

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of two unit power sales agreements with Southern Company Services, Inc. for purposes of cost recovery through capacity and fuel cost recovery clauses, by Progress Energy Florida, Inc.

Docket No. 041393-EI

Filed: May 23, 2005

**PREHEARING STATEMENT OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to the Prehearing Officer's April 20, 2005 "Order Establishing Procedure" (Order No. PSC-05-0432-PCO-EI) ("April 20 Order"), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("White Springs") hereby files its Prehearing Statement.

a. All Known Witnesses

Maurice E. Brubaker
Brubaker and Associates, Inc.
P.O. Box 412000
St. Louis, MO 63141-2000

b. All Known Exhibits

Exhibit No. MEB-1 () – Estimate of Differential Revenue Requirements (Data)
Exhibit No. MEB-2 () – Estimate of Differential Revenue Requirements (Graph)
Exhibit No. MEB-3 () – Actual and Projected PEF Gas / Oil Reliance
Exhibit No. MEB-4 () – POD-13
Exhibit No. MEB-5 () – Excerpts from Southern Company OATT

c. Statement of Basic Position

Progress Energy Florida, Inc.'s ("PEF") application for approval of two unit power sales ("UPS") agreements with Southern Company Services, Inc. ("SCS") for cost recovery through PEF's capacity and fuel cost recovery clauses should be denied. PEF has failed to prove that the UPS agreements represent a reasonable and prudent action to maintain its 20 percent reserve margin and that the costs associated with the UPS agreements are reasonable and prudent. First, the proposed agreements have not been shown to be cost-effective. PEF has conceded from the outset that the proposed agreements would impose a net cost on its customers. In its application PEF minimized the significance of that net cost by claiming that the short-term economic

benefits were substantial and more certain. After White Springs' discovery uncovered the fact that those short-term benefits were overstated by \$90 million – 67 percent – PEF conceded its error through last-minute supplemental testimony. Thus, the “certainty” of both PEF’s cost-effectiveness analysis and its argument that the short-term benefits somehow offset the long-term net costs are undermined.

Second, PEF failed to consider alternative means to meet its capacity and energy needs. PEF acknowledges that it did not conduct an RFP or other comprehensive process for determining what other alternatives to the proposed agreements might be available. Thus, PEF’s customers and this Commission cannot have confidence that the proposed agreements are reasonable and prudent.

Third, PEF has not demonstrated that the net costs of the proposed agreements are offset by any non-price considerations. Although PEF has provided a laundry list of claimed “non-price” benefits, in fact PEF has not provided credible evidence that those benefits exist or are sufficiently quantified such that the Commission should give them any significant weight.

Ultimately, it is not White Springs’ or the Commission’s burden to demonstrate that the proposed agreements are not reasonable, but rather PEF’s burden to demonstrate that the agreements are reasonable and prudent based on the record evidence in this proceeding. That PEF has failed to do, and for that reason the Commission should reject the proposed agreements.

Importantly, the Commission should not hasten its review of the proposed agreements out of concern that it must act by some artificial deadline. Because the current agreements do not expire until May 2010, the Commission has ample time to reject the proposed agreements and allow PEF to thoroughly examine available alternatives and submit an adequately supported proposal. PEF’s claims that the Commission must act immediately to avoid the possibility that PEF will incur transmission costs do not withstand scrutiny. To the contrary, the Commission cannot reasonably evaluate the proposed agreement until transmission availability and costs are known with certainty. In any event, to the extent that such concerns may exist they are of PEF’s own making.

d. Statement on Each Question of Fact at Issue

FACT ISSUE #1 (ISSUE ID # I): Did PEF adequately consider alternatives to the proposed UPS agreements?

POSITION: No. The record evidence demonstrates that PEF failed adequately to consider alternatives to the UPS agreements. PEF did not engage in an RFP, or other comprehensive process, to identify energy and capacity supply alternatives to the UPS agreements. PEF failed to demonstrate that it has engaged in prudent utility planning to assure the proper mix of generation resources and lowest cost power to consumers and failed to consider adequately fuel alternatives, such as coal.

FACT ISSUE #2 (ISSUE ID # II): Is PEF’s cost-effectiveness analysis reasonable and supported by the evidence?

