base case is that it imprudently relied upon unrealistically low gas price forecasts. What that means is that the base case was unrealistically skewed in favor of using natural gas-fired generation to meet PEF's resource needs. Mr. Waters confirmed during his cross-examination that the natural gas price forecasts underlying PEF's base plan were substantially understated. Although White Springs respectfully urges the Commission to review the confidential price forecasts provided in Exhibits 22 – 24 to understand the magnitude of the inaccuracy in PEF's base case natural gas price forecast, a simple non-confidential comparison

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[40] 1 Tr. 62.
[41] 1 Tr. 59.

provided by Mr. Waters demonstrates the point. PEF's "base plan" natural gas price forecast is provided in Ex. 22, its September 2004 natural gas price forecast is provided in Ex. 23 and its February 2005 natural gas price forecast is found in Ex. 24.[42] For the forecast year 2007, there is a dramatic increase from the base case gas price forecast to PEF's 2004 and 2005 forecasts. Specifically, Mr. Waters explained that compared to the base plan gas price, its 2004 forecast was roughly 20 to 25 percent higher, and its March 2005 forecast was an incredible 60 to 65 percent higher.[43] For the forecast year 2015, the last year of the proposed UPS agreements, the increase from the base case price forecast to PEF's 2004 forecast was roughly 15 to 20 percent higher, and from the base case to February 2005 roughly 45 percent higher. Given the dramatic flaws in the base case natural gas price forecast it is clear that the base case does not provide least cost or best alternative against which to compare the proposed UPS agreements.

Notwithstanding the volatility of natural gas prices, PEF conceded that it failed to take the simple step of performing a sensitivity analysis of natural gas prices.[44] PEF's failure to employ this standard analysis tool to select a base case and evaluate the potential impact of gas price volatility was imprudent. PEF, its customers and the Commission cannot know how the rapidly-increasing natural gas prices forecast for PEF will affect PEF's obligations and costs to its customers under the proposed UPS agreements.

### 3. PEF's Cost-Benefit Analysis Ignores Start Costs.

Another area where PEF simply turned a blind eye to potential costs under the proposed agreements involves start costs. As Mr. Waters explained:

> Start costs, as you look particularly at gas technologies, gas turbines are expected to start quite frequently. Combined cycle units, it varies quite a bit depending on how many starts you

[42] Tr. 108-09.
[43] 2 Tr. 110.
[44] 2 Tr. 96.

> assume, but there is a cost associated with each start up that has to do with materials and wear and tear on the unit.

1 Tr. 66-67. Mr. Waters further elaborated:

> The start-up, as defined in the contract . . . is basically going from a state of zero, being off, to turning on whether it is at minimum load or any other level. As soon as we get to a non-zero level, that is start up. And there would be costs – so it is basically turning the unit on and off, and there are costs associated with that.

1 Tr. 71. In other words, the more frequently the plant is turned on and off to meet demand, the higher the start costs will be. The proposed Franklin agreement provides that Progress must make a monthly start payment.[45] That payment is calculated pursuant to the confidential formula in Appendix C.

PEF conceded that it did not include start up costs in the cost-benefit analysis.[46] Mr. Waters made that decision based on his "feeling" that there would not be start up costs under the agreement based on a comparison to a generic self-build unit.[47] Mr. Waters stated that the basis for a generic unit in this analysis is an 85 percent capacity factor.[48] But, of course, the Franklin unit is not a generic self-build unit. Mr. Waters also stated that it would be more common for combined cycles to run in the 50 percent range "where you would have more starts."[49] In fact, PEF made no effort to analyze the number of starts likely under the Franklin unit,[50] other than Mr. Waters' " feeling." Although Mr. Waters attempted to argue that any start costs would not add to the $5 to $11 million net cost of the proposed agreements, he conceded that although he

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[45] 1 Tr. 68. (Referring to the Franklin agreement, Ex. SSW-2, at § 6.3).
[46] 1 Tr. 69.
[47] 1 Tr. at 70. Mr. Waters explained that Progress sees combined cycle units with the potential to run 70 or 80 percent of the time, but that the basis for the generic unit was a 85 percent capacity factor. 1 Tr. 72.
[48] 1 Tr. 72.
[49] *Id.*
[50] 1 Tr. at 74.

had not done the analysis to support that statement, he had already assumed the conclusion.[51] Moreover, although Mr. Waters appeared to suggest that there would be no start costs under the Franklin UPS agreement based on his experience with PEF units, that ignores the fact that the Franklin UPS agreement contains confidential, negotiated start cost provisions that would be different from PEF's cost-based start costs.

