

Matilda Sanders

From: Costello, Jeanne [JCostello@CarltonFields.com]
 Sent: Friday, August 26, 2005 2:49 PM
 To: Filings@psc.state.fl.us
 Cc: miketwomey@talstar.com; tperry@mac-law.com; jmcwhirter@mac-law.com; Jennifer Brubaker; Mclean.harold@leg.state.fl.us; daniel.frank@sablaw.com; everett.boyd@sablaw.com; james.bushee@sablaw.com; KSTorain@potashcorp.com; richzambo@aol.com; mcglathlin.joseph@leg.state.fl.us; swright@landersandparsons.com; Andrew.soto@sablaw.com; Jennifer Rodan; matthew.binette@sablaw.com; ajenkins@mckennalong.com; chris_kise@oag.state.fl.us
 Subject: Docket No. 050078 Documents for Filing

Attachments: PEF Objections White Springs 4th Req for Prod.pdf; PEF Objections White Springs 4th Interr.pdf



Attached for filing and e-service on behalf of Progress Energy Florida are:

1. Progress Energy Florida's Objections to White Springs Fourth Set of Requests for Production of Documents (Nos. 56-65); and
2. PEF's Objections to White Springs Agricultural Chemicals, Inc. d/b/a Phosphate - White Springs Fourth Set of Interrogatories (Nos. 58-66).

Jeanne Costello
 Legal Administrative Assistant
 Gary L. Sasso / James Michael Walls / John T. Burnett Carlton Fields
 4221 W. Boy Scout Blvd.
 Tampa, FL 33607
 Email: jcostello@carltonfields.com
 Phone: (813) 223-7000
 Fax: (813) 229-4133
 www.carltonfields.com

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SORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by
Progress Energy Florida, Inc.

Docket No. 050078-EI
Submitted for filing:
August 26, 2005

**PEF'S OBJECTIONS TO WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS' FOURTH SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS (NOS. 56-65)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.350 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure in this matter, Progress Energy Florida, Inc. ("PEF") hereby serves its objections to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs' ("White Springs") Fourth Set of Requests for Production of Documents (Nos. 56-65) and states as follows:

GENERAL OBJECTIONS

PEF first objects to White Springs' Fourth Set of Requests for Production of Documents as being untimely filed because they do not provide PEF with twenty (20) days to file its responses. As provided in the May 4, 2005 Order Establishing Procedure¹, and as revised by the Order Granting Motion for Extension of Time for Conducting of Discovery², all discovery was to be completed by August 26, 2005. The Order Establishing Procedure further provides that discovery responses must be served within twenty (20) calendar days, inclusive of mailing, of receipt of the discovery request. Therefore, any party seeking discovery needed to serve discovery requests twenty (20) days prior to the August 26, 2005 deadline for completion of discovery, specifically before August 6, 2005. White Springs did not obtain an order from the

¹ Order No. PSC-05-0487-PCO-EI (May 4, 2005).

² Order No. PSC-05-0758-PCO-EI (July 21, 2005).

Pre-hearing Officer shortening PEF's time for filing responses to discovery, nor did White Springs obtain agreement from PEF to provide expedited responses. PEF was served with White Springs' Fourth Set of Requests for Production of Documents (Nos. 56-65) on August 16, 2005, which was ten days after the August 6, 2005 date for timely serving discovery requests. Since White Springs' Fourth Set of Requests for Production of Documents are untimely, PEF will not file responses to White Springs' discovery requests.

Subject to the above objection regarding the timely service of discovery, and without waiving the same, PEF asserts the following additional objections to White Springs' discovery request. By making these additional general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to White Springs' discovery. PEF objects to the time and place of production requirement in White Springs' Fourth Set of Requests for Production of Documents and, if compelled to do so, will make all responsive documents available for inspection and copying at the offices of Progress Energy Florida, Inc., 106 E. College Ave., Suite 800, Tallahassee, Florida, 32301 at a mutually-convenient time, or will produce the documents in some other manner or at some other place that is mutually convenient to both PEF and White Springs for purposes of inspection, copying (at White Springs' expense), or handling of the responsive documents.

With respect to the "Definitions and Instructions" in White Springs' Fourth Set of Requests For Production, PEF objects to any definitions or instructions that are inconsistent or in conflict with PEF's discovery obligations under applicable rules. PEF also objects to any definitions or instructions that attempt to impose discovery obligations on PEF beyond those called for under the applicable rules. If some question arises as to PEF's discovery obligations, PEF will comply with applicable rules and not with any of White Springs' definitions or

instructions that are inconsistent with those rules. PEF objects to any definitions or instructions to the extent that they attempt to seek information or documents from PEF's attorneys that is protected by the attorney-client privilege or work product doctrine. PEF also objects to any request that calls for documents to be produced from the files of PEF's outside or in-house counsel in this matter because such documents are privileged and/or work product and are otherwise not within the scope of discovery under the applicable rules and law. Furthermore, PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. No responses to the requests will be made on behalf of persons or entities other than PEF. Furthermore, PEF objects to any request that calls for PEF to create documents that it otherwise does not have because there is no such requirement under the applicable rules and law.

