

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
ORDER NO. PSC-05-0538-PCO-EI
ISSUED: May 16, 2005

ORDER GRANTING MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY
AND DENYING EMERGENCY MOTION TO SUSPEND PROCEDURAL SCHEDULE

An administrative hearing is scheduled for June 2-3, 2005, for the Commission to hear testimony on Progress Energy Florida Inc.'s (PEF) petition for approval for cost recovery purposes of two Unit Power Sales agreements with Southern Company. In anticipation of the hearing, PEF prefiled the testimony and exhibits of Samuel S. Waters on April 15, 2005, which in part sets out PEF's cost-effectiveness analysis for the agreements.

Motion for Leave to File Supplemental Testimony

On May 10, 2005, PEF filed a Motion for Leave to File Revised Supplemental Testimony. PEF seeks to file the supplemental testimony and exhibit of Samuel S. Waters to ensure that the record reflects accurate information. Since Mr. Waters' direct testimony and exhibits were filed on April 15, 2005, it has come to PEF's attention that certain inputs to Mr. Waters analysis of cost savings were incorrect. According to PEF, the purpose of Mr. Waters' supplemental testimony is to provide a revised estimate of cost savings based on an updated analysis with corrected inputs; these revisions do not change any of the conclusions stated in Mr. Waters' direct testimony.

White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (White Springs) filed a response in opposition to PEF's motion on May 11, 2005. White Springs argues that it would be unfair and a denial of due process to allow PEF to file supplemental testimony that changes the cost-effectiveness analysis underlying its petition just days before White Springs' direct testimony is due. White Springs states that it cannot reasonably be expected to fully analyze the supplemental testimony and respond in its direct testimony; moreover, it would not have an opportunity to conduct discovery on the supplemental testimony in time to respond in its direct testimony.

Upon review of the pleadings and consideration of the arguments, I find that PEF's request for leave to file the supplemental testimony and exhibit of Samuel S. Waters for consideration at the hearing is granted. It appears that certain inputs in Mr. Waters' original estimate of cost savings over the five-year term of the agreements were incorrect, and PEF has demonstrated that the purpose of the supplemental testimony is to correct these errors. Therefore, PEF's motion for leave to file supplemental testimony is hereby granted.

DOCUMENT NUMBER-DATE

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Emergency Motion to Suspend Procedural Schedule

White Springs also filed an Emergency Motion to Suspend Procedural Schedule or, Alternatively, to Dismiss Petition on May 11, 2005. White Springs states that the magnitude of the fundamental changes in PEF's cost-effectiveness analysis contained in the supplemental testimony of Mr. Waters calls into question the credibility of the entire analysis. As a result, White Springs urges the Commission to immediately suspend the procedural schedule in this proceeding. White Springs's direct testimony is due on May 13, 2005, and absent an immediate suspension of the schedule, it will be forced to devote considerable resources to responding to what appears to be a moving target, the cost-benefit analysis.

In addition, White Springs claims that the need for expedition claimed by PEF no longer applies. According to White Springs, PEF argued that expedition was necessary so that it would not risk being forced to accept a transmission agreement before the Commission had ruled on its petition. Based on discovery responses, White Springs states that PEF has signed a System Impact Study Agreement with and paid a deposit to Southern Company, which indicates that PEF can no longer cite the need to enter into such an agreement as a driving force for the timing of the Commission's action on PEF's petition.

White Springs asserts that the procedural schedule should be suspended until a schedule can be established that would provide for an adequate opportunity to understand PEF's case as it is now stands. White Springs believes that the prehearing conference, scheduled for May 26, 2005, would provide a forum to discuss the reasons underlying the change in PEF's case and to develop an appropriate procedural schedule.

In the alternative, White Springs argues it would be appropriate for the Commission to dismiss PEF's petition without prejudice, and PEF can refile its petition when it has accurate and complete information to support the petition. White Springs asserts that PEF's corrections so significantly impact the underlying cost-effectiveness analysis and represent such a magnitude of change that a de novo proceeding is justified.

