

**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: March 31, 2005

**PETITION FOR HEARING AND MOTION TO INTERVENE OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
D/B/A PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to Sections 120.57 and 120.569(1), Florida Statutes, and Rules 25-22.029, 28-106.201, and 28-106.205, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“White Springs”) files its Petition for Hearing and Motion to Intervene. In support thereof, White Springs states the following:

I. Identity of Petitioner

1. The name and address of Petitioner is:

White Springs Agricultural Chemicals, Inc.
d/b/a PCS Phosphate – White Springs
15843 SE 78th Street
P.O. Box 300
White Springs, FL 32096

2. Copies of all pleadings, notices, and orders in this docket should be provided to Petitioner’s representative as follows:¹

¹ Concurrently with this Petition for Hearing and Motion to Intervene, James M. Bushee, Daniel E. Frank and Andrew K. Soto, counsel for White Springs, are filing with the Commission requests for authorization as qualified representatives of White Springs.

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3. White Springs is a manufacturer of fertilizer products with plants and operations located within Progress Energy Florida Inc.'s ("PEF") service territory in White Springs and receives service under PEF's IS-1, IST-1, SS-2, GS-1, GSD-1, GSDT-1, and LS-1 Rates. During calendar year 2004, White Springs purchased from PEF, in total, approximately \$20 million worth of power.

II. Statement of Affected Interests

4. In its March 14, 2005 Order No. PSC-05-0272-PAA-EI in this proceeding (the "PAA Order"), the Commission proposed to approve, for cost recovery purposes, two unit power sales ("UPS") agreements between PEF and Southern Company Services, Inc. ("SCS"). Those agreements provide for the sale by SCS to PEF of 424 MW of power, consisting of 74 MW of

coal-fired and 350 MW of natural gas-fired capacity, during a primary term of 2010 through 2015. The agreements would replace two existing UPS agreements between the same parties that provide for 414 MW of exclusively coal-fired capacity.

5. White Springs' interests are of the type that this proceeding is designed to protect. *See, e.g., Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981). White Springs, as one of PEF's largest customers, will be substantially affected by the Commission's decision in this proceeding. First, because PEF proposes to rely increasingly on relatively high-priced natural gas-fired generation – possibly without fully reasoned consideration of other energy sources – White Springs faces harmful rate increases and increased price volatility. Such increases will affect White Springs' production costs and its competitive position. Second, because PEF proposes to procure 424 MW of power from out-of-state resources using constrained transmission resources, the reliability of PEF's service to White Springs may be adversely affected. Adverse reliability impacts will affect White Springs' ability to operate its facilities in an efficient and economical manner. Third, as one of the largest electricity consumers in Florida, White Springs will be substantially affected by the Commission's determination concerning the use of natural gas-fired versus coal-fired generation.

III. Disputed Issues of Material Fact

6. Based on the limited information available in PEF's heavily redacted public filing, it is evident that the UPS agreements raise disputed issues of material fact that can be resolved only through a formal hearing. Additionally, White Springs anticipates that, after it is given the opportunity to review the complete unredacted filing, it will uncover additional disputed issues of material fact. Accordingly, White Springs reserves the right to raise additional issues when given access to the complete PEF filing.

7. The PAA Order's conclusion that PEF's cost-effectiveness analysis is based on reasonable assumptions² is based on numerous disputed issues of material fact. Those disputed issues of material fact include, but are not limited to:

- a) Whether other options were available to, and considered by, PEF in addition to the two proposed UPS agreements, and whether those other available options would be more cost effective. In particular, did PEF consider whether other sources of coal-fired generation, including an extension of the existing unit sales agreements, were available?
- b) Whether PEF's UPS agreements and cost-effectiveness analysis are reasonable and are adequately supported. Both the publicly available terms of PEF's filing as well as the redacted terms raise disputed issues of material fact. Because those provisions of the agreements that are necessary to resolve these issues were filed under seal, it is likely that there will be additional disputed issues of fact revealed upon review of the complete, unredacted filing. Based on the public version of the filing, however, the disputed issues include, for example:
 - i) Whether the cost-effectiveness analysis premise that the UPS agreements would defer construction of two generating units is reasonable and supported.
 - ii) If PEF can demonstrate that the UPS agreements in fact would defer construction of two generating units, whether the basis for calculating the \$133 million savings over the life of the agreements is reasonable and supported.
 - iii) If PEF cannot demonstrate that the proposed UPS agreements in fact would defer the generating units, whether the proposed agreements would impose unnecessary and unreasonable costs or risks on PEF's rate payers.
 - iv) Whether PEF's assertion that the UPS agreements would enable increased economy purchases, because a portion of the capacity under the agreements is natural gas-fired, is supported. It is unclear how many hours the capacity from the gas-fired Franklin facility available under the agreement will be dispatched; whether transmission capacity will be available during those hours that would support economy purchases; and what sources of economy energy may be available. Moreover, even assuming the availability of economy power and necessary transmission, whether the calculation of the value of any economy purchases,

² PAA Order at 3.

factoring in the capacity payments for the Franklin facility, is correct.

