

Hopping Green & Sams

Attorneys and Counselors

April 15, 2005

BY HAND-DELIVERY

Blanca Bayó
Director, Division of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 041393-EI
CONFIDENTIAL INFORMATION ENCLOSED

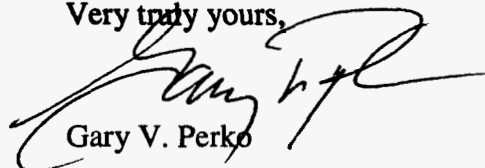
Dear Ms. Bayó:

On behalf of Progress Energy Florida, Inc. (PEF), I enclose for filing in the above docket the original and seven (7) copies of the following:

- PEF's Answer to Petition for Hearing and Request for Expedited Schedule; 03716-05
- Redacted Direct Testimony of Samuel S. Waters and Exhibit No. __ (SSW-4). 03717-05
- PEF's Request for Confidential Classification for portions of Mr. Waters' testimony, along with a package containing two redacted copies of the testimony and a separate envelope labeled "CONFIDENTIAL" containing one unredacted copy of the testimony with the confidential information highlighted in yellow.

03718-05 03719-05 03720-05
Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning it to me. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,



Gary V. Perko

Counsel for PROGRESS ENERGY FLORIDA, INC.

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Progress Energy Florida's (PEF's) Answer to Petition for Hearing and Request for Expedited Schedule, a redacted copy of the Direct Testimony of Samuel S. Waters and Exhibit No. __ (SSW-4), and PEF's Request for Confidential Classification were provided by fax and U.S. Mail, postage pre-paid, to the following on this ¹⁴15 day of April, 2005:

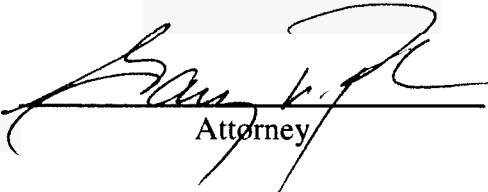
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy Florida for approval of Unit Power Sales Agreements for cost recovery purposes.

DOCKET NO. 041393-EI

FILED: April 15, 2005

PROGRESS ENERGY FLORIDA'S ANSWER TO PETITION FOR HEARING AND REQUEST FOR EXPEDITED SCHEDULE

Progress Energy Florida, Inc. ("PEF"), pursuant to Rule 28-106-203, Florida Administrative Code ("FAC"), hereby answers the petition for hearing filed by White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs ("White Springs") regarding Commission Order No. PSC-05-272-PAA-EI ("PAA order"), by which the Commission proposed to approve of two Unit Power Sales ("UPS") agreements between PEF and Southern Company Services, Inc. ("Southern"), for purposes of cost recovery. In addition, for the reasons discussed below, PEF respectfully requests that the Commission establish an expedited discovery and hearing schedule for this proceeding.

Background

1. The Commission is very familiar with the substance of this case and has, for all practical purposes, already decided the issues now raised by White Springs. Even before the Commission issued the PAA order under protest, it had already issued a final order approving substantially similar UPS agreements between FPL and Southern after considering most, if not all, of the issues raised in White Springs' petition. *See*, Order No. PSC-05-0084-FOF-EI. In the FPL order, the Commission emphasized that it "has the expertise needed to make a decision based upon the economic impact of the new UPS agreements and a description of the benefits they will bring to FPL's ratepayers." *Id.* at 5. Even though the FPL agreements were projected to result in net costs between \$69 and \$117 million, the Commission approved the FPL

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agreements because they “continue many of the benefits associated with the current UPS agreements.” *Id.*

2. There is no basis in this case for the Commission to deviate from the FPL precedent. Like the FPL agreements, the PEF agreements would replace existing UPS agreements that have substantially benefited the ratepayers. Like the FPL agreements, the PEF agreements retain some, though not all, of the coal-fired generation included in the existing agreements. Like the FPL agreements, the PEF agreements will provide substantial benefits including: (a) the ability to maintain transmission access to the southeastern region and thereby maintain access to economy energy purchases and sales outside of Florida; (b) fuel diversity by providing more coal capacity than PEF’s self-build option; (c) planning flexibility by deferring the need for two combined cycle units and thereby providing PEF additional time to study the cost-effectiveness and feasibility of coal generation; and (d) increased reliability by adding an outside source for natural gas transportation and providing access to the Southern system and beyond. In addition, the PEF agreements are projected to provide cost *savings* between \$133 and \$145 million over the life of the agreements.¹ Thus, the evidence supporting approval of PEF’s new agreements is even stronger than what the Commission reviewed in approving FPL’s agreements.