The evidence shows that the owner of the Franklin unit, Southern Company, has a different view concerning the potential for start costs. Appendix H to the contract provides an illustration of the Monthly Start payment calculation. That table is based on certain assumptions provided by Southern Company concerning the performance of the Franklin unit.[52] Specifically, Table H-4, at line 11 shows the cumulative one-year information related to start payments based on Southern's assumptions.[53] That number multiplied by 5 would give the cumulative five-year information related to start payments under the contract.[54]

Significantly, a small change in the assumptions underlying Table H-4 would yield an even larger number. For example, PEF provided the confidential late-filed Exhibit 18 based on slightly changed assumptions.[55] That change in assumptions roughly doubled the annual start cost payment over the five-year length of the contract. Neither the Commission nor PEF's customers can know what the actual start costs are likely to be because PEF did not take the trouble of doing an analysis of potential start costs. What is clear, however, is that any start costs would be paid for by PEF's customers, not PEF.[56]

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[51] 4 Tr. 252.
[52] 1 Tr. at 73.
[53] 2 Tr. at 80.
[54] 2 Tr. at 80-81
[55] Specifically, PEF added the number 10 to the first assumption and the number 5 to the second number.
[56] 2 Tr. 82.

### 4. The Cost-Benefit Analysis Ignores Transmission Costs.

PEF conceded that its cost-effectiveness analysis does not include any costs for possible transmission upgrades.[57] Unfortunately, because the record does not contain evidence concerning whether PEF must pay transmission upgrade costs in connection with the proposed Franklin agreement, the Commission cannot determine the ultimate costs that will be borne by PEF. That is because Southern has not completed a required System Impact Study ("SIS") in connection with those agreements. The SIS will determine whether transmission will be available and, if so, whether systems upgrades will be required and how much such upgrades would cost. The results of the SIS are expected by about June 25, 2005.[58]

Essentially, PEF asserts that the Commission need not worry about system improvement costs because the contract provides alternatives in case transmission is not available or is too costly.[59] Based on the record in this proceeding, however, the Commission cannot determine whether PEF's customers will be required to pay additional costs relating to transmission improvements. As Mr. Brubaker testified, however:

> [i]t is entirely possible that Southern will require certain system modifications to be made before it will agree to approve the transmission necessary to accomplish the proposed UPS transactions. Depending on the amount of any capital contribution that may be required from PEF, the economics of the proposed UPS transactions could become even more negative. Without knowing what the transmission will cost, it is not possible to know whether or not it is feasible or even marginally economic to enter into the proposed UPS agreements.

Brubaker Direct at 29.

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[57] 2 Tr. 112.
[58] 2 Tr. 113.
[59] *See, e.g.,* 2 Tr. 113.

Moreover, PEF's concedes that under the confidential portion of section 7.4.4 of the Franklin agreement Southern has some discretion[60] to determine what it will do and two days to exercise that discretion.[61] Thus, to the extent that PEF is suggesting that it has certain absolute rights under the contract, it is mistaken. Moreover, PEF concedes that if transmission is not available it would have to terminate the Franklin agreement.[62] Similarly, one option for PEF, if system upgrades were required but uneconomic would be to terminate the contract.[63] The one sure thing, however, is that PEF's customers will bear any costs that PEF incurs.