PEF responded in opposition to White Springs's emergency motion on May 11, 2005. PEF argues that White Springs' emergency motion is premised on the false assertion that the revised cost analysis calls into question the entire economic analysis upon which PEF's case is based. PEF maintains that the revised five-year cost savings analysis still shows significant cost savings over the term of the agreements, and it does not effect the results of PEF's long-term cost analysis; additionally, the five-year cost analysis is just one of several bases for PEF's request for approval of the agreements. According to PEF, White Springs had sufficient time to review the cost analysis at issue because White Springs was able to identify the incorrect inputs in the cost analysis. Through its proffered supplemental testimony, PEF has acknowledged the error in the five-year analysis and seeks to present corrected information to the Commission and other parties. PEF states it has provided White Springs the spreadsheets underlying the revised analysis, and that there is no basis for an extension of the discovery schedule, much less a complete suspension of the schedule. Contrary to White Springs' assertion, PEF maintains that an expedited decision is still needed. PEF has signed a System Impact Study Agreement and

placed a deposit for that study within the deadlines established in Southern's Open Access Transmission Tariff, which means that Southern could grant PEF's request for transmission rights at any time, leaving PEF at risk of being obligated to take the transmission without any assurance that the agreements would be approved by the Commission.

With regard to White Springs' alternate motion to dismiss, PEF argues that the fact that it has proffered supplemental testimony does not provide any basis to dismiss PEF's petition. PEF states that in any de novo proceeding the parties are entitled to present evidence and argument on all issues involved and to conduct cross-examination. Accordingly, White Springs is entitled to cross-examine PEF's witness and present evidence in support of its contention that PEF's revised analysis is flawed or incomplete, just as PEF is not limited in presenting only the information contained in its petition.

Upon review of the pleadings and consideration of the arguments, I find that White Springs' request to suspend the procedural schedule is denied. White Springs has not demonstrated that the modifications to the cost-effectiveness analysis contained in PEF's supplemental testimony are so fundamental to this proceeding that a suspension of the procedural schedule is warranted. However, because White Springs only received these revisions three days before its own testimony is due, additional time is warranted for White Springs to address the revised cost-effectiveness analysis in its testimony. Accordingly, White Springs shall have until May 20, 2005, to file testimony addressing PEF's supplemental testimony. This ruling does not obviate White Springs' responsibility to file testimony on May 13, 2005, on all other matters. As a result, PEF has until May 26, 2005, to file rebuttal testimony addressing any testimony filed by White Springs on May 20, 2005. This ruling does not obviate PEF's responsibility to file rebuttal testimony on May 20, 2005, on all matters raised by White Springs' May 13, 2005 testimony. In addition, PEF is directed to respond to all discovery requests served by White Springs regarding PEF's supplemental testimony via hand-delivery, electronic mail, facsimile, or overnight courier within three days of service. Therefore, White Springs's emergency motion to suspend the procedural schedule is hereby denied. Because I have ruled on the emergency motion to suspend the procedural schedule, no ruling is necessary on the alternate request.

Based on the foregoing, it is,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Progress Energy Florida, Inc.'s Motion for Leave to File Supplemental Testimony is hereby granted. It is further

ORDERED that White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs' Emergency Motion to Suspend Procedural Schedule is hereby denied as set forth in the body of this Order. It is further

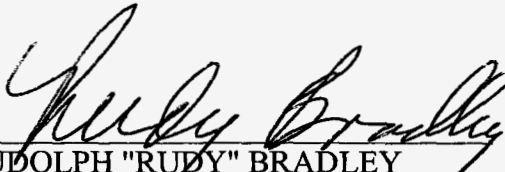
ORDERED that White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs shall have until May 20, 2005, to file testimony addressing Progress Energy Florida, Inc.'s supplemental testimony. This does not obviate White Springs' responsibility to file testimony on May 13, 2005, on all other matters. It is further

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ORDERED that Progress Energy Florida, Inc. has until May 26, 2005, to file rebuttal testimony addressing any testimony filed by White Springs on May 20, 2005. This does not obviate PEF's responsibility to file rebuttal testimony on May 20, 2005, on all matters raised by White Springs' May 13, 2005 testimony. It is further

ORDERED that Progress Energy Florida, Inc. is directed to respond to all discovery requests served by White Springs regarding Progress Energy Florida, Inc.'s supplemental testimony via hand-delivery, electronic mail, facsimile, or overnight courier within three days of service.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
16th day of May, 2005


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case

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of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.