Request for Expedited Schedule

3. PEF respectfully requests that the Commission set an expedited schedule for this proceeding to prevent undue delay that could jeopardize the agreements and benefits they would provide to PEF and its customers. Under the agreements, PEF must obtain firm transmission before February, 2006. Because PEF has the right to “rollover” its existing transmission rights,

¹ In the years beyond the term of the agreements, when PEF’s resource plan is less certain, the contracts are projected to result in a net cost to customers between \$5 million and \$11 million, CPVRR.

the Company is not required to go to the end of the queue of applications for new transmission service under Southern's Open Access Transmission Tariff (OATT). However, PEF was required to submit an application to redirect its "rollover" rights from Plant Miller, which provides 350 MW of generation under the existing UPS agreement, to Plant Franklin, which will provide 350 MW under the new agreements. To maintain the rollover rights, PEF must submit a System Impact Study agreement for the redirection request in the immediate future, at which point Southern can act on the request at any time. If Southern approves the redirection request, PEF will be obligated to take that transmission for the term June 1, 2010 through December 31, 2015. Thus, if Southern approves the pending application before the Commission approves the new UPS Agreements, PEF will be obligated to pay for transmission regardless of the Commission's ultimate decision on the UPS agreements.

4. For this reason, PEF respectfully requests an expedited discovery and hearing schedule for this proceeding so that the Commission can reach a final decision as soon as possible and thereby mitigate the substantial risks associated with delay. To facilitate such a schedule, contemporaneously with this Request, PEF is filing the pre-filed direct testimony of Samuel S. Waters in support of the Commission's proposed action.

Responses to Issues Raised

I. Identity of Petitioner

5. Paragraphs 1 and 2 of the Petition provide the names and addresses of the Petitioner and its representatives and therefore require no response.

6. PEF admits the allegations in Paragraph 3 of the Petition.

II. Statement of Affected Interests

7. PEF admits the allegations in Paragraph 4 of the Petition.

8. PEF denies the allegation in Paragraph 5 that PEF “proposes to rely increasingly on high priced natural gas-fired generation.” To the contrary, as discussed in paragraph 12 below, the agreements will actually increase the projected amount of coal generation in PEF’s resource plan. PEF denies the allegation that White Springs “faces harmful rate increases and increased price volatility” that “will affect White Springs’ production costs and its competitive position.” PEF also denies the allegations that PEF proposes to use “constrained transmission resources,” that “the reliability of PEF’s service to White Springs will be adversely affected,” and that the agreements will adversely affect White Springs’ “ability to operate its facilities in an efficient and economical manner.”

III. “Disputed Issues of Material Fact”

9. PEF denies that statement in Paragraph 6 of the Petition that the UPS agreements “raise disputed issues of material fact that can be resolved *only* through a formal hearing.” (Emphasis added). PEF believes this matter should be resolved informally once White Springs reviews the analyses supporting PEF’s Petition. Furthermore, PEF objects to any suggestion that White Springs may raise additional disputed issues of material fact after designation of the presiding officer absent a showing of good cause. *See*, Rule 28-106.202, FAC.

10. Contrary to the suggestion in Paragraph 7 of the Petition, PEF contends that its cost-effectiveness analysis was based on reasonable assumptions. Furthermore, PEF contends that the answers to all of the questions (labeled “issues”) in subparagraphs 7(a) and (b) (i) through (ix) support the Commission’s proposed action.

11. PEF disputes the relevance of the “issues” raised in Paragraph 8 of the Petition regarding the adequacy of transmission. Under the terms of the UPS Agreements, PEF has the right to terminate the power purchases if Southern cannot provide acceptable transmission

service. Assuming *arguendo* that the Commission deems this issue relevant, PEF contends that the answers to all of the questions (labeled “issues”) in subparagraphs 8(a) through (f) support the Commission’s proposed action. PEF is without sufficient knowledge to admit or deny the allegation in subparagraph 8(e) regarding “recent SCS filings ... at FERC.”

12. PEF disputes the suggestion in Paragraph 9 of the Petition that the UPS agreements would “replac[e] coal-fired generation with natural gas-fired generation” and “undermine” fuel diversity. Absent the new agreements, PEF would have no right to any of Southern’s coal-fired generation after the existing agreement expires. With the new agreements, however, PEF will have rights to 74 MW of Southern coal generation. Moreover, the new agreements would defer the need for a new gas-fired unit during the 2010-2015 term. Thus, the new agreements will actually increase the projected amount of coal generation in PEF’s resource plan. As to subparagraph 9(a) of the Petition, PEF contends that the UPS Agreements would increase fuel diversity for the reasons stated above. As to subparagraph 9(b), PEF specifically denies the allegation that the Commission’s PAA order is self-contradictory.

13. PEF disputes the suggestion in Paragraph 10 of the Petition that the UPS agreements may “undercut planning flexibility.” PEF contends that the agreements offer planning flexibility by deferring the need for two combined cycle units and thereby providing PEF additional time to study the cost-effectiveness and feasibility of coal generation. Furthermore, PEF disputes the suggestion in the last Sentence of Paragraph 10 that any additional analysis of alternatives is necessary.

