

ORIGINAL

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

PROGRESS ENERGY FLORIDA'S RESPONSE IN OPPOSITION TO WHITE SPRINGS' EMERGENCY MOTION TO SUSPEND PROCEDURAL SCHEDULE OR, ALTERNATIVELY, TO DISMISS PETITION

Progress Energy Florida, Inc., (PEF) hereby responds in opposition to the motion filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("White Springs") to suspend the procedural schedule in this proceeding or, alternatively, to dismiss the PEF's petition. As discussed below, White Springs has no basis in law to support the relief it requests, and its prejudice claims are the result of its own delay. Moreover, if successful, White Springs' attempt at delay would prejudice PEF and its customers.

1. White Springs premises its motion on the fact that PEF has filed a motion for leave to file Supplemental Testimony in order to submit a revised analysis of cost savings over the five-year term of the Unit Power Sales (UPS) agreements at issue. Contrary to White Springs' claims, the revised analysis is not a "fundamental change;" nor does it "call into

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benefits significant enough in their own right to justify Florida Power & Light Company's (FPL's) similar UPS agreements despite evidence that the FPL agreements were projected to result in net costs of \$69 to \$117 million. See Order No. PSC-05-0084-FOF-EI.

2. In any event, the fact that PEF has proffered supplemental testimony does not provide any basis whatsoever to dismiss PEF's petition. As in any *de novo* proceeding under Section 120.57, Florida Statutes, the parties are entitled "to present evidence and argument on all issues involved and to conduct cross-examination[.]" § 120.57(1)(b), Fla. Stat. If White Springs contends the PEF's revised analysis was flawed or incomplete, it is entitled cross-examine PEF's witness(es) and to present evidence in support of its case. By the same token, PEF is not limited to present only the information included in its Petition. See Gulf Court Nursing Center v. Department of Health and Rehabilitative Services, 483 So.2d 700, 710 (Fla. 1st DCA 1986) (Hearing officer in a section 120.57 proceeding is not limited to consideration of the record made by HRS during its preliminary investigation . . . and may freely consider any and all additional evidence presented by the parties, including evidence of changed conditions since the preliminary review, so long as it is relevant[.]").

3. White Springs' claim that the current schedule does not afford it sufficient time for discovery is baseless for the reasons expressed in PEF's Response in Opposition White Springs' "Request for Extension of Time or, Alternatively, Reconsideration." Moreover, the Prehearing Officer issued the Order Establishing Procedure (OEP) on April 20, 2005, yet White Springs waited nine days to serve its first discovery requests on April 29. PEF served its responses to those requests by e-mail on May 6. And, even though the OEP only required a written response to White Springs' document production request by May 6, PEF shipped four CD-ROMs of responsive documents to White Springs' counsel and consultant by overnight

delivery overnight delivery for receipt on May 6. Other documents were shipped by overnight delivery as soon as possible.

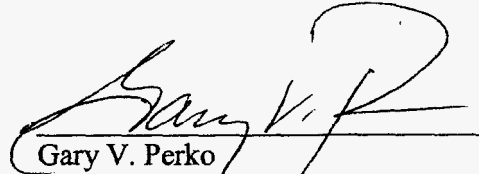
4. As evidenced by its own motion, White Springs had sufficient time review the cost analysis at issue to identify the incorrect inputs. Through its proffered supplemental testimony, PEF has in good faith simply acknowledged the error in the five-year analysis and sought to present corrected information to the Commission and other parties. The methodology used in the analysis has not changed, only the inputs and the result. Moreover, PEF has provided White Springs the spreadsheets underlying the revised analysis. There is no basis for an extension of the discovery schedule, let alone a complete suspension.

5. Finally, contrary to White Springs' assertion, an expedited decision is still needed; indeed, even more than before. As indicated in its discovery responses, PEF has signed a System Impact Study Agreement and placed a deposit for a System Impact Study under the time deadline established in Southern Transmission's Open Access Transmission Tariff. In light of that development, Southern could grant PEF's request at any time, thereby leaving PEF at risk of being obligated to take the transmission without assurance that the UPS agreements will be approved.

WHEREFORE, Progress Energy Florida, Inc., respectfully requests that the Commission deny the motion of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs to suspend the procedural schedule in this proceeding, or, in the alternative, dismiss PEF's Petition in this proceeding.

Respectfully submitted, this 11th day of May, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been provided by e-mail and by U.S. Mail, postage pre-paid, on May 17th, 2005, to the following:

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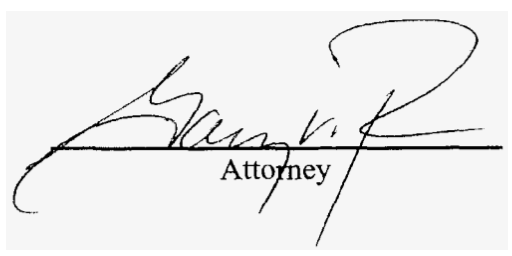
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