

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition for rate increase by  
Progress Energy Florida, Inc.

Docket No. 050078-E1  
Submitted for filing:  
June 13, 2005

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**PEF'S OBJECTIONS TO WHITE SPRINGS AGRICULTURAL CHEMICALS,  
INC. D/B/A PCS PHOSPHATE – WHITE SPRINGS' FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS (NOS. 1-16)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.350 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure in this matter, Progress Energy Florida, Inc. ("PEF") hereby serves its objections to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs' ("White Springs") First Set of Requests for Production of Documents (Nos. 1-16) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in White Springs' First Set of Requests for Production of Documents and will make all responsive documents available for inspection and copying at the offices of Progress Energy Florida, Inc., 106 E. College Ave., Suite 800, Tallahassee, Florida, 32301 at a mutually-convenient time, or will produce the documents in some other manner or at some other place that is mutually convenient to both PEF and White Springs for purposes of inspection, copying (at White Springs' expense), or handling of the responsive documents.

With respect to the "Definitions and Instructions" in White Springs' First Set of Requests For Production (Nos. 1-16), PEF objects to any definitions or instructions that

are inconsistent or in conflict with PEF's discovery obligations under applicable rules. PEF also objects to any definitions or instructions that attempt to impose discovery obligations on PEF beyond those called for under the applicable rules. If some question arises as to PEF's discovery obligations, PEF will comply with applicable rules and not with any of White Springs' definitions or instructions that are inconsistent with those rules. PEF objects to any definitions or instructions to the extent that they attempt to seek information or documents from PEF's attorneys that is protected by the attorney-client privilege or work product doctrine. PEF also objects to any request that calls for documents to be produced from the files of PEF's outside or in-house counsel in this matter because such documents are privileged and/or work product and are otherwise not within the scope of discovery under the applicable rules and law. Furthermore, PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. No responses to the requests will be made on behalf of persons or entities other than PEF. Furthermore, PEF objects to any request that calls for PEF to create documents that it otherwise does not have because there is no such requirement under the applicable rules and law. PEF also objects to White Springs' instruction requiring PEF to produce responsive documents to both White Springs' counsel of record and its experts or consultants. In accordance with applicable discovery rules, PEF will only serve responses upon counsel for parties of record.

PEF objects to White Springs' definition "16" given that it includes "affiliates" in the definition of "Progress," and PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are

not subject to discovery. No documents will be produced on behalf of persons or entities other than PEF. PEF also objects to White Springs' Instruction "3" given that PEF has no obligation under applicable rules to seek out or obtain information or documents from former employees.

Additionally, PEF generally objects to White Springs' requests to the extent that they call for documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law. PEF will provide a privilege log in accordance with the applicable law or as may be agreed to by the parties to the extent, if at all, that any document request calls for the production of privileged or protected documents.

Further, in certain circumstances, PEF may determine upon investigation and analysis that documents responsive to certain requests to which objections are not otherwise asserted are confidential and proprietary and should be produced only under an appropriate confidentiality agreement and protective order, if at all. By agreeing to provide such information in response to such a request, PEF is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement, protective order, or the procedures otherwise provided by law or in the Order Establishing Procedure. PEF hereby asserts its right to require such protection of any and all information that may qualify for protection under the Florida Rules of Civil Procedure, the Order Establishing Procedure, and all other applicable statutes, rules, and legal principles. PEF further notes that White Springs' instruction "18" suggests that PEF and White Springs have entered into a confidentiality agreement with each other, but

PEF has not received a signed confidentiality agreement from White Springs as of the date of these objections.

PEF generally objects to White Springs' First Set of Requests for Production to the extent that it calls for the production of "all" documents of any nature, including, every copy of every document responsive to the requests. PEF will make a good faith, reasonably diligent attempt to identify and obtain responsive documents when no objection has been asserted to the production of such documents, but it is not practicable or even possible to identify, obtain, and produce "all" documents. In addition, PEF reserves the right to supplement any of its responses to White Springs' requests for production if PEF cannot produce documents immediately due to their magnitude and the work required to aggregate them, or if PEF later discovers additional responsive documents in the course of this proceeding.

PEF also objects to any request that calls for projected data or information beyond the year 2006 because such data or information is wholly irrelevant to this case and has no bearing on this proceeding, nor is such data or information likely to lead to the discovery of admissible evidence. Furthermore, if a request does not specify a timeframe for which data or information is sought, PEF will interpret such request as calling only for data and information relevant to the years 2004-2006.

PEF objects to any attempt by White Springs to evade the numerical limitations set on requests for production in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts. PEF also objects to White Springs' instruction "17," and PEF will provide discovery responses in the time frame set forth in the Order Establishing Procedure in this matter. Finally, PEF objects to

White Springs' instruction "15," as there is no such obligation under the applicable rules or the Order Establishing Procedure. However, PEF will identify what witness provides particular answers in response to White Springs' interrogatories. Finally, where a document only exists in paper form, PEF will produce such documents in paper form. Where documents exist in both paper and/or electronic form, PEF will produce such documents in paper form unless White Springs specifically requests production in electronic form.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to White Springs' discovery at the time PEF's response is due under the Florida Rules of Civil Procedure and the Order Establishing Procedure. PEF provides these general objections at this time to comply with the intent of the Order Establishing Procedure to reduce the delay in identifying and resolving any potential discovery disputes.

#### **SPECIFIC OBJECTIONS:**

**Request 1:** PEF objects to White Springs' request number 1 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. If PEF has any responsive data in the electronic forms requested, PEF will provide that data to White Springs in those forms. Otherwise, PEF will produce data to White Springs in hard-copy format.