Given the lack of record evidence on this point, White Springs respectfully asks that the Commission specifically rule that PEF will be at risk for any system improvement costs that it must pay under the proposed agreements. As Chairman Baez correctly observed at the hearing: "I've always tried to avoid . . . creat[ing] a blank check with very little review on the back end."[64]

### 5. The Limited Time Available for Discovery and Analysis in the Proceeding Precluded a Thorough Analysis of PEF's Cost-Benefit Analysis.

Because PEF could not provide complete information to support its cost-effectiveness analysis, that analysis should be accorded little or no weight. Specifically, PEF was unable to locate or replicate some of the key information upon which its analysis was based.[65] For example, PEF could not locate the date supporting its claimed $133 million cost savings.

Additionally, the compressed procedural schedule precluded White Springs from fully analyzing the PEF proposals and underlying analyses. To do so, at a minimum would require

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[60] White Springs respectfully urges the Commission to carefully review the confidential contract provisions concerning transmission costs and Southern's discretion provided at paragraph 7.4.4 of the agreement.
[61] 4 Tr. 253-55.
[62] 2 Tr. 114.
[63] 2 Tr. 116.
[64] 4 Tr. 270.
[65] 1 Tr. 61.

White Springs to acquire access to the proprietary model Strategist used by PEF, to install that model on its system, and to validate the model; all of those activities would require some period of time.[66] To determine how different variables would affect the analysis would require a series of Strategist runs. For example, PEF conducted a series of Strategist runs over an eight-month period in performing its analysis.[67]

### C. PEF's Claimed "Non-Price" Benefits of the UPS Agreements Are Not Supported by the Evidence and Are Not Reasonable. [Issue No. 3]

Because the proposed UPS agreements cannot be justified on an economic basis, PEF has resorted to amorphous "non-price" benefits as a justification. Those purported benefits, however, are illusory and unsupported. Hence, the non-price factors cannot justify the agreements.

#### 1. Fuel Diversity.

PEF's claimed "fuel diversity" benefit cannot be taken seriously in light of (1) PEF's decision that fuel diversity is not its problem and (2) the fact that the proposed agreements contribute to PEF's, and the state's, dramatically-increased reliance on natural gas-fired generation.

PEF's cavalier view of fuel diversity is, to say the least, alarming. In an April 21, 2004 email, Mr. Waters explained:

> Fuel diversity may be a problem, but it's not ours to solve. FPL is in much worse shape. We should not take the lead in fixing the state.

Ex. 20, 2 Tr. 95.

PEF's own projections illustrate the dramatic increased reliance on natural gas-fired generation that is forecast. Exhibit 3 to Mr. Brubaker's testimony shows that PEF's reliance on

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[66] 2 Tr. 117-119.
[67] 2 Tr. 120.

generation from oil and gas-fired resources will increase from 28 percent in 2000 to a projected 54 percent in 2014. Mr. Waters confirmed these figures.[68] The Commission's Staff recognized fuel diversity concerns in a December 2004 report and recommended that Florida utilities evaluate potential coal generation.[69]

PEF's assertion that the proposed agreements would increase fuel diversity is counter-intuitive and unsustainable. Mr. Brubaker explained:

> The first factor he [Waters] mentions is that the proposed UPS agreements would contribute to fuel diversity. By this he means that PEF would have the rights to 74 megawatts of Southern coal-based generation, which is more than it says it would have when the existing UPS agreement expires. Actually, for this to be true, the assumption must be that there are no other sources of coal-fired power during this period of time, and/or that absent the UPS agreements PEF would not be able to construct or otherwise acquire a coal-based facility prior to 2015.

Brubaker Direct at 29-30.

PEF acknowledged that fuel diversity is a concern in the Florida Reliability Coordinating Council ("FRCC") region.[70] PEF further acknowledges that increased reliance on natural gas could cause reliability concerns.[71] Yet, because the proposed agreements would replace 400 MW of coal-fired capacity under the existing agreement with 350 MW of natural gas-fired capacity and 74 MW of coal, the proposed agreements contribute to PEF's and the State of Florida's increasing reliance on natural gas-fired generation.