- v) What is the fuel cost impact of the UPS agreements on PEF's ratepayers?
- vi) What risks are placed on PEF in the transactions; are those risks reasonable; and will PEF's rate payers be asked to bear all of those risks?
- vii) What are the complete terms of the UPS agreements and how are PEF and SCS permitted to modify those provisions? Key redacted provisions include: (a) the timeframe within which SCS may make changes to the Franklin facility (§ 3.3 of the Franklin contract) and (b) what constitutes the "entire agreement" between the parties (§ 21.8 of the Franklin contract and § 19.8 of the Scherer contract).
- viii) What is the availability of the units under the UPS agreements and how will the availability provisions affect the economics of these agreements and the reliability of the PEF system? Key redacted provisions include: (a) scheduling rights and obligations (§ 5.1 of each contract); (b) scheduled and maintenance outages of the facilities (§§ 4.1 and 4.2 of the Franklin contract and § 4.2 of the Scherer contract); (c) the use, availability and cost of alternate resources (§§ 5.5 and 5.6 of each contract); (d) *force majeure* rights and obligations (§ 5.9.2 of each contract; *see also* § 15.3.2 of the Franklin contract and § 13.3.2 of the Scherer contract); (e) unavailability of capacity (§ 5.10 of each contract); and (f) PEF's remedy, imbalances and associated penalties (§ 7.3 of each contract).
- ix) What are the basic economic terms of the agreements and underlying assumptions, and are those terms and assumptions reasonable? Key redacted terms include: (a) transmission service (§§ 7.4.4, 7.4.5, and 7.4.6 of each contract); (b) fuel arrangements (§§ 9.2.1, 9.2.2, 9.2.3, 9.2.5, 9.2.6 of the Franklin contract); (c) certain key definitions that affect the availability and cost of power purchased by PEF, such as the definition of "Increased Generation Cost" for which PEF is responsible and the definition of "Seller's Damages" (§ 16.2.3 in the Franklin contract and in § 14.2.3 of the Scherer contract); (d) creditworthiness and security (Article 20 of the Franklin contract and Article 18 of the Scherer contract); and (e) key terms of Appendix A, Appendix B and Appendix C of each contract on the "Monthly Capacity Payment Calculation," "Energy Payment Calculation" and "Calculation of Start Payment," respectively.

8. There are substantial questions concerning whether there is adequate transmission service available to implement the proposed transactions in a reliable and economic manner.

Those disputed issues of material fact include:

- a) Whether the type of transmission service that PEF has requested from SCS is available and adequate to provide the purported benefits of the UPS agreements. Specifically, would transmission be network service or point-to-point service; what is the cost of that service; and will the requested service support the proposed purchases, purported economy purchases and purported reliability improvements?
- b) Whether the existing agreements with SCS allow PEF to exercise “rollover” rights and maintain transmission access to the Southern Company system. Specifically, what transmission rollover rights are available under Federal Energy Regulatory Commission (“FERC”) policy, the existing UPS agreements and Southern Company’s open access transmission tariff (OATT)?
- c) Whether available transmission rollover rights would give PEF sufficient available transfer capability to systems other than Southern Company to enable economy transactions with third-party systems interconnected with the Southern Company system.
- d) Whether the transmission rights available to PEF would maintain the existing level of reliability or decrease reliability.
- e) Whether PEF has adequately considered transmission constraints and restrictions – and the consequent lack of transmission for third parties like PEF – in its analyses. Recent SCS filings of transmission service agreements at FERC show significant transmission constraints on the SCS system and include attempts to restrict the rollover rights of existing transmission customers.
- f) What capacity is available at the Florida-Georgia interface; who owns that capacity; and can PEF acquire the necessary rights to implement its proposed transaction(s)?

9. Whether replacing coal-fired generation with natural gas-fired generation undermines “fuel diversity,” contrary to the “particular importance” that the PAA Order places on fuel diversity. Those disputed issues of material fact include:

- a) Given that Florida is seeing a significant increase in the amount of natural gas-fired generation, can the proposed UPS agreements that include

primarily natural gas-fired generation increase fuel diversity? The North American Electric Reliability Counsel (“NERC”) forecasts that the proportion of electrical energy produced by natural gas-fired generation in Florida will increase from 26 percent in 2003 to 52 percent in 2013. Yet, PEF has proposed only a 74-MW coal purchase, as compared to the 414-MW coal-purchase under the existing agreements.

