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100009-EI

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Sent: Friday, February 18, 2011 2:49 PM

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Subject: Electronic Filing - Docket # 100009-EI

Attachments: FPL's Response in Opposition to Motion for Reconsideration of White Springs.doc; FPL's Response in Opposition to Motion for Reconsideration of White Springs.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100009-EI

IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of six (6) pages.

e. The document attached for electronic filing is:

Florida Power & Light Company's Response in Opposition to the Motion for Reconsideration of White Springs Agricultural Chemicals, Inc. d/b/a PSC Phosphate-White Springs

See attached file(s):
FPL's Response in Opposition to Motion for Reconsideration of White Springs.doc
FPL's Response in Opposition to Motion for Reconsideration of White Springs.pdf

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant)	Docket No. 100009-EI
Cost Recovery Clause)	Filed: February 18, 2011

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO THE MOTION FOR RECONSIDERATION OF WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. d/b/a PCS PHOSPHATE-WHITE SPRINGS

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, and pursuant to Rule 25-22.060(3), Florida Administrative Code, responds in opposition to the Motion for Reconsideration filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs ("White Springs"), and in support states:

1. On February 11, 2011, White Springs filed a Motion for Reconsideration of the portion of Order No. PSC-11-0095-FOF-EI holding that the Florida Public Service Commission ("Commission") did not have the authority to require a risk-sharing mechanism in the nuclear cost recovery context. White Springs's motion fails to meet the legal standard for a motion for reconsideration and should be denied.

2. The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). A motion is not an appropriate vehicle to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959), *citing State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958). Nor should a motion for reconsideration be granted "based upon an arbitrary feeling that a mistake may have been made". *Stewart Bonded Warehouse*, 294 So. 2d at 317.

3. White Springs fails to point to any issue of fact or law that was overlooked. Rather, White Springs claims the Commission committed "legal error" (White Springs Motion for Reconsideration, p. 7) in determining that the more specific nuclear cost recovery statute, Section 366.93, controls over the Commission's broader authority to ensure fair, just and reasonable rates. In essence, White Springs is simply rearguing a position that the Commission has already considered and rejected, concluding with an assertion that the Commission made the wrong decision. This argument fails to meet the standard for reconsideration established by Florida law.

4. White Springs's motion is premised upon the flawed representation that Section 366.93 "does not guarantee that the utility recover all of its prudently-incurred costs." White Springs Motion for Reconsideration, p. 6. In fact, that is precisely what the statute does. To support its position, White Springs focuses on the use of the word "allow" in the statute, stating that "the alternative cost recovery mechanism need only 'allow' for the recovery of such [prudently incurred] costs." White Springs Motion for Reconsideration, p. 7. It then goes on to explain that "allow" is a permissive term, indicating that disallowance of prudently incurred costs via some risk sharing mechanism is somehow therefore permitted by the statute. But White Springs's focus on the term "allow" is misplaced at best. Section 366.93(2) states that the Commission ***shall*** establish an alternative cost recovery mechanism that ***shall*** allow for the recovery of ***all*** prudently incurred costs. The language is therefore mandatory, not permissive, with respect to allowing the recovery of all prudently incurred costs. In other words, the Commission does not have the option to disallow prudently incurred costs by use of a risk sharing mechanism or any other mechanism.

5. This fundamental misinterpretation of Section 366.93 appears to form the basis of White Springs's position that a risk sharing mechanism, established pursuant to the Commission's general authority to ensure fair, just and reasonable rates, could be read in harmony with the cost recovery framework of Section 366.93, and that therefore the Commission need not determine that the more specific statute (Section 366.93) governs in the nuclear cost recovery context. White Springs's quarrel with the Commission's legal determination – particularly when premised upon a misinterpretation of Section 366.93, Florida Statutes – fails to meet the legal standard for reconsideration. This is particularly true where the Commission's Order on its face makes it clear that the Commission has considered, addressed and rejected White Springs' position.

6. Finally, White Springs's argument that the issue is not ripe for determination fails to recognize the importance of these decisions to utilities pursuing additional nuclear generation for the benefit of their customers, and the necessity of regulatory certainty *before* significant investments in nuclear generation are made. It is critical for the application of the nuclear cost recovery statutes to be consistent with the Legislature's clearly stated intent to promote utility investment in nuclear generation by minimizing the inherent financial risk to the utility. The incremental risk introduced by a new "risk sharing" mechanism that further calls into question a utility's ability to recover prudently incurred costs contrary to Section 366.93, Fla. Stat., or by simply leaving the decision to another day, could be so great as to prevent utilities from investing in, or continuing to invest in, nuclear generation. The Commission determined that the issue was ripe for determination when it issued its decision consistent with Florida law and in accordance with the stated public policy of the statute.

WHEREFORE, FPL respectfully requests that the Commission deny White Springs's Motion for Reconsideration of Order No. PSC-11-0095-FOF-EG.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that Florida Power & Light Company's Response in Opposition to the Motion for Reconsideration of White Springs was served by electronic delivery or U.S. Mail this 18th day of February, 2011, to the following:

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