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March 20, 2008

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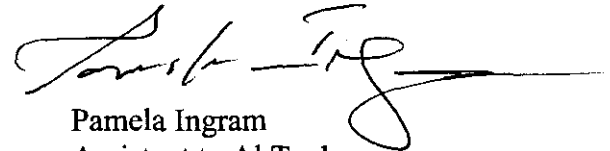
Re: Docket No. 070235-EQ - In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100kW tariff, by Progress Energy Florida, Inc.

Dear Ms. Cole:

Attached is a Microsoft Word version of the "Prehearing Statement of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs" which was filed in the above-referenced proceeding on March 17, 2008.

If you have any questions regarding this matter, please call Al Taylor at (202) 342-0800.

Regards,



Pamela Ingram  
Assistant to Al Taylor

- CMP \_\_\_\_\_
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**Ruth Nettles**

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**From:** Al Taylor [Al.Taylor@bbrslaw.com]  
**Sent:** Monday, March 17, 2008 2:10 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** richzambo@aol.com; Wade\_Litchfield@fpl.com; Bryan Anderson; James D. Beasley; Jon Moyle; Vicki Gordon Kaufman ; Jean Hartman; Jennifer Brubaker; john.burnett@pgnmail.com; KSTorain@Potashcorp.com; Susan Clark; Lisa Scoles; Solid Waste Authority of Palm Beach County; Jay Brew  
**Subject:** FPSC Dockets 070234 / 070235 - E-filing of Pre-Hearing Statement  
**Attachments:** PCS Prehearing Statement.pdf

Electronic Filing

- a. Person Responsible for Filing - James W. Brew, Brickfield, Burchette, Ritts & Stone, P.C., 1025 Thomas Jefferson Street, N.W., Washington, D.C. 20007, [jay.brew@bbrslaw.com](mailto:jay.brew@bbrslaw.com) is the person responsible for this electronic filing.
- b. Dockets - The filing is to be made in Docket Nos. 070234-EQ and 070235-EQ.
- c. The filing is made on behalf of White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate-White Springs.
- d. The total number of pages is 9.
- e. The document attached for electronic filing is the "Prehearing Statement of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs"

(see attached file: **PCS Prehearing Statement.pdf**)

F. Alvin Taylor  
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DOCUMENT NUMBER-DATE

01975 MAR 17 8

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of renewable energy tariff standard offer contract, by Florida Power and Light Company

DOCKET NO. 070234-EQ

In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100kW tariff, by Progress Energy Florida, Inc.

DOCKET NO. 070235-EQ

**Dated: March 17, 2008**

**PREHEARING STATEMENT OF  
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
d/b/a PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to the Order Establishing Procedure and Consolidating Dockets, Order No. PSC-07-0962-PCO-EQ, issued December 3, 2007 and the Order Granting Joint Motion for Enlargement of Time and Revising Order Establishing Procedure, Order No. PSC-07-1010-PCO-EQ, issued December 20, 2007 (collectively, “*Procedural Orders*”), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate White Springs (“PCS Phosphate”) hereby files its Prehearing Statement.

**A. APPEARANCES**

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**B. WITNESSES**

PCS Phosphate will call the following witness:

Martin J. Marz – Mr. Marz will testify regarding changes which should be made to the standard offer contract to modify or eliminate unreasonable terms and conditions that are inconsistent with the State of Florida’s objective to encourage renewable energy generation. These changes primarily concern Progress Energy Florida’s (“PEF”) methodology for determining capacity payments to an RF/QF, and non-price terms and conditions of the standard offer contract that have not been addressed specifically by the Commission’s regulations or the proposed agency action in Docket No. 070235 but have a substantial impact on a renewable energy producer.

**C. EXHIBITS**

Through Mr. Marz, PCS Phosphate will sponsor the following exhibits:

- a. MJM-1 – Proposed Changes to PEF’s Standard Offer Contract
- b. MJM-2 – Capacity Factor of PEF’s Combined Cycle Units
- c. MJM-3 – Excerpts from Vandolah Power Company and PEF Tolling Agreement
- d. PCS Phosphate’s Petition to Intervene, dated July 2, 2007.

PCS Phosphate may have additional exhibits based on the responses to its discovery requests received between now and the end of the discovery period, and PEF witness David Gammon’s testimony at the hearing.

