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Sent: Tuesday, April 26, 2005 1:42 PM
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Subject: Electronic filing in Docket No. 041393-EI
Attachments: 387015_1.DOC

a. James M. Bushee, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004

Telephone: 202-383-0643, james.bushee@sablaw.com is responsible for this electronic filing;

b. The filing is to be made in Docket No. 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. The filing is made on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PSC Phosphate - White Springs;

d. The total number of pages is 5; and

e. Attached to this email in Word format is Request for Extension of Time Or, Alternatively, Reconsideration of White Springs Agricultural Chemicals, Inc.

<<387015_1.DOC>>

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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

Filed: April 26, 2005

**REQUEST FOR EXTENSION OF TIME OR,
ALTERNATIVELY, RECONSIDERATION OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.**

Pursuant to Rule 25-22.0376, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“White Springs”) requests an extension of time or, alternatively, reconsideration of the Commission’s April 20, 2005 order in this proceeding, Order No. PSC-05-0432-PCO-EI (“Procedural Order”). In support thereof, White Springs states the following:

A Short Extension of Time is Necessary to Ensure a Full and Fair Examination of the Issues and to Provide a Reasonable Opportunity for the Parties Informally to Resolve Those Issues.

1. The two proposed unit power sales (“UPS”) agreements and related cost-effectiveness analysis present numerous significant issues that can only be resolved, formally or informally, after a reasonable opportunity for discovery and analysis. White Springs’s petition raised numerous significant issues, including whether the UPS agreements proposed by Progress Energy Florida, Inc. (“PEF”) have been justified on a cost-effectiveness basis, whether adequate transmission will be available to reliably implement the UPS agreements, whether the UPS agreements in fact contribute to fuel diversity, whether the UPS agreements are consistent with planning flexibility, and whether replacing PEF’s existing coal purchase with the purchase of

primarily natural-gas fired generation is consistent with the Commission's policies and the public interest.¹ Those issues must be resolved based on the specific evidence to be developed in this proceeding, much of which is confidential information currently possessed by PEF. The schedule adopted in the Procedural Order, however, does not provide a reasonable opportunity for White Springs to address the issues. For example, White Springs would have to complete discovery necessary to prepare its direct case and prepare its testimony within only 23 days from the date of the Procedural Order. That challenge is exacerbated by the fact that significant portions of PEF's filings in this proceeding were made on a confidential basis and, given the need to arrange a confidentiality agreement, were first provided on an unredacted basis to White Springs on April 22, 2005.

2. Additionally, the Procedural Order schedule would require White Springs to focus all of its efforts on hearing preparation during a limited time frame and therefore would effectively preclude meaningful settlement discussions.² Allowing adequate time for the parties to engage in informal discussions could substantially narrow the scope of issues and thereby expedite, or even eliminate the need for, the hearing. That, of course, would conserve the resources of both the parties and the Commission.

3. Importantly, White Springs does not desire to unduly delay or prolong this proceeding. White Springs recognizes that PEF has asserted the need to resolve this proceeding expeditiously. The desire for expedition, however, must be balanced against (a) the fundamental need to assure that White Springs' due process rights are protected and (b) the prospects for the

¹ The listing here of examples of the issues raised in White Springs' petition should not be construed as a limitation on the issues that White Springs will or may pursue at hearing.

² In its answer to White Springs' petition for hearing, PEF stated that this matter should be "resolved informally once White Springs reviews the analyses supporting PEF's Petition." Answer, at 4.

parties to reach an informal resolution of the issues. Parties in administrative proceedings must have a reasonable opportunity for discovery and hearing preparation,³ and failure to provide such an opportunity could impair the lawfulness of these proceedings and result in lengthy court appeals and remands.⁴

A Three-Week Extension of the Procedural Schedule Would Balance the Desire for Expedition With the Need to Assure a Fair Resolution of the Issues.

4. White Springs respectfully requests that the Commission grant an extension of time or, alternatively, grant reconsideration of its Procedural Order to extend the procedural schedule by three weeks as set forth below.

Activity	Current Due Date	Proposed Due Date
1) Intervenors' direct testimony and exhibits	May 13, 2005	June 3, 2005
2) Staff's direct testimony and exhibits	May 13, 2005	June 3, 2005
3) Rebuttal testimony and exhibits	May 20, 2005	June 10, 2005
4) Prehearing statements	May 23, 2005	June 13, 2005
5) Prehearing conference	May 26, 2005	June 16, 2005
6) Discovery complete	May 27, 2005	June 17, 2005
7) Hearing	June 2-3, 2005	June 23-24, 2005
8) Briefs (if no bench vote)	June 8, 2005	June 29, 2005

This requested extension of the procedural schedule would not unduly delay or prolong the proceeding, and would afford White Springs and other parties a meaningful opportunity to conduct discovery, prepare testimony, and engage in settlement discussions.

³ See, e.g., *Citizens of the State of Fla. v. Mayo*, 333 So.2d 1 (Fla. 1976) (public policy favors traditional due process rights in utility rate hearings).

⁴ See, e.g., *Creel v. Dist. Bd. of Trustees of Brevard Community College*, 785 So.2d 1285, 1287 (Fla. 5th DCA 2001) (court required to remand to agency where “fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure”) (quoting Section 120.68(7)(c), Fla. Stat. (2000)).

For the foregoing reasons, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, respectfully requests that the Commission grant a three-week extension of time or, alternatively, reconsideration of the April 20, 2005 order as requested herein.

Respectfully submitted,

s/ C. Everett Boyd, Jr.

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April 26, 2005

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Request for Extension of Time or Alternatively, Reconsideration has been furnished by electronic mail and U.S. Mail this 26th day of April 2005, to the following:

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