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From: Frank, Dan [Daniel.Frank@sablaw.com]
 Sent: Wednesday, May 11, 2005 12:10 PM
 To: Filings@psc.state.fl.us
 Subject: Emergency Motion for filing in Docket No. 041393-EI
 Attachments: WO_391569_4.DOC

Please accept for e-filing the attached document.

- a. The person making this filing is: Daniel E. Frank, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, DC 20004-2415, telephone 202-383-0100, fax 202-637-3593, e-mail daniel.frank@sablaw.com.
- b. The docket number is: 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. This document is filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs.
- d. There are a total of 6 pages in the attached document.
- e. The document is the Emergency Motion of White Springs Agricultural Chemicals, Inc. to Suspend Procedural Schedule or, Alternatively, to Dismiss Petition.

Thank you for your attention to this matter.

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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: May 11, 2005

EMERGENCY MOTION OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
TO SUSPEND PROCEDURAL SCHEDULE OR,
ALTERNATIVELY, TO DISMISS PETITION

White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“White Springs”) hereby submits this emergency motion to suspend the procedural schedule in this proceeding or, alternatively, to dismiss the Progress Energy petition.

Introduction

1. This emergency motion is necessary because the petitioner in this proceeding – Progress Energy Florida, Inc. (“Progress Energy”) – has sought to file Supplemental Testimony in this proceeding¹ that fundamentally changes the cost-effectiveness analysis contained in its original petition filed on December 13, 2004 and in its direct testimony filed on April 15, 2005. Progress Energy’s proposed “corrections” in its Supplemental Testimony did not come about by happenstance. The error that Progress Energy seeks to correct – specifically, *the reduction by \$89 million (fully two-thirds) of projected savings over the five-year term of the unit power sales agreements* – resulted from White Springs’s review and questioning of the workpapers underlying Progress

¹ White Springs is filing contemporaneously with this Emergency Motion an “Answer in Opposition” to Progress Energy’s motion for leave to file the supplemental testimony.

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Energy's direct testimony. This fundamental flaw calls into question the entire economic analysis upon which Progress Energy's case is based. Further discovery and analysis may disclose additional errors, omissions and weaknesses. For these reasons, Progress Energy's Petition should be dismissed without prejudice to its re-filing once an accurate and complete analysis – ripe for review by the Commission – has been undertaken. At a minimum, the procedural schedule should be suspended to allow for additional discovery and analysis. In support thereof, White Springs states the following:

**Emergency Motion to Suspend Procedural Schedule
or, Alternatively, to Dismiss Petition**

2. On May 10, 2005, Progress Energy filed a Motion for Leave to File Revised Supplemental Testimony along with Supplemental Testimony prepared by Progress Energy witness Samuel S. Waters. The Motion and Testimony claim that, subsequent to the filing of Mr. Waters's original Direct Testimony in this proceeding on April 15, 2005, Progress Energy discovered that certain inputs in Mr. Waters's analysis of cost savings during the term of the unit power sales agreements at issue were incorrect. Progress Energy purports to correct these errors in the Supplemental Testimony, and indicates that the revisions proffered do not change any of the conclusions in Mr. Waters's original Direct Testimony.

3. Because of the magnitude of the fundamental changes in Progress Energy's cost-effectiveness analysis – which call into question the credibility of the entire analysis – along with the delays in providing discovery responses, White Springs respectfully urges the Commission to immediately suspend the procedural schedule in this proceeding. Under the current procedural schedule, White Springs's direct testimony

is due on Friday, May 13 and, absent an immediate suspension of the schedule, White Springs will be forced to devote considerable resources to respond to what appears to be a “moving target” cost/benefit analysis. It is now apparent, based on Progress Energy’s Motion, that White Springs will not be able to address Progress Energy’s real case under the current schedule. Specifically, in its proposed Supplemental Testimony, Progress Energy has now reduced its estimated cost savings *by approximately 67 percent without satisfactory explanation*. As a matter of fundamental fairness and due process, the procedural schedule should be suspended until a schedule can be established that would provide for an adequate opportunity to understand Progress Energy’s case as it is now postured. The prehearing conference now scheduled for May 26 would provide an appropriate forum to discuss the reasons underlying the fundamental change in Progress Energy’s case and to develop an appropriate procedural schedule. At a minimum, White Springs urges the Commission to extend the procedural schedule by three weeks, as requested by White Springs in its pending motion.²

4. Alternatively, it would be appropriate for the Commission simply to dismiss Progress Energy’s petition for approval of the two unit sales agreements without prejudice to it re-filing that petition when it has accurate and complete information to support the petition. The alleged corrections proffered by Progress Energy so significantly impact the underlying cost-effectiveness analysis and represent such magnitude of change that a “de novo” proceeding is justified.

² See “Request for Extension of Time or, Alternatively, Reconsideration of White Springs Agricultural Chemicals, Inc.,” Docket No. 041393-EI (filed April 26, 2005).

5. Importantly, the need for expedition claimed earlier by Progress Energy no longer applies. Progress Energy previously 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, it is clear that Progress Energy has signed a System Impact Study Agreement and placed a deposit for a System Impact Study. It is not clear that having done so obligates Progress Energy to accept a transmission agreement, but in any event, the need to enter into a System Impact Study Agreement and tender the related deposit can no longer be cited in good faith as driving forces for the timing of the Commission's action on Progress Energy's petition.

Wherefore, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests that the Commission immediately suspend the procedural schedule in this proceeding, or, in the alternative, dismiss the Petition of Progress Energy in this proceeding, permitting Progress Energy to re-file its request for approval of the unit power sales agreements with Southern Company once it has corrected all errors present in its original filings.

Respectfully submitted,

/s/ Daniel E. Frank

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May 11, 2005

Certificate of Service

I hereby certify that a true and correct copy of the foregoing “Emergency Motion of White Springs Agricultural Chemical, Inc. to Suspend Procedural Schedule or, Alternatively, to Dismiss Petition” has been furnished by electronic mail and U.S. Mail this 11th day of May, 2005 to the following:

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/s/ Daniel E. Frank

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