**2. Access to Transmission on the Southern System.**

PEF's assertion that the proposed UPS agreements provide access to transmission on the Southern system is incorrect. First, the proposed agreements do not provide access to

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[68] 3 Tr. 145-46.
[69] See Brubaker Direct at 12-13.
[70] 3 Tr. 147.
[71] *Id.*

transmission at all. PEF's transmission rollover rights do not arise under the proposed UPS agreements. Rather those rights result from the operation of the policies, rules and tariffs of the Federal Energy Regulatory Commission ("FERC") based on the existing UPS agreement.[72] Mr. Brubaker's uncontroverted testimony was that:

> Section 2.2 of FERC's *pro forma* open access transmission tariff provides that existing long-term firm transmission customers (including bundled wholesale requirements customers) have the right to continue to take transmission service from the transmission provider when the contract expires, rolls over, or is renewed. This transmission reservation priority is independent of whether the customer continues to purchase capacity and energy from the transmission provider or selects a different supplier. . . .

Brubaker Direct at 21. Thus, PEF can use its rollover transmission rights for any resource that can deliver power on the Southern system.

Similarly, the proposed agreements do not create rights on the Florida–Georgia interface. PEF concedes that those rights are independent of the proposed UPS agreements and are established by separate agreements.[73] Moreover, PEF conceded that it could enter into an agreement with anyone who could deliver power across the Southern system and still use its Florida–Georgia interface rights.[74]

**3. Economy Energy.**

PEF's assertion that there will be benefits from economy energy purchases associated with the proposed UPS agreements cannot withstand scrutiny. First, any such benefits would be associated with the rollover transmission rights and not with the proposed UPS agreements.[75]

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[72] Brubaker Direct at 21-22.
[73] 2 Tr. 136. See also Brubaker Direct at 24.
[74] *Id.*
[75] 3 Tr. 147.

Thus, the same benefits could be available had PEF selected a different supplier.[76] Second, the claimed benefits would only occur when the Franklin unit is not scheduled – in other words, the availability of economy energy benefits is premised on the Franklin unit being out of market and not economic.[77] If Mr. Waters is correct that the Franklin unit might operate at an 85 percent capacity factor,[78] there would be relatively few opportunities for economic sales. If not, then the number of starts, and consequently level of start costs, would be higher. PEF cannot have it both ways.

Significantly, PEF's shareholders stand to gain financially from economy purchases. As Mr. Waters conceded, PEF would keep 20 percent of the net from economy transactions.[79]

**4. Reliability.**

PEF's assertion that there will be reliability benefits associated with the proposed UPS agreements is likewise incorrect. During cross-examination, Mr. Waters himself refuted the reliability claims that he made in his direct testimony. Specifically, in response to a question concerning whether there are concerns that increased reliance on natural gas-fired generation could cause reliability problems, Mr. Waters testified that:

> Hypothetically speaking, I think that has been addressed by the number of pipelines coming into the state. We have just taken actions to add a third pipeline in the state. So I think that reliability concerns are probably not the main concern over diversity.[80]

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[76] Brubaker Direct at 30.
[77] Id.
[78] 2 Tr. 72.
[79] 3 Tr. 148.
[80] 3 Tr. 147.

**D. If PEF's Claimed Cost and "Non-Price" Benefits Are Not Realized, PEF's Shareholders Should Bear the Risk. [Issue No. 4]**

Under PEF's proposal, PEF's customers, not PEF or its shareholders, would be at risk for any costs incurred under the proposed agreements. Article 13 of the agreements requires PEF to pay for all costs associated with changes in law. Under PEF's proposal, these costs – some significant ones are currently unknown – ultimately would be paid for by PEF customers such as White Springs. Similarly, PEF's customers would be at risk for increased natural gas prices. As we demonstrate above, these costs are now forecast as much as 60 percent above base case.

