

Marguerite McLean

From: Al Taylor [Al.Taylor@bbrslaw.com]
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To: Filings@psc.state.fl.us
Cc: 'J. Burnett'; 'Paul Lewis'; Jay Brew; 'Vicki Kaufaman'; 'John C. Moyle, Jr.'; Keino Young; Lisa Bennett; 'J. McWhirter'; 'J. R. Kelly'; Charles Rehwinkel; 'george@cavros-law.com'; 'bhuhta@carltonfields.com'; 'mbernier@carltonfields.com'; 'thomas@saprodani-associates.com'; Anna Norris; 'SAYLER.ERIK'
Subject: FPSC Docket No. 100437-EI PCS Phosphate's Answer to Second Motion to Establish Case Schedule
Attachments: PCS-Opposition to Second Motion to Establish Schedule FINAL.pdf

a. Person responsible for filing

James W. Brew
 Brickfield, Burchette, Ritts & Stone, P.C.
 1025 Thomas Jefferson Street, N.W.
 Eighth Floor West Tower
 Washington, D.C. 20007
 Tel: (202) 342-0800
 Fax: (202) 342-0807
jwb@bbrslaw.com

- b. Docket No. 100437 -EI, Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.
- c. Filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs
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F. Alvin Taylor
 BRICKFIELD BURCHETTE RITTS & STONE, PC
 1025 Thomas Jefferson St, N.W.
 Eighth Floor, West Tower
 Washington, DC 20007
 202-342-0800
 Fax: 202-342-0807
ataylor@bbrslaw.com

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Examination of the outage and replacement)
fuel/power costs associated with the CR3)
steam generator replacement project, by)
Progress Energy Florida, Inc.)

Docket No. 100437-EI
Filed: August 5, 2011

**ANSWER OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
d/b/a PCS PHOSPHATE – WHITE SPRINGS TO
PROGRESS ENERGY FLORIDA’S
SECOND MOTION TO ESTABLISH CASE SCHEDULE**

Pursuant to Rule 28-106.204, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate” or “PCS”), through its undersigned attorney, files this Answer to Progress Energy Florida, Inc.’s (“PEF’s”) Second Motion to Establish Case Schedule (“Motion”). PCS Phosphate opposes the relief that PEF requests in its motion, both with respect to the need to fix a schedule in this complex matter at this time and the truncated schedule that the utility proposes. In addition, PCS Phosphate supports Citizen’s Objection to PEF’s Scheduling Motion.

1. As the parties discussed at the technical conference held on July 14, 2011, PEF continues to evaluate questions relating to the most recent delamination of the CR3 containment structure and its tentative decision to attempt to repair the building. All parties are aware that the prolonged outage of this important base-load generating station has serious immediate and long term rate implications for consumers and financial implications for PEF investors. They are equally aware that establishing multiple litigation tracks to evaluate the prudence and rate consequences of highly linked events that stem from PEF’s decision to accomplish its steam generator replacement by cutting an opening in the containment building would be highly inefficient for the Commission, unsatisfactory for PEF investors, and

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exhausting for the intervenors in this docket. As PEF concedes in its motion, the Prehearing Officer previously has rejected a utility motion to bifurcate this proceeding as premature, and the Order Establishing Procedure issued February 8, 2011 outlined a case schedule premised on the return to service of CR3. The newest delamination event caused by PEF's attempt to repair the containment building created additional uncertainty that obviously affected the prospects for that return to service, the scope of issues in this proceeding, and the litigation schedule. Each of those concerns were discussed at the July 14, 2011 status conference.

2. PEF's motion, which seeks to break this prudence inquiry into three distinct tracks and dramatically truncate the time period for addressing the prudence and rate consequences associated with its proposed Phase I (PEF's actions and decisions with respect to CR3 up to the discovery of the newest delamination in March 2011) is notable in that it offers absolutely nothing new to resolve the uncertainties associated with the unit, or any new facts to suggest that it is no longer premature to break the case into several pieces. Just as significantly, PEF offers no good cause for its proposal to radically shorten the proposed schedule from the time frames that it initially proposed. In fact, nothing new of consequence has been revealed with respect to CR3 in the last three weeks. On that basis alone, the Commission should summarily reject the PEF motion and direct the utility to work with intervenor parties to establish a scope of review and issues for the proceeding.

