

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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

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**PEF'S OBJECTIONS TO WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
D/B/A PCS PHOSPHATE – WHITE SPRINGS' FOURTH SET OF  
INTERROGATORIES (NOS. 58-66)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.340 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 Interrogatories (Nos. 58-66) and states as follows:

**GENERAL OBJECTIONS**

PEF first objects to White Springs' Fourth Set of Interrogatories 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 Procedure<sup>1</sup>, and as revised by the Order Granting Motion for Extension of Time for Conducting of Discovery<sup>2</sup>, 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 Pre-hearing Officer shortening PEF's time for

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

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

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 Interrogatories (Nos. 58-66) 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 Interrogatories 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. With respect to the "Definitions and Instructions" in White Springs' Fourth Set of Interrogatories (Nos. 58-66), 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.

Additionally, PEF objects to White Springs' definition "16" given that it includes "affiliates" in the definition of "Progress," and PEF objects to any definition or interrogatory 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 interrogatories will be made on behalf of persons or entities other than PEF. PEF also objects to White Springs' Instruction "2" given that PEF has no obligation under applicable rules to seek out or obtain information or documents from former employees.

PEF must also object to White Springs' Fourth Set of Interrogatories to PEF to the extent that they require PEF or PEF's retained experts to develop information or create material for White Springs, presumably at PEF's expense. The purpose of discovery, of course, is to obtain information that already exists, not to require the other side to create information or material for the requesting party. PEF, therefore, is not obligated to incur the expense of performing or having its experts perform work for White Springs to create information or material that White Springs seeks in these interrogatories.

Additionally, PEF generally objects to White Springs' interrogatories to the extent that they call for data or information 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. Further, in certain circumstances, PEF may determine upon investigation and analysis that information responsive to certain interrogatories 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 an interrogatory, 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.

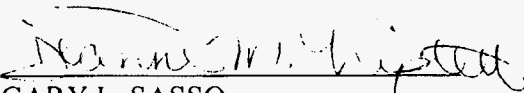
PEF also objects to any interrogatory that calls for projected data or information beyond the year 2006 or prior to 2004 because such data or information is irrelevant to this case and has no bearing on this proceeding, nor is such data or information likely to lead to the discovery of

admissible evidence. Furthermore, if an interrogatory does not specify a timeframe for which data or information is sought, PEF will interpret such interrogatory as calling only for data and information relevant to the years 2004-2006, if compelled to provide responses.

PEF objects to any attempt by White Springs to evade the numerical limitations set on interrogatories in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts. PEF also objects to White Springs' instruction "12," and PEF will instead follow applicable provisions forth in the Order Establishing Procedure in this matter. Finally, PEF objects to White Springs' instruction "11," as there is no such obligation under the applicable rules or the Order Establishing Procedure. However, if compelled to provide responses, PEF will identify what witness provides particular answers in response to White Springs' interrogatories.

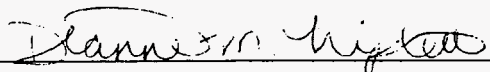
Respectfully submitted,

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**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 27<sup>th</sup> day of August, 2005 to all counsel of record as indicated below.

  
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