Because PEF failed to meaningfully consider alternatives to the proposed UPS agreements, or to even undertake reasonable processes to determine what alternatives were available, PEF and its shareholders, not PEF's retail customers should be on the hook if the benefits claimed by PEF are not realized. That is especially the case where the claimed economic benefits were vastly overstated by PEF and the potential costs either greatly exceed PEF's projections or are simply unknown. It would not be "fair, just and reasonable" to saddle PEF's ratepayers with those costs.

**E. PEF Has Not Shown That There Is Reliable Transmission Available to Support the Proposed Agreements. [Issue No. 5]**

PEF has not demonstrated that there is transmission capacity available to support the proposed UPS agreements (at least up to the Florida-Georgia interface).

The Southern SIS for the proposed transmission necessary to implement the UPS agreements has not been completed. It is entirely possible that Southern will require certain system modifications to be made before it will agree to approve the transmission necessary to accomplish the proposed UPS transactions.[81] Any such modifications affect not only the

[81] Brubaker Direct at 29.

economics of the deal,[82] but also the availability of transmission. While PEF has expressed optimism about the outcome of the SIS, the bottom line is that we just don't know. Thus, PEF has not met its burden of proving that sufficient transmission is available to support the proposed UPS agreements.

**F. The Commission Should Decline to Approve the UPS Agreements for Cost Recovery Purposes. [Issue No. 7]**

**1. The Proposed Agreements Are Not Supported by Competent and Substantial Evidence**

Fundamentally, as demonstrated above, PEF has failed to prove that the proposed UPS agreements are reasonable and prudent. Commission approval of the UPS agreements on the present record would violate the Administrative Procedure Act requirement that Commission acts be based on "competent and substantial evidence." Fla. Stat. § 120.68(7) (2005). A Commission decision to approve the agreements would be supported by substantial evidence ***if*** there existed evidence in the record such that "a reasonable mind would accept [it] as adequate to support a conclusion." *Adam Smith Enterprises, Inc. v. Florida Dept. of Envtl. Regulation*, 553 So.2d 1260, 1270 n.15 (Fla. Dist. Ct. App. 1989) (citing *Becker v. Merrill*, 20 So. 2d 912 (1944). When the record lacks credible evidence to support basic conclusions, however, the Commission simply cannot approve the contracts and uphold its obligation to ensure that its decision is based on competent and substantial evidence.

**2. The Commission Should Not Approve the Proposed Agreements Given the Credible Allegations of Southern Company Market Power.**

FERC has determined that there are credible concerns that the Southern Companies, including the Southern entities involved in the UPS agreements, have exercised market power to the detriment of wholesale competition and wholesale customers in the Southeast. Brubaker

[82] *Id.*

Direct at 34. Given that PEF is asking for approval of these contracts five years before the end of the current contract term, the Commission should be concerned by the considerable uncertainty that exists concerning potential federal regulatory impacts on the Southern Companies' wholesale activities. These concerns arise in three ongoing FERC investigations concerning the exercise of market power by the Southern Companies, including the sellers under the UPS agreements and their agent, Southern Company Services, Inc. (who entered into the agreements on their behalf): (a) an investigation instituted by FERC on December 17, 2004 under Section 206 of the Federal Power Act concerning the justness and reasonableness of the Southern Companies' market-based rates, involving Southern's generation market power within its control area (where the Franklin and Scherer plants are located),[83] (b) a separate Section 206 investigation, initiated by FERC on May 5, 2005, to determine whether the Southern Companies have exercised market power in transmission, have erected barriers to entry to the market, and have engaged in affiliate abuse and/or reciprocal dealing,[84] and (c) an investigation, also initiated on May 5, 2005, into allegations concerning the Southern Companies' Intercompany Interchange Contract ("IIC").[85] In particular, in the IIC Order, FERC observed that:

> The participants have raised credible allegations . . . that the relationship between Southern Power and other Southern Companies, including Southern Services and the inclusion of Southern Power in the IIC and Southern pool, as well as the conduct of several of the Southern Companies may have resulted in unduly preferential or unduly discriminatory conduct in violation of the FPA and/or in violations of Part 37 of the

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[83] *Southern Companies Energy Marketing Inc. and Southern Companies Services, Inc.*, 109 FERC 61,275 (2004).

