

Hopping Green & Sams

Attorneys and Counselors

April 27, 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

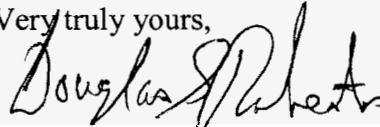
Dear Ms. Bayó:

Enclosed for filing on behalf of Progress Energy Florida, Inc., (PEF), are the original and fifteen copies of PEF's Response in Opposition to Request for Extension of Time, or, Alternatively, Reconsideration, along with a diskette containing the Request in Word format.

By copy of this letter, I am providing a copy of the pleading to all parties in this docket.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,



Douglas S. Roberts

Counsel for PROGRESS ENERGY FLORIDA, INC.

cc: Certificate of Service

DOCUMENT NUMBER-DATE

04104 APR 27 05

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Progress Energy Florida's (PEF's) Response in Opposition to Request for Extension of Time, or, Alternatively, Reconsideration were provided by fax and U.S. Mail, postage pre-paid, to the following on this 27th day of April, 2005:

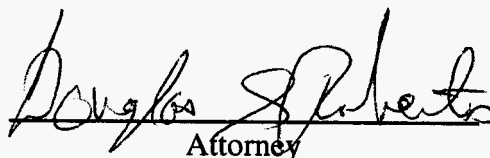
James M. Bushee, Esq.
Daniel E. Frank, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington DC 2004-2415
Fax: (202) 637-3593

C. Everett Boyd, Esq.
Sutherland Asbill & Brennan LLP
2282 Killearn Center Boulevard
Tallahassee, FL 32309-3576
Fax: (850) 894-0030

Karin S. Torain, Esq.
PCS Administration (USA), Inc.
Suite 400
Skokie Boulevard
Northbrook, IL 60062
Fax: (847) 849-4663

Adrienne E. Vining, Esq.
Senior Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

R. Alexander Glenn, Esq.
Deputy General Counsel
Progress Energy Service Company, L.L.C.
100 Central Avenue, Suite 1D
St. Petersburg, FL 33701-3324


Attorney

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

SERVED: April 27, 2005

PROGRESS ENERGY FLORIDA, INC.'S RESPONSE IN OPPOSITION TO REQUEST FOR EXTENSION OF TIME OR, ALTERNATIVELY, RECONSIDERATION

PROGRESS ENERGY FLORIDA, INC. ("PEF"), pursuant to Rule 28-106.204, Florida Administrative Code ("FAC"), hereby responds in opposition to the Request for Extension of Time or, in the Alternative, Reconsideration ("Request") filed by White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs ("White Springs"). As discussed below, White Springs' Request does not allege good cause for an extension of time; nor does it identify any point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Order Establishing Procedure. Accordingly, the Request must be denied.

Introduction

1. In its Petition for Hearing, White Springs protests the Commission's proposed approval of two Unit Power Sales ("UPS") agreements between PEF and Southern Company Services, Inc. ("SCS"). As discussed in PEF's Answer to White Springs' Petition, the Commission is very familiar with the substance of this case, having already addressed most, if not all, of the issues raised by White Springs when it approved substantially similar UPS agreements between Florida Power & Light Company ("FPL") and SCS. See Order No. PSC-05-0084-FOF-EI (Jan. 24, 2005).

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FPSC-COMMISSION CLERK

2. PEF's Answer and the pre-filed direct testimony of Samuel S. Waters further explain that, unless the Commission acts expeditiously, PEF could be committed to transmission service without approval of the corresponding power purchases. This is a significant possibility because transmission service could be offered at any time. The agreements also call for PEF to make diligent efforts to obtain Commission approval of these agreements within 180 days of the effective date, November 24, 2004. This date may be extended but is tied to the notices related to transmission service. Thus, a delayed decision by the Commission may put the agreements and the associated economic and strategic benefits at substantial risk.

3. White Springs acknowledges that PEF has asserted a need to resolve this proceeding expeditiously, but it nevertheless seeks an extension of the schedule set forth in the Order Establishing Procedure ("OEP") issued by the Prehearing Officer on April 20, 2005. For the reasons discussed below, however, there is no legitimate basis for the requested extension or reconsideration of the OEP.

