

ORIGINAL

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Subject: White Springs Issue memorandum
Attachments: WS Issues memorandum.doc

1. James W. Brew, Brickfield, Burchette, Ritts & Stone, P.C., 1025 Thomas Jefferson Street, NW, Washington, DC 20007, jbrew@bbrslaw.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060658-EI, In re: Coal Price refund
3. The filing is made on behalf of White Springs Agricultural Chemicals, Inc.
4. The total number of pages is 5; and
5. The attached document is White Springs Agricultural Chemical's Memorandum on Issues.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens of the)	
State of Florida to require Progress Energy)	DOCKET NO. 060658-EI
Florida, Inc. to refund customers)	
<u>\$143 million</u>)	FILED: March 12, 2007

MEMORANDUM ON ISSUES OF WHITE SPRINGS

Pursuant to the Third Order Revising Order Establishing Procedure ("Third Order") in this docket, Order No. PSC-07-0191--PCO-EI, issued March 2, 2007, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate White Springs ("White Springs") hereby files its Memorandum on the issues to be addressed in this matter.

The Third Order recognized that the parties to this docket were not able to reach consensus on the framing of issues for resolution, set forth a list of tentative issues, and directed the parties to justify any proposed changes to that tentative listing. The Third Order listed the following tentative issues:

ISSUE 1: Did PEF act prudently in purchasing coal for Crystal River Units 4 and 5 beginning in 1996 and continuing to 2005?

ISSUE 2: If the Commission determines that PEF acted imprudently in its coal purchases, should PEF be required to refund customers for coal purchased to run Crystal River Units 4 and 5 during the time period of 1996-2005?

ISSUE 3: If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, what amount should be refunded?

ISSUE 4: If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, how and when should such refund be accomplished?

White Springs supports adoption of the tentative list of issues, which reasonably encompass all substantive prudence and rate issues raised by the Office of Public Counsel petition, with the singular exception of the penalty issues posed in AARP's testimony. With that exception, there is no need to subdivide further the prudence or rate consequence issues in order for the Commission to address the matters presented in this docket.

AARP, in its testimony, asserts that in addition to a refund of overcharges, plus interest, a penalty should be imposed on Progress Energy. While penalty-related issues could be subsumed in the refund matters described in Issues 3 and 4, it would be more appropriate to frame as distinct issues the legality, justification and quantification of any such penalty. White Springs proposes that they be defined as follows:

ISSUE 5: If the Commission determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, should the Commission impose a penalty on PEF?

ISSUE 6: If the Commission determines to impose a penalty on PEF, what should be the amount of the penalty and how should it be imposed?

PEF offers four additional issues of law or policy in its pre-hearing statement. In White Springs' view, the PEF proposed issues of law separately posing retroactive ratemaking, hindsight review, and administrative finality as bars to Commission action in this docket are multiply redundant statements as to the Commission's authority under the Florida Statutes to assess specific matters applicable to costs recovered through the fuel clause. The Commission has already heard arguments, including oral argument at its December 19, 2006 agenda conference, on these questions. White Springs refers to the Staff recommendation, dated December 7, 2006, for an accurate statement of the applicable case precedent. Based on the previous discussions and memoranda on these points, the Commission's authority in this area appears to be settled. Consequently, the

PEF proposed legal and policy issues are not required to conclude the matters at issue in this docket.

CONCLUSION

For the reason stated above, White Springs urges the Commission to adopt Issues 5 and 6, described above, as issued to be resolved in this docket, and further urges the Commission to determine that no further issues beyond the tentative issues listed in the Third order are required.

Respectfully submitted the 12th day of March, 2007.

BRICKFIELD, BURCHETTE, RITTS & STONE, P.C.

/s/ James W. Brew

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PCS Phosphate White Springs

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Prehearing Statement has been furnished by electronic mail and U.S. Mail this 9th day of March, 2007 to the following individuals:

/s/ James W. Brew

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