POSITION: No. PEF has failed to demonstrate that its “base case” and its altered case (*i.e.*, the base case adjusted to reflect the proposed UPS agreements) produces the least cost or best alternative. All that PEF has demonstrated is that the altered case may produce short-term benefits when compared solely to its base case.

FACT ISSUE #3 (ISSUE ID # II.A): Are the claimed savings associated with the agreements supported by the evidence?

POSITION: No. PEF first claimed that the cumulative present value savings during the term of the proposed UPS agreements would be \$133 million, and subsequently reduced that claim by almost \$90 million. At a minimum, that suggests that further scrutiny of PEF’s analysis is appropriate. In fact, PEF’s own exhibits and testimony demonstrate a net detriment of the UPS agreements to consumers of between \$5 and \$11 million compared to the base plan.

FACT ISSUE #4 (ISSUE ID # II.B): Has PEF adequately identified and justified costs that will be borne by ratepayers?

POSITION: No. PEF has not adequately identified and justified all of the costs that will be borne by ratepayers. For example, until the results of the System Impact Study are provided by Southern Company whether PEF’s ratepayers will be asked to bear substantial additional costs associated with the transmission needed to implement the agreements is unknown. Similarly, whether PEF’s customers will be asked to bear substantially greater natural gas costs than projected is unknown because PEF has not performed any sensitivity analysis of the costs to ratepayers under various gas price assumptions (*e.g.*, good case, median case, bad case). What is known is that natural gas prices are volatile and that PEF has a poor record of predicting natural gas prices 5-10 years in advance.

FACT ISSUE #5 (ISSUE ID # III): Are PEF’s claimed “non-price” benefits of the UPS agreements supported by the evidence and reasonable?

POSITION: No. The record evidence does not support the existence of most of PEF’s claimed “non-price” benefits, nor does it quantify any of the claimed benefits. For example, with respect to fuel diversity, PEF has conducted no analysis on the potential availability of coal capacity from sources other than Southern. Additionally, there is no evidence that the right of first refusal for additional SCS coal capacity provides any real benefit. PEF’s analysis assumes that, absent approval of the UPS agreements, there will be no other sources of coal-fired power available to PEF during the proposed term of the agreements.

Similarly, PEF’s claim of increased reliability is unsupported by record evidence. PEF will maintain import rights at the Georgia-Florida border irrespective of whether it enters into the UPS agreements. Because of this, reliability would be more greatly enhanced by building or acquiring capacity in Florida and depending on import capability to provide power supplies from Georgia to meet reliability needs.

Finally, PEF asserts that the planning flexibility of being able to extend the combined cycle contract for two years presents an additional “non-price” benefit. However, PEF makes no attempt to explain or study the actual benefit of this option.

FACT ISSUE #6 (ISSUE ID # V): Is there sufficient reliable transmission available to support the proposed agreements on the Southern system?

POSITION: It is unclear whether sufficient reliable transmission is available on the Southern system to support the proposed UPS agreements. To date Southern has not completed its System Impact Study of PEF’s request for redirected transmission service. Thus, there is no evidence either that transmission will be available to support the proposed agreements or that, if transmission is available, it will be cost-effective.

FACT ISSUE #7 (ISSUE ID # VI): Does the fact that the UPS agreements may postpone the need for other generation justify those agreements?

POSITION: No. Although PEF’s evidence appears to demonstrate that the UPS agreements will postpone the need for other generation, that does not support the reasonableness of the proposed agreements. Adding additional capacity from any source – whether self-build, other PPAs or demand side management – would equally postpone the need for other generation. That, however, has no bearing on the reasonableness of the proposed agreements. PEF has failed to prove that the generating plant fuel types and timing of their construction resulting from postponement are cost-effective. Thus, postponing the need for other generation could actually cost more than procuring the energy using other means.

e. **Statement on Each Question of Law at Issue**

QUESTION OF LAW #1 (ISSUE ID # VII): Whether the record evidence in this proceeding demonstrates that the UPS agreements are reasonable and prudent.

POSITION: PEF has failed to demonstrate that the UPS agreements are reasonable and prudent, given that PEF apparently did not consider alternatives to the agreements and given that PEF has failed to demonstrate adequately the purported cost savings and economic efficiencies of the proposed agreements. PEF has not demonstrated that the UPS agreements are the least-cost or best option available for its customers and has entered into transmission arrangements to implement the UPS agreements in advance of the Commission’s approval.

