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From: Binette, Matthew J. [Matthew.Binette@sablaw.com]
Sent: Monday, May 23, 2005 4:49 PM
To: Filings@psc.state.fl.us
Subject: Motion for Reconsideration and for Shortened Response Period in Docket No. 041393-EI
Attachments: Motion for Reconsideration.pdf

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- a. The person making this filing is: James M. Bushee, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, DC 20004-2415, telephone 202-383-0100, fax 202-637-3593, e-mail james.bushee@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 a Motion for Reconsideration and for Shortened Response Period by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs requesting reconsideration of the May 16, 2005 Order Granting Motion for Leave to File Supplemental Testimony and Denying Emergency Motion to Suspend Procedural Schedule and requesting that the Commission shorten the response period to May 25, 2005.

Thank you for your attention to this matter.
<<Motion for Reconsideration.pdf>>

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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 23, 2005

**MOTION FOR RECONSIDERATION AND FOR SHORTENED RESPONSE  
PERIOD OF WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
D/B/A PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to Rule 25-22.0376, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“White Springs”) hereby moves for reconsideration of the Prehearing Officer’s May 16, 2005 Order Granting Motion for Leave to File Supplemental Testimony and Denying Emergency Motion to Suspend Procedural Schedule, Order No. PSC-05-0538-PCO-EI (“May 16 Order”). In support thereof, White Springs states the following:

**INTRODUCTION**

1. The May 16 Order denied White Springs’ motion to suspend the procedural schedule in this proceeding or, alternatively, to dismiss the Progress Energy Florida, Inc. (“Progress Energy”) petition. That Order concluded, *inter alia*, that the modifications to Progress Energy’s cost-effectiveness analysis contained in the Supplemental Testimony of Samuel S. Waters are not so fundamental to this proceeding that a suspension of the procedural schedule is warranted, and provided a four-day period for White Springs to submit testimony addressing the Supplemental Testimony.

2. Given the fundamental significance of Progress Energy’s last-minute change in its economic analysis, and in order to ensure White Springs’ right to judicial

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review, White Springs submits this request for reconsideration. Specifically, White Springs asks that the Commission suspend the procedural schedule in this proceeding or, alternatively, dismiss Progress Energy's Petition with leave to re-file once Progress Energy has finalized and verified that its Petition and underlying analyses are true and correct.

3. White Springs respectfully asks that the Commission shorten the period for responses to this motion until Wednesday, May 25 and set the matter for oral argument at the May 26 prehearing conference in this proceeding.

#### **BACKGROUND**

4. 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' original Direct Testimony in this proceeding on April 15, 2005, Progress Energy discovered that certain inputs in Mr. Waters' 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' original Direct Testimony.

5. White Springs filed an Emergency Motion to Suspend the Procedural Schedule or Alternatively to Dismiss Progress Energy's Application on May 11, 2005. The Motion was denied by the Prehearing Officer's May 16 Order.

## **REQUEST FOR RECONSIDERATION**

6. The May 16 Order concluded that Progress Energy's changes to its cost-effectiveness analysis was not so fundamental to warrant a suspension of the procedural schedule. To the contrary, White Springs respectfully submits that by revising the projected savings downward by nearly 67 percent, Progress Energy's supplemental testimony casts significant doubt over whether the proposed agreements are reasonable and prudent.

7. Because of the fundamental change in Progress Energy's cost-effectiveness analysis – which calls into question the credibility of the entire analysis – White Springs again respectfully urges the Commission to immediately suspend the procedural schedule in this proceeding. Under the current procedural schedule, White Springs's was required to file direct testimony on Friday, May 13 and, as a result of the procedural schedule, was forced to devote considerable resources to respond to Progress Energy's "moving target" cost/benefit analysis. Although the May 16 Order provided White Springs an opportunity to respond to Progress Energy's Supplemental Testimony on May 20, that four-day period did not provide a meaningful opportunity for White Springs to respond to a fundamental change in Progress Energy's case and therefore White Springs did not file additional testimony. 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 previous motion.<sup>1</sup>

8. 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 re-file the petition when it has accurate and complete information to support the petition. Given that existing supply agreements remain in effect for the next five years, there is no urgency for the Commission to act on these agreements within the time frame established in the original Order Establishing Procedure. For the reasons set forth in our Emergency Motion, the need for expedition claimed earlier by Progress Energy no longer applies.

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<sup>1</sup> See "Request for Extension of Time or, Alternatively, Reconsideration of White Springs Agricultural Chemicals, Inc.," Docket No. 041393-EI (filed April 26, 2005). This Motion was also denied by the Prehearing Officer on May 16, 2005. See Order Denying Request for Extension of Time, Order No. PSC-05-0537-PCO-EI, dated May 16, 2005.

**Wherefore**, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully moves that the Prehearing Officer reconsider the May 16 Order Granting Motion for Leave to File Supplemental Testimony and Denying Emergency Motion to Suspend the Procedural Schedule, and immediately suspend the procedural schedule in this proceeding to provide for a full and fair evaluation of the proposed agreements. In the alternative, the Commission should 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 when appropriate.

Respectfully submitted,

s/ James M. Bushee

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May 23, 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 23<sup>rd</sup> day of May, 2005 to the following:

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s/ James M. Bushee

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