PEF objects to White Springs' definition "16" given that it includes "affiliates" in the definition of "Progress," and PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. No documents will be produced on behalf of persons or entities other than PEF. PEF also objects to White Springs' Instruction "3" given that PEF has no obligation under applicable rules to seek out or obtain information or documents from former employees.

Additionally, PEF generally objects to White Springs' requests to the extent that they call for documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law. If compelled to produce documents, PEF will provide a privilege log in accordance with the applicable law or as may be agreed to by the parties to the extent, if at all, that any document request calls for the production of privileged or protected documents.

Further, in certain circumstances, PEF may determine upon investigation and analysis that documents responsive to certain requests to which objections are not otherwise asserted are confidential and proprietary and should be produced only under an appropriate confidentiality agreement and protective order, if at all. By agreeing to provide such information in response to such a request, PEF is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement, protective order, or the procedures otherwise provided by law or in the Order Establishing Procedure. PEF hereby asserts its right to require such protection of any and all information that may qualify for protection under the Florida Rules of Civil Procedure, the Order Establishing Procedure, and all other applicable statutes, rules, and legal principles.

PEF generally objects to White Springs' Fourth Set of Requests for Production to the extent that it calls for the production of "all" documents of any nature, including, every copy of every document responsive to the requests. If compelled to produce documents, PEF will make a good faith, reasonably diligent attempt to identify and obtain responsive documents when no objection has been asserted to the production of such documents, but it is not practicable or even possible to identify, obtain, and produce "all" documents. In addition, PEF reserves the right to supplement any of its responses to White Springs' requests for production if PEF cannot produce documents immediately due to their magnitude and the work required to aggregate them, or if PEF later discovers additional responsive documents in the course of this proceeding.

PEF also objects to any request that calls for projected data or information beyond the year 2006 or prior to 2004 because such data or information is wholly irrelevant to this case and has no bearing on this proceeding, nor is such data or information likely to lead to the discovery of admissible evidence. Furthermore, if a request does not specify a timeframe for which data or


information is sought, PEF will interpret such request as calling only for data and information relevant to the years 2004-2006.

PEF objects to any attempt by White Springs to evade the numerical limitations set on requests for production in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts. PEF also objects to White Springs' instruction "17," and PEF will instead follow applicable provisions set forth in the Order Establishing Procedure in this matter. Additionally, PEF objects to White Springs' instruction "15," as there is no such obligation under the applicable rules or the Order Establishing Procedure.

Finally, where a document only exists in paper form, PEF will produce such documents in paper form if PEF is compelled to produce documents. Where documents exist in both paper and/or electronic form, PEF will produce such documents in paper form unless White Springs specifically requests production in electronic form.


Respectfully submitted,

R. ALEXANDER GLENN
Deputy General Counsel – Florida
PROGRESS ENERGY SERVICE
COMPANY, LLC
100 Central Avenue, Ste. 1D
St. Petersburg, FL 33701
Telephone: (727) 820-5587
Facsimile: (727) 820-5519


GARY L. SASSO
Florida Bar No. 622575
JAMES MICHAEL WALLS
Florida Bar No. 0706272
JOHN T. BURNETT
Florida Bar No. 173304
DIANNE M. TRIPLETT
Florida Bar No. 0872431
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 26th day of August, 2005 to all counsel of record as indicated below.


Attorney

Jennifer Brubaker Felicia Banks Jennifer Rodan Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850	John W. McWhirter, Jr. McWhirter, Reeves, Davidson, Kaufman & Arnold, P.A. 400 North Tampa Street, Ste. 2450 Tampa, FL 33601-3350 -and- Timothy J. Perry McWhirter, Reeves, Davidson, Kaufman & Arnold, P.A. 117 South Gadsden Street Tallahassee, FL 32301 Counsel for Florida Industrial Power Users Group
Harold McLean Office of the Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400	C. Everett Boyd, Jr. Sutherland Asbill & Brennan LLP 2282 Killearn Center Blvd. Tallahassee, FL 32309
Mike B. Twomey P.O. Box 5256 Tallahassee, FL 32314-5256 Counsel for AARP	James M. Bushee Daniel E. Frank Andrew K. Soto Sutherland Asbill & Brennan LLP 1275 Pennsylvania Avenue, N.W. Washington, DC 20004-2415
Robert Scheffel Wright, John T. LaVia, III, Landers & Parsons, P.A. 310 West College Avenue (ZIP 32301) Post Office Box 271 Tallahassee, Florida 32302 Counsel for Florida Retail Federation	Richard A. Zambo Richard A. Zambo, P.A. 2336 S.E. Ocean Boulevard, #309 Stuart, Florida 34996

Alan R. Jenkins
McKenna Long & Aldridge LLP
One Peachtree Center
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308

Counsel for the Commercial Group

Christopher M. Kise, Solicitor General and
Jack Shreve, Senior General Counsel
OFFICE OF THE ATTORNEY GENERAL
The Capitol-PL01
Tallahassee, Florida, 32399-1050
Counsel for the Attorney General

-and-

Karin S. Torain
PCS Administration, (USA), Inc.
Suite 400
Skokie blvd.
Northbrook, IL 60062

Counsel for White Springs