- b) The PAA Order, which touts the fuel diversity benefits of the proposed agreements, also notes the risks inherent in relying on gas-fired generation, specifically, “fuel price volatility.” Because the bulk – 350 MW – of PEF’s purchase would rely precisely on generation subject to such “fuel price volatility,” the Order appears to be self-contradictory in this regard.

10. Whether, contrary to the PAA Order, the proposed agreements undercut planning flexibility. The PAA Order concludes that the proposed UPS agreements offer planning flexibility compared to self-build options, and notes that planning flexibility is of “particular importance” to the Commission because it helps mitigate “the volatility and forecasting uncertainty of natural gas prices.”³ The PEF proposal and the PAA Order, however, only evaluate the PEF proposal compared to building gas-fired generation. There is a factual issue concerning what other alternatives might exist and the relative benefits of those alternatives.

11. Whether the proposed UPS agreements would reduce the reliability of the PEF system. Those disputed issues of material fact include:

- a) Whether the proposed UPS agreements would provide any new reliability benefits or reduce the level of reliability provided under the existing agreements.
- b) Are the UPS agreements necessary to meet PEF’s 20-percent reserve margin? An examination of PEF’s forecast load and resource changes, as well as whether PEF has considered demand response alternatives, is necessary to resolve this issue.

³ PAA Order at 4.

IV. Disputed Legal Issues

12. Because PEF filed the material terms of the proposed UPS agreements on a confidential basis, the Commission's PAA Order would deny the public the opportunity for meaningful review and comment. Unless the Commission grants a hearing in which PEF rate payers are able to review and evaluate the agreements and the related cost-effectiveness analysis, these ratepayers, including White Springs, would be deprived of their due process rights.

13. Based on the limited availability of the proposed UPS agreements, White Springs identifies here one disputed legal issue arising out of those agreements – whether SCS will retain legal authority to continue to sell power consistent with the terms of the proposed UPS agreements. SCS's authorization to continue to sell power at market-based rates currently is under investigation before FERC. If that authorization is revoked or restricted as a result of a FERC finding that SCS and/or the Southern Operating Companies have market power, there is an issue whether SCS will have authorization to sell power under the agreements, at least as proposed. Unless PEF can demonstrate, and the Commission can satisfy itself, that SCS will not lose its authorization to sell power at market-based rates (at least during the term of the proposed UPS agreements), the possible extension of the term of the existing cost-based agreements should be considered. That issue should be resolved through a formal hearing.

V. Policy Questions

14. This proceeding presents the Commission with the significant policy issue of whether PEF should be required to acquire capacity from a base-load, coal-fired unit located in Florida rather than importing relatively high-cost natural gas-fired capacity over constrained transmission lines. PEF proposes to replace 340 MW of coal-fired capacity under the existing UPS agreements with natural gas-fired capacity. Given relative prices of natural gas and coal

and related factors (*e.g.*, transportation availability and costs to transport the fuel to plants), the policy implications of that proposal should be explored at hearing. That is particularly true because claimed benefits of the proposed UPS agreements include the “fuel diversity” and “planning flexibility” afforded by the coal-fired generation purchased under the proposed UPS agreements.

15. Florida consumers have paid for the transmission lines to import coal-fired generation into Florida – so called “coal by wire” – for fuel diversity purposes. PEF’s proposal to import gas-fired generation presents the significant policy issue of whether such use would constitute a wise use of limited and valuable transmission resources.

VI. Statement of Ultimate Facts

16. Alleged ultimate facts include, but are not limited to, the following:

- a) PEF has the burden to prove that the proposed UPS agreements are reasonable and prudent.
- b) PEF has the burden to prove that the proposed UPS agreements are cost-effective.
- c) PEF has the burden to prove that the proposed UPS agreements will not result in unreasonable cost increases, risks or other burdens on its rate payers.
- d) PEF has the burden to prove that the proposed UPS agreements will not undermine the reliability of its system.
- e) PEF has the burden to prove that the proposed UPS agreements are necessary to maintain an appropriate reserve margin.

17. White Springs anticipates that additional alleged ultimate facts will be identified in the course of this proceeding.

VII. Motion to Intervene

18. For the reasons stated above, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, respectfully requests that the Commission enter an order allowing it to intervene as a full party in this proceeding.

VIII. Conclusion

Wherefore, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, respectfully requests that the Commission set this matter for hearing and grant its motion to intervene.

Respectfully submitted,



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March 31, 2005

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petition For Hearing and Motion To Intervene has been furnished by electronic mail and U.S. Mail this 31st day of March 2005, to the following:

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