QUESTION OF LAW #2 (ISSUE ID # II.C): Whether the Commission’s consideration of the proposed agreements, absent evidence concerning the availability and cost of transmission associated with those agreements, would be arbitrary, capricious and unreasonable.

POSITION: Absent credible evidence concerning whether transmission will be available to implement the agreements, and the cost of that transmission, the Commission cannot make a reasoned judgment concerning whether the proposed agreements are reasonable and prudent. Moreover, given the current uncertainty concerning what actions the Federal Energy Regulatory Commission may take as a result of several investigations concerning the Southern Company

system, Southern's market power, and the design of Southern's transmission system – action which could result in additional competitive alternatives well before the expiration date of the existing UPS Agreements -- the Commission cannot reasonably evaluate whether the proposed UPS agreements are reasonable and prudent.

QUESTION OF LAW #3: (Issue ID # VII) Whether the Commission can approve the proposed agreements for cost recovery absent credible evidence that the asserted cost and non-price benefits exist.

POSITION: No. The Commission cannot approve the proposed agreements for cost recovery until PEF has (i) demonstrated that the claimed cost and non-price benefits exist and (ii) received from Southern adequate guarantees that the necessary transmission service will be available at the costs assumed by PEF in its cost/benefit analysis of the agreements. Based on the record evidence, the Commission does not have a complete picture of the agreements before it. It would be arbitrary, capricious and unreasonable for the Commission to approve the agreements for cost recover unless it requires PEF to bear all financial and other risks associated with the agreements in any proceeding in which it seeks to recover costs associated with the agreements.

f. Statement on Each Policy Question at Issue

ISSUE #1 (ISSUE ID # IV): Who should bear the risk if PEF's claimed cost and "non-price" benefits are not realized, PEF's customers or its stockholders?

POSITION: In the event that the Commission approves the UPS agreements, PEF's stockholders should bear the risk that the claimed benefits fail to materialize. PEF entered into transmission arrangements associated with these agreements prior to Commission approval, and thus ratepayers should not be saddled with poor contracting decisions by the company. Furthermore, PEF management, as a sophisticated party to the contract negotiations, should remain answerable for contracting decisions that result in less-than expected benefits. Management, and by extension, shareholders, should be and generally are held liable for risks associated with bad business decisions.

g. Stipulated Issues

White Springs is not aware of any stipulated issues at this time.

h. Pending Motions

Concurrent with this Prehearing Statement, White Springs will file a Motion for Reconsideration of the Presiding Officer's May 16, 2005 Order Granting Motion For Leave to File Supplemental Testimony and Denying Emergency Motion to Suspend Procedural Schedule.

i. Pending Requests or Claims for Confidentiality

Consistent with its Notice of Intent to Request Confidential Classification (filed on May 13, 2005), White Springs requests confidential treatment of the following pages from the

Direct Testimony of Maurice Brubaker (filed on May 13, 2005), which contained information designated by PEF in this proceeding as confidential:

page 15 line 9
page 16 lines 22, 24, and 25
page 19 lines 31, 32, and 33
page 20 line 1
page 26 lines 12-23
page 27 lines 1-3, 7-8, and 12-14

White Springs also requests confidential treatment of the following exhibits, which also contain information designated by PEF in this proceeding as confidential:

Exhibit No. MEB-1 ()
Exhibit No. MEB-4 (), at pages 14-15, 37-38, and 43

j. Statement on Any Requirements That Cannot Be Complied With

White Springs is not aware of any requirements with which it cannot comply.

k. Objections to Witness's Qualification as An Expert

White Springs is not aware of any such objections at this time.

Respectfully submitted,

s/ James M. Bushee

James M. Bushee
Daniel E. Frank
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004-2415
(202) 383-0100 (phone)
(202) 637-3593 (fax)

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

May 23, 2005

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Notice of Service has been furnished by electronic mail this 23rd day of May, 2005, to the following:

Via E-mail

Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740
paul.lewisjr@pgnmail.com

Via E-mail

Gary V. Perko
Hopping Green & Sams, P.A.
123 S. Calhoun Street (32301)
Post Office Box 6526
Tallahassee, FL 32314
garyp@hgslaw.com

Via E-mail

Adrienne Vining
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
avining@psc.state.fl.us

s/ James M. Bushee

James M. Bushee