[84] "Order on Rehearing," *Southern Companies Energy Marketing Inc. and Southern Companies Services, Inc.*, 111 FERC ¶ 61,144 (2005).

[85] "Order Establishing Hearing Procedures," *Southern Company Services, et al.*, 111 FERC ¶ 61,146 (2005) ("IIC Order"). As explained by Mr. Brubaker, the IIC is the agreement among the six Southern operating companies, including Southern Power, that establishes a closed power pool (the "Southern Pool").

> Commission's regulations, to the detriment of wholesale competition and customers in the southeast. It is appropriate to allow the participants to continue to investigate these allegations in a hearing. We are also concerned that the IIC (including how ratepayers are impacted by the sharing of costs and revenues under the IIC and whether native load wholesale customers are receiving a proper share of revenue credits from off-system sales) may not be just and reasonable, may allow Southern Power to enjoy an undue preference by virtue of its pool membership that adversely impacts wholesale competition and wholesale customers, and may lack sufficient clarity and transparency to ensure its justness and reasonableness. These issues should be addressed in the hearing.[86]

As explained by Mr. Brubaker,[87] there are a number of potential consequences of these ongoing FERC investigations that are relevant to this proceeding. First, FERC could decide that the Southern Companies do not meet FERC's test for market-based rates and presumably could revoke Southern's market-based rate authority – which directly could impact Southern's ability to implement the UPS agreements. Second, FERC could force Southern to open the closed Southern Pool to other competitors, which could give PEF access to additional competitive options during the time frame of the UPS agreements. By approving the UPS agreements now, notwithstanding that the term of the agreements is 2010-2015, the Commission could foreclose the possibility of PEF's retail customers benefiting from such competitive options. Third, if the UPS agreements are the result of or tainted by the Southern Companies' market power – for example, if Southern has used its market power to deprive PEF of competitive alternatives – then PEF's retail customers will be harmed because they ultimately would bear the burden of higher prices.

The Commission also should be hesitant to approve, far in advance, transactions that may be tainted by the Southern Companies' market power. As FERC has recognized, there are credible allegations that the Southern Companies have used their market power to harm

[86] IIC Order, at P 35 (quoted in Brubaker Direct at 34).
[87] Brubaker Direct at 34-35.

wholesale competition, and wholesale customers (PEF in this case being a wholesale customer), in the Southeast. Such a result also would harm both PEF and its retail customers. For example, if Southern has used its market power to deprive PEF of competitive alternatives, PEF's retail customers ultimately would bear the burden of higher prices. Brubaker Direct at 35.

For these reasons, the Commission should not approve the UPS agreements until more is known about the outcome of the Southern Companies' market power cases at FERC.

## III. CONCLUSION

Because PEF has failed to satisfy its burden of demonstrating that the proposed UPS agreements are reasonable and prudent the Commission must decline to pre-approve guaranteed cost recovery under those agreements. If PEF is indeed confident that the agreements are reasonable it should confidently go forward with them and seek cost recovery beginning in 2010 when costs are actually incurred. If it is not confident that the agreements are reasonable, it should promptly determine what alternative resources are available and present evidence to the Commission demonstrating that its choice is reasonable and prudent. To the extent that PEF is reluctant to act unless the Commission wholly insulates it from risk, that is a problem of PEF's own making.

As demonstrated above, the Commission must decline to guarantee cost recovery for the following reasons, any one of which alone establishes that the agreements are not reasonable and prudent:

- PEF failed to consider alternatives to the proposed agreements;
- The proposed agreements are not economic, and PEF's cost-effectiveness analysis is not credible;

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- PEF's claimed non-price benefits are illusory and unsubstantiated; and
- FERC's Order initiating investigations states that there are credible assertions that the Sellers under these agreements have exercised market power.

Respectfully submitted,

s/ James M. Bushee

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June 8, 2005

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing Notice of Service has been furnished by electronic mail this 8th day of June, 2005, to the following:

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