3. PCS Phosphate wholeheartedly supports the Public Counsel's objections to the PEF motion. PEF's proposed schedule is patently prejudicial to intervenor parties and completely at odds with all prior schedule proposals, including those previously proposed by the utility. PEF fails even to attempt to justify the proposed abbreviated schedule, and it should be rejected. With respect to the litigation schedule, it is important to recognize several

basic considerations. First, the issues associated with the containment delaminations, PEF's actions and decisions, and its management of all facets of the steam generator replacement and containment repair are complex in a scope that is unrivaled in recent Commission history. Second, PEF unquestionably bears the burden of proving the prudence of its actions and the costs incurred. Third, notwithstanding that burden of proof, the scope of the issues litigated generally will be defined by intervenors' positions and the utility's rebuttal. Consequently, intervenors require sufficient time after receiving PEF's direct testimony to conduct discovery and formulate positions. PEF's motion simply seeks to deny intervenors that opportunity. OPC correctly suggests in its objection that a proper airing of these events requires a lengthening of the litigation schedule.

4. Progress has previously recognized the time required to review the evidence and prepare a case that addresses the prudence of both PEF's actions regarding the delamination events as well as its decisions concerning the procurement of replacement power due to CR3's extended outage. In its December 3, 2010 motion to establish a case schedule, PEF allotted significantly more time for all parties and the Commission to present a case, proposing the following schedule:

60 days after return to service	PEF files petition and direct testimony
180 days after return to service	Intervenor testimony
210 days after return to service	Staff testimony
240 days after return to service	Rebuttal testimony
270 days after return to service	CR3 hearing

This schedule was adopted by Prehearing Officer on February 8, 2011.¹

5. Next, it appears beyond dispute that the newest delamination disclosed in March 2011 is a direct product of the utility's effort to repair the previous delamination.

¹ *Order Granting in Part Progress Energy Florida, Inc.'s Motion to Establish Case Scheduling*, Order No. PSC-11-0108-PCO-EI, Docket No. 100437-EI (Feb. 8, 2011).

While PEF's decision to repair or retire CR3 following that event is arguably a discrete matter, March 14, 2011 does not constitute a logical break point in the prudence cause of events. It is an artifice erected by PEF that will lead to an inefficient Commission assessment of the CR3 issues, and PCS opposes bifurcating or trifurcating this case based on PEF's premise.

6. Finally, exploration of the issues posed in this proceeding suggests that the scope of issues likely is expanding. For example, the extent of insurance coverage available to PEF to offset repair and replacement fuel costs appears to be less than settled. The need to provide sufficient time for PEF to develop an adequate understanding of what caused the crisis facing CR3, and for the parties to review the information, also was the basis of the Prehearing Officer's decision less than four months ago that PEF's first attempt to split the proceeding was premature.² At this juncture, it would be far more productive for the parties to continue meeting informally in an effort to define the scope of issues to be addressed. The relief requested by PEF would be counter-productive and should be rejected.

² *Order Denying Progress Energy Florida, Inc.'s Motion to Bifurcate*, Order No. PSC-11-0208-PCO-EI, Docket No. 100437, at 3 (Apr. 26, 2011).

WHEREFORE, PCS Phosphate respectfully requests that the Commission deny PEF's Motion. Instead, PCS Phosphate urges the Commission to direct the parties to develop a list of issues to be addressed in PEF's direct testimony.

Respectfully submitted,

s/ James W. Brew
James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW,
Eighth Floor, West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
jbrew@bbrslaw.com
ataylor@bbrslaw.com

*Attorneys for White Springs Agricultural
Chemicals Inc. d/b/a PCS Phosphate –
White Springs*

CERTIFICATE OF SERVICE

I HEREBY certify that a true copy of the foregoing Answer to Progress Energy Florida, Inc.'s Second Motion to Establish Case Schedule has been furnished by electronic mail and/or U.S. Mail this 5th day of August 2011 to the following:

J.R. Kelly/Charles Rehwinkel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32393-1400

Vicki G. Kaufman/Jon C. Moyle, Jr.
Florida Industrial Power Users Group c/o
Keefe Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740

John T. Burnett
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042

Southern Alliance for Clean Energy
c/o George Cavros, Esq.
120 East Oakland Park Blvd., Suite 105
Fort Lauderdale, FL 33334

/s/ F. Alvin Taylor
F. Alvin Taylor