**Request 2:** PEF objects to White Springs' request number 2 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. If PEF has any responsive data in the electronic forms requested, PEF will provide that data to White Springs in

those forms. Otherwise, PEF will produce data to White Springs in hard-copy format.

**Request 3:** PEF objects to White Springs' request number 3 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. PEF also objects to this request because it calls for documents that are irrelevant to this case. PEF's work papers underlying its Jurisdictional Separation Study have no bearing on this proceeding, nor is the information likely to lead to the discovery of admissible evidence, because the Jurisdictional Separation Study the Company filed with the Commission contains the relevant information, by definition, upon the filing of the Jurisdictional Separation Study.

**Request 4:** PEF objects to White Springs' request number 4 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. PEF also objects to this request because it calls for documents that are irrelevant to this case. PEF's work papers underlying all its class cost of service studies have no bearing on this proceeding, nor is the information likely to lead to the discovery of admissible evidence, because the class cost of service studies the Company filed with the Commission contain the relevant information, by definition, upon the filing of the cost of service studies.

**Request 5:** PEF objects to White Springs' request number 5 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. PEF also objects to this request because it calls for documents that are irrelevant to this case. PEF's work papers underlying all its rate designs have no bearing on this proceeding, nor is the information likely to lead to the discovery of admissible evidence, because the rate designs the

Company filed with the Commission contain the relevant information, by definition, upon the filing of the rate designs.

**Request 6:** PEF objects to request 6(a), 6(b), and 6(c) because they call for “all” return on common equity analyses, “all” depreciation studies, and “all” dismantlement cost studies without any limitation as to time or to relevancy to this proceeding. Such broad requests, therefore, necessarily call for documents that are irrelevant and unlikely to lead to the discovery of admissible evidence. In response to these requests, PEF will provide any such documents that have any impact or bearing on this proceeding. PEF also objects to White Springs’ request number 6 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. Subject to objections, if PEF has any responsive data in the electronic forms requested, PEF will provide that data to White Springs in those forms. Otherwise, PEF will produce data to White Springs in hard-copy format.

**Request 8:** PEF must object to White Springs’ request number 8 to the extent that request calls for PEF to produce “relevant portions of all documents and reference sources relied on” by Dr. Vander Weide “in reviewing capital markets, utility industry investment characteristics, academic studies and the cost of common equity for PEF in this proceeding” because Dr. Vander Weide relies on all of the knowledge gained from the review of such material over his entire career of over thirty years and, therefore, he cannot possibly produce all such material that he has “relied on” to form his opinions in this proceeding. To the extent that Dr. Vander Weide refers to any specific source material, that material, subject to the other general and specific objections asserted

herein, has been or will be produced.

**Request 9:** PEF must object to White Springs' request number 9 to the extent that request calls for PEF to obtain documents from other entities (i.e., "affiliate companies") that are not within PEF's possession, custody, or control. PEF objects to any request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. No responses to the requests will be made on behalf of persons or entities other than PEF.

**Request 10:** PEF objects to request number 10 to the extent that the request requires PEF to produce information for years prior to 2002 (i.e. "over the last five years"). Financial statements for the years before 2002 are irrelevant to this case and have no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence. The financial statements for the years before 2002 are pre-merger and are necessarily irrelevant to this proceeding, as they relate to a different company than PEF.

**Request 11:** PEF must object to this interrogatory to the extent that it requires PEF or its expert to create documents that otherwise do not exist or to prepare a study or do work for White Springs that has not been done for PEF, presumably at PEF's cost. PEF also must object to request number 11 to the extent the request is for information over the past 10 years. The request is overbroad as to time, and is therefore irrelevant, and not likely to lead to the discovery of admissible evidence in this proceeding. PEF also objects to this request to the extent it improperly requests PEF to provide a legal opinion or evaluation as to the effect a decision by the Florida Public Service Commission may or may not have on the Company's storm damage expenditures and receipts. PEF is not obligated to respond with any legal opinions or evaluations.



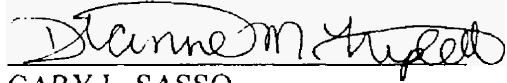
**Request 12:** PEF must object to this request to the extent that it requires PEF or its expert to create documents that otherwise do not exist or to prepare a study or do work for White Springs that has not been done for PEF, presumably at PEF's cost. PEF also objects to White Springs' request number 12 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought.

**Request 14:** PEF must object to this request to the extent that it requires PEF to create documents that otherwise do not exist or to prepare a study or do work for White Springs that has not been done for PEF, presumably at PEF's cost. PEF also notes that this request is more akin to an interrogatory rather than a request for production as it asks PEF to identify and explain things rather than to produce documents and is therefore improper.

**Request 15:** PEF must object to this request to the extent that it requires PEF to create documents that otherwise do not exist or to prepare a study or do work for White Springs that has not been done for PEF, presumably at PEF's cost. PEF also notes that this request is more akin to an interrogatory rather than a request for production as it asks PEF to identify and explain things rather than to produce documents and is therefore improper.

**Request 16:** PEF objects to this request because PEF has already provided White Springs with copies of PEF's responses to discovery requests served by all other parties in this proceeding. PEF will continue to provide copies of such requests to White Springs as PEF responds to the requests. As to any documents produced in response to such requests, those documents will be made available to White Springs at Progress Energy Florida, Inc., 106 E. College Ave., Suite 800, Tallahassee, Florida, 32301, at a mutually convenient time for inspection or copying at White Springs' expense.

Respectfully submitted,




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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 13<sup>th</sup> day of June, 2005 to all counsel of record as indicated below.

  
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