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- b. Docket No. 080148-EI, In Re: Petition for Determination of Need for Levy Units 1 and 2 Nuclear Power Plants
- c. Filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs
- d. Total Pages = 8
- e. Memorandum on Additional Issues of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (attached as PCS\_Memo on additional issues.doc)

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DOCUMENT NUMBER-DATE

03772 MAY-7 8

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**In Re: Petition for Determination of )  
Need for Levy Units 1 and 2 Nuclear )  
Power Plants )**  
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**Docket No. 080148-EI  
Filed: May 7, 2008**

**MEMORANDUM ON ADDITIONAL ISSUES OF  
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
d/b/a PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to the Florida Public Service Commission’s April 30, 2008 *Order Allowing Memorandum on Additional Issues*, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”), through its undersigned attorney, submits its memorandum on the following issues:

**Issue 9:** Should the Commission separately assess the need for each of the proposed generating units using the criteria set forth in Section 403.519(4), Florida Statutes?

**Issue 10:** Should the Commission require, as a condition of granting a determination of need for the proposed units, that Progress Energy Florida, Inc. implement contractual and other strategies required to effectively manage the units' construction cost and schedule and the risks to consumers associated with cost overruns and project delays?

**I. Preliminary Comment**

The basic purpose of the list of issues in the Prehearing Order is to inform and educate the panel of commissioners assigned to the docket as to the nature of the disputes raised by the pleadings. The goal is to frame a succinct and focused list to facilitate the Commission’s decision in a complex matter. Mere brevity (e.g., reducing a base rate case to the single issue: “Is the utility rate request reasonable?”) is not helpful. Sweeping,

generic issue statements can disguise or confuse the matters that the Commission must reach, and, like compound questions during cross-examination, generally should be avoided. For this reason, issues lists in rate cases and fuel dockets are constructed to break complicated proceedings into basic components and concerns in order to facilitate the Commission's decision-making. A need determination for a proposed nuclear power plant is a complex matter as well that should be similarly dissected.

Second, an appropriate delineation of issues in the Prehearing Orders facilitates the organization and presentation of parties' positions in post-hearing memoranda and briefs. This focuses arguments on the questions and concerns that matter most. Finally, properly constructed, an issue list should provide the Commission with additional flexibility to address issues in the manner the Commissioners believe is most appropriate.

## **II. Statutory Background**

Section 403.519(4), F.S. directs the Commission to act expeditiously with respect to an application for a determination of need for a new nuclear power plant. Subsection (4) provides that, in making its determination, the Commission shall consider "the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, the need for adequate electricity at a reasonable cost, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available."

Subsection (b) of the Section 403.519(4) further elaborates as follows:

In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, *including* whether the nuclear or integrated gasification combined cycle power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.
3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(Emphasis supplied). In short, the specific criteria enumerated must be taken into account, but do not constitute an exclusive list of factors to evaluate. The Commission must also consider any other factors within its jurisdiction that are relevant.

### **III. Discussion**

The issues listed in the "Tentative List of Issues" appended to the Order Establishing Procedure<sup>1</sup> in this matter focus on the specific criteria enumerated in §403.519(4) subsections (a) and (b). The most daunting, and important, issue that the Commission must confront in deciding whether to grant a determination of need, however, does not appear on the Tentative List of Issues. The critical missing issue, and the issue upon which this project ultimately will be judged, is whether the Levy County project is likely to be too large, expensive and risky for Florida consumers.

Given the history of nuclear plant construction in the U.S., the unproven nature of the new Westinghouse reactor designs, and the limited scope (by design) of prudence reviews in the nuclear cost recovery clause proceedings, this need proceeding must confront the risk issues.

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<sup>1</sup> Order No. PSC-08-0151-PCO-EI, dated March 12, 2008.

PCS Phosphate and the Southern Alliance for Clean Energy (“SACE”) propose two additional issues to squarely address the cost risk issues. Neither issue pre-supposes construction cost prudence or imprudence (the topic of cost recovery clause proceedings). Both issues are consistent with the 2006 Florida Energy Act.

**Issue 9:** Should the Commission separately assess the need for each of the proposed generating units using the criteria set forth in Section 403.519(4), Florida Statutes?

This issue is needed because it is entirely possible to find that each Tentative Issue identified in the Commission’s Order Establishing Procedure supports construction of Levy Unit 1, but that a need determination for Unit 2 cannot be justified. In its 2007 TYSP, Progress identified plans to construct a single nuclear unit for commercial operation in 2016. The utility subsequently revised its plans to construct twin units on closely parallel timelines. The decision to add a second unit should be a distinct area of inquiry in this docket.