Discussion

I. White Springs has not alleged good cause for an extension of time.

4. White Springs primarily complains that it has "only" 23 days from the date of the OEP to prepare its direct case and testimony. Request, at pp. 1-2, ¶1. However, such a schedule is by no means unusual. In the FPL matter, for example, FPL filed direct testimony in support of its UPS agreements on September 9, 2004. See Direct Testimony of Tom Hartman filed in Docket No. 040001-EI. The intervenors opposing FPL's request then had 25 days (i.e., until October 4, 2004) to file testimony. See Order No. PSC-04-0161-PCO-EI. In this case, PEF filed and served (by fax) its direct testimony on April 15, 2005. Under the OEP, White Springs has 28 days from then (i.e., until May 13, 2005) to file its testimony. Thus, as compared to the

intervenors opposing FPL's request, White Springs has more time to prepare its testimony. Moreover, the OEP requires PEF to respond to discovery requests within seven days (as compared to 20 days in the FPL matter). This provides sufficient time for White Springs to conduct two rounds of discovery before its testimony is due and two additional rounds before the May 27 discovery cutoff established in the OEP.

5. White Springs also alleges that the current schedule "would effectively preclude meaningful settlement discussions." Request, at p. 2, ¶2. As discussed in its Answer, PEF believes this matter should be resolved without a hearing once White Springs reviews the analyses supporting PEF's petition. That is because PEF is confident its analyses justify approval of the UPS agreements. PEF has provided White Springs unredacted copies of all of the documents and data it submitted to the Commission in support of its petition. Moreover, PEF is willing to participate in informal discussions to the extent they may narrow or resolve the issues raised by White Springs. Contrary to White Springs' assertion, the current schedule would not preclude such discussions.

6. Finally, White Springs alludes to the prospect of "lengthy court appeals and remands" if its request is not granted. Request, at pp. 2-3, ¶3. This threat rings hollow. Florida courts review limitations on discovery and denials of continuances under the highly deferential abuse of discretion standard. Panda Energy v. Jacobs, et al, as the Public Service Commission, 813 So. 2d 46, 49 (Fla. 2002) (citations omitted). White Springs' Request provides no basis to conclude that the current schedule constitutes an abuse of discretion or somehow fails to provide due process. The two cases cited by White Springs merely addressed whether due process

required a hearing under the circumstances.¹ Neither case addressed timing or scheduling issues in a case where a hearing was already set to be held, as in this proceeding.

7. As discussed above, the Commission followed a similar hearing schedule when it reviewed FPL's request for approval of its UPS agreements. In that case, the Commission expressly concluded that it had "the information and expertise needed to make a decision[.]" Order No. PSC-05-0084-FOF-EI, at p. 5. White Springs provides no factual or legal basis to conclude that more time is needed to provide the Commission with the information or expertise it needs to make a decision in this case. Accordingly, the request for an extension of time must be denied.

II. White Springs has not alleged a basis for reconsideration.

8. The standard of review for a motion for reconsideration of a Prehearing Officer's order is whether the motion identifies a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the order. See Order No. PSC-04-0251-PCO-EI, at p. 2 (March 8, 2004), citing Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974), Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962), and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Order No. PSC-04-0251-PCO-EI, at p. 2, citing Stewart Bonded, *supra*.

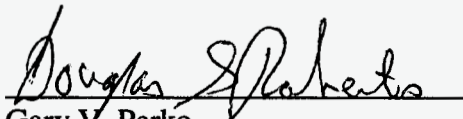
¹ See Citizens of the State of Fla. v. Mayo, 333 So.2d 1, 6-7 (Fla. 1976) (Depending upon the circumstances of a particular case, traditional due process rights *may* require a hearing on an interim rate increase); Creel v. District Bd. of Trustees of Brevard Community College, 785 So.2d 1285, 1287 (Fla. 5th DCA 2001) (Administrative law judge deprived state employee of procedural due process by addressing an issue that was not raised or argued at hearing).

9. White Springs' request includes only conclusory allegations of a need for additional time and a vague reference to "due process rights." It does not even purport to identify any specific point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the OEP. Nor is it based on "specific factual matters set forth in the record and susceptible to review." Accordingly, the alternative request for reconsideration must be denied.

Conclusion

For the reasons discussed above, Progress Energy Florida, Inc., respectfully requests entry of an order denying White Springs' Request for Extension of Time or, in the Alternative, Reconsideration.

Respectfully submitted, this 27th day of April, 2005.



Gary V. Perko
Florida Bar No. 855898
Douglas S. Roberts
Florida Bar No. 559466
Hopping Green & Sams, P.A.
123 S. Calhoun Street (32301)
Post Office Box 6526
Tallahassee, FL 32314

R. Alexander Glenn
Florida Bar No. 0097896
Deputy General Counsel
Progress Energy Service Company, L.L.C.
100 Central Avenue, Suite 1D
St. Petersburg, FL 33701-3324

Attorneys for PROGRESS ENERGY FLORIDA, INC.