14. PEF disputes the suggestion in Paragraph 11 of the Petition that the UPS agreements may “reduce the reliability of the PEF system.” As to subparagraph 11(a) of the Petition, PEF contends that the agreements would increase system reliability by adding an

outside source for natural gas transportation and providing access to the Southern system and beyond. As to subparagraph 11(b) of the Petition, PEF contends that the agreements represent prudent and reasonable action to meet PEF's twenty percent reserve margin and therefore should be approved.

IV. "Disputed Legal Issues"

15. Paragraph 12 of the Petition alleges that because PEF filed the UPS agreements and related cost-effective analysis on a confidential basis, White Springs would be deprived of due process unless the Commission grants a hearing. That allegation ignores the fact that this docket has been pending for over 3 ½ months, and was publicly noticed prior to the Commission's vote on March 1, 2005. White Springs has had ample opportunity to intervene in this docket either before or after the Commission's vote to gain access to and analyze the confidential materials through a confidentiality agreement or protective order issued by the Commission. White Springs' own inaction cannot create a due process issue.

16. Paragraph 13 of the Petition raises, as a "legal issue," whether SCS will retain legal authority to continue to sell power under the UPS agreements in light of a pending FERC investigation. Because the Commission cannot speculate as to the disposition of a pending FERC matter, the issue is not appropriate for consideration in this proceeding. *See, Duval County School Bd. v. Spruell*, 665 So. 2d. 262 (Fla. 1st DCA 1996) (Court will not speculate as to results of future agency action); *Village Park Mobile Home Assoc. v. State, Dept. of Business Reg.*, 506 So. 2d 426 (Fla. 1st DCA 1987) (speculation on possible occurrence of events are too remote to warrant inclusion in the administrative process). Moreover, although the pending FERC matter was discussed in testimony and a post-hearing brief when the Commission considered the FPL agreements, *see* Thomas K Churbuck's Post-Hearing Brief, pp. 10-11, 25,

filed Docket No. 040001-EI (Document No. 12781-04), the Commission nevertheless appropriately approved the FPL agreements.² Order No. PSC-05-0084-FOF-EI

V. “Policy Questions”

17. Paragraph 14 of the Petition raises, as a “policy issue,” whether PEF should be required to acquire capacity from a base load, coal-fired unit located in Florida rather than importing cost-effective, natural gas-fired capacity. PEF contends that there is no legal or factual basis for establishing such a policy. Furthermore, there is no base load, coal-fired generation in Florida that would be available to replace the generation in the existing UPS agreement upon its expiration.

18. Paragraph 15 of the Petition raises, as a “policy issue,” whether importation of gas-fired generation into Florida is “a wise use of limited and valuable transmission resources.” This issue is not cognizable in this proceeding because the Commission has no jurisdiction over inter-state transmission resources. In any event, PEF contends that the importation of the generation called for under the agreements would constitute “a wise use of limited and valuable transmission resources.”

VI. Statement of Ultimate Facts

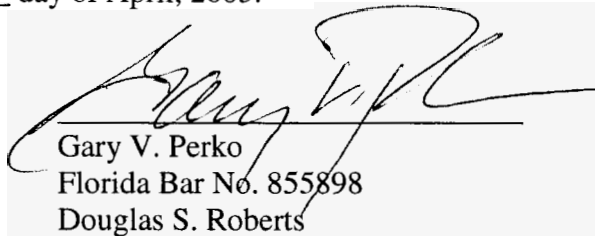
19. Contrary to White Springs’ characterization, Paragraph 16 of the Petition does not allege “ultimate facts” as required in Rule 28-106.201(2)(e), FAC, which refers to “ultimate facts . . . which entitle the petitioner to relief.” Instead, Paragraph 16 states White Springs’ position on the burden of proof in this case. PEF disputes White Springs’ view of the burden of proof and

² Contrary to the suggestion in Paragraphs 12 and 7(a) of the Petition, extension of the existing UPS agreement under the same terms as the existing agreement was not an option because Southern was not willing to provide coal generation above the 74 MW included in the new Scherer agreement.

contends that PEF's only burden is to demonstrate that the UPS agreements represent reasonable and prudent action to maintain PEF's twenty percent reserve margin. Furthermore, PEF specifically denies the existence of any facts, statutes, or rules warranting reversal or modification of the Commission's proposed agency action.

WHEREFORE, Progress Energy Florida, Inc., respectfully requests that the Commission: (i) enter an order establishing an expedited discovery and hearing schedule for this proceeding; and (ii) enter a final order approving recovery of the energy and capacity costs associated with the agreements as proposed in Order No. PSC-05-272-PAA-EI.

Respectfully submitted, this 5th day of April, 2005.



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