While Progress maintains that there are synergy benefits to constructing twin units on closely parallel construction paths, the current capital cost estimate for Unit 2 alone exceeds \$5 billion.<sup>2</sup> Further, the unit is not needed for reliability purposes at its planned in-service date of 2017, but will create an inflated capacity reserve of 33% that will persist for years.<sup>3</sup>

Given the uncertain and speculative nature of the projected benefits of nuclear plant operation in the very distant future, and the high probability that today’s \$17 billion estimated construction price tag will quickly yield to even more staggering cost projections, it is reasonable and prudent for the Commission to consider whether

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<sup>2</sup> Need Study, p. 19, Table 3.

<sup>3</sup> Need Study, p. 77, Table 9.

constructing both units at Levy County is biting off more than Progress Energy Florida's consumers can reasonably be expected to swallow. Including Issue 9 as framed by PCS Phosphate and SACE forces necessary attention on the claimed benefits of a) building twin units at all, and b) building Unit 2 on a time line designed to complete that unit within a year of Unit 1. This is a critical issue that cannot simply be subsumed in a "packaged" look at expected cost and cost-effectiveness of two 1,100 MW units.

**Issue 10:** Should the Commission require, as a condition of granting a determination of need for the proposed units, that Progress Energy Florida, Inc. implement contractual and other strategies required to effectively manage the units' construction cost and schedule and the risks to consumers associated with cost overruns and project delays?

This issue is required to address at the outset Progress Energy's management of the significant likelihood of project delays and cost overruns. Progress has acknowledged that a variety of factors could lead to project delays and further cost increases. These could easily lead to project costs that are simply unaffordable. There are, of course, many factors affecting project cost that will be beyond the control of Progress Energy Florida, but it is equally true that Progress is responsible for both the overall project strategy and daily management, and that it will make all crucial project decisions. Experience has shown that active and effective project management is essential for such projects. The Commission must ensure that the utility has the contracts, systems and personnel in place to effectively manage the project. Absent assurances that adequate cost and schedule control safeguards are in place, an assessment of project need is incomplete. Proposed issue 10 addresses that concern in a direct manner taking into account matters well within the Commission's jurisdiction and responsibilities under section 403.519 F.S.

This concern cannot be accomplished through further refinement of projections of distant benefits or adjustments to cost contingency factors. It also cannot be accomplished in annual cost recovery true-up and prudence dockets. The latter proceedings only apportion blame after events have gone awry; they do not manage risks.

To place the questions before the Commission in context, consider a 1985 cover article of *Forbes* magazine, styled as an obituary on U.S. nuclear power plant construction, which asked:

What destroyed the nuclear option in the U.S.? How could U.S. nuclear power costs run so outrageously out of control? And why didn't the NRC or state regulators, never mind the utility managements, do something about them?<sup>4</sup>

The article subsequently concluded “[T]he truth is that nuclear power was killed, not by its enemies, but by its friends.” (pointing to the NRC, equipment manufacturers (like Westinghouse), contractors, engineers and construction managers (like Shaw, Stone & Webster), utility managers and state regulators).<sup>5</sup>

To promote a renaissance in nuclear plant construction, all of those entities have learned from that historic experience. The NRC has overhauled and streamlined its licensing process and pre-approved new reactor designs (including the Westinghouse AP1000). Westinghouse and other reactor designers invested years in improving both the NRC process and their plant designs. They are aggressively marketing those designs but are loathe to guarantee cost or schedule performance. To mitigate utility investor concerns, the federal government is offering loan guarantees on new nuclear projects, and Florida's Renewable Technologies and Energy Efficiency Act of 2006 sharply limits

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<sup>4</sup> “Nuclear Follies,” *Forbes*, February 11, 1985, p. 82.

<sup>5</sup> *Id.* at 83.

post-hoc prudence inquiries. The gaping hole in this chain is that consumers, the only entity with absolutely no control over any aspect of project design, engineering or construction, bear virtually all of the project risk. The Commission should examine, as a central element of its need determination, the strategies and methods that Progress will implement to manage these risks.

PCS Phosphate urges the Commission to include additional issues 9 and 10 in its deliberations in this docket.

Respectfully submitted the 7th day of May, 2008.

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

*s/ James W. Brew*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing has been furnished by electronic mail and/or U.S. Mail this 7th day of May 2008 to the following:

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