**D. STATEMENT OF BASIC POSITION**

Florida has adopted an energy strategy for the State that places a high priority on the promotion of renewable energy production. This is reflected throughout applicable

Florida statutes and regulatory requirements, most succinctly in the objectives articulated in Rules 25-17.001(d) and 25-17.200, Florida Administrative Code. The objective of a standard offer contract is to facilitate renewable energy goals by establishing price, terms and conditions that a renewable energy producer (and the utility) can accept with no further negotiation. Given the limited cost-effective generation supply options available to Florida consumers today, other than increasing reliance on natural gas for electric generation, the Commission should carefully scrutinize the standard offer contract for RF/QFs for terms and conditions that may impede production from such alternative resources.

The Commission's review of a utility's standard offer contract typically focuses on the energy and capacity pricing provisions based on designated avoided fossil-fueled units consistent with the requirements of Rule 25-17.250, Florida Administrative Code. The standard offer contract, however, is a complete contractual package that includes numerous price and non-price terms, conditions and requirements. Many of these are not discussed expressly in the Commission's rules but must be assessed to determine if they are consistent with the overall State objectives.

As explained in PCS Phosphate's Petition to Intervene and the Direct Testimony of Martin J. Marz, PEF's standard offer contract is not consistent with the specific provisions of the Commission's regulations or the statutory policies and purposes that govern renewable energy policy or the standard offer contract as a whole. As an example, PEF imposes a methodology for calculating a RF/QF's capacity payments that not a single natural gas fired unit in its power plant inventory satisfies. Similarly, PEF demands an option to purchase a renewable energy supplier's environmental attributes

without paying for that option. In addition to these price-related provisions, PEF demands a variety of the non-price terms and conditions that are unreasonable

Because the standard offer contract is inconsistent with both the specific instructions in the Commission's regulations as well as the policy provisions of the Florida statutes and Commission regulations, the Commission must reject PEF's proposed standard offer contract. The Commission should require PEF to (i) revise its methodology for calculating capacity payments; (ii) include all costs associated with the avoided unit; and (iii) adopt non-price terms and conditions that are commercially reasonable and reflect standard industry practice. With respect to this last element, in Exhibit MJM-1, PCS Phosphate has revised the standard offer contract to be more fair and equitable to both parties while still recognizing the unique circumstances of a standard offer contract. The proposed revisions are generally based on industry-standard agreements or contracts to which PEF was a party.

These changes are required for the standard offer contract to serve its intended function and the policies and purposes set forth at Section 366.91, Florida Statutes, and Rules 25-17.001 and 25-17.200, Florida Administrative Code. Each investor-owned electric utility in Florida is required to re-file its standard offer contract every April. In order for changes that the Commission may order to PEF's 2007 standard offer contract in this docket to have any remaining relevance and vitality, the Commission should expressly direct PEF to incorporate those changes into all subsequent versions of PEF's standard offer contract unless PEF expressly proposes and justifies any departure in a future filing.

**E. STATEMENT ON SPECIFIC ISSUES**

PCS Phosphate's witness Martin J. Marz will testify regarding the following issues:

**Issue 1: Is the standard offer contract filed by Progress Energy Florida on April 2, 2007, in compliance with Rules 25-17.001 and 25-17.200 through 25-17.310, Florida Administrative Code?**

**PCS Phosphate:** No. The standard offer contract fails to meet the purposes set forth at Rules 25-17.001 and 25-17.200 through 25-17.310, Florida Administrative Code, because it fails to (i) promote the development of renewable energy; (ii) protect the economic viability of Florida's existing renewable energy facilities; (iii) diversify the types of fuel used to generate electricity in Florida; (iv) lessen Florida's dependence on natural gas and fuel oil for the production of electricity; (v) minimize the volatility of fuel costs; (vi) encourage investment within the state; (vii) improve environmental conditions; and (viii) minimize the costs of power supply to electric utilities and their customers.

PEF's failure in this regard is not generic but stems from the numerous terms and conditions in the standard offer contract that conflict with the specific requirements of the Commission's regulations. Mr. Marz' testimony and exhibits address specific terms that are unreasonable and propose remedies based on standard industry practice and terms adopted in PEF's negotiated contracts that should have general applicability.

**Issue 2: Do the non-price terms and conditions of the PEF's standard offer contract that are not required by Florida Statutes or Commission regulations comply with the policies and purposes set forth in Section 366.91, Florida Statutes and Rules 25-17.001 and 25-17.200, Florida Administrative Code?**

**PCS Phosphate:** No. PEF has proposed contractual terms and conditions that are onerous, one-sided, commercially unreasonable and beyond the scope of the

Commission's regulations. These provisions therefore fail to comply with the policies and purposes set forth at Section 366.91, Florida Statutes, and Rules 25-17.001 and 25-17.200, Florida Administrative Code.

**Issue 3: Does the standard offer contract's methodology for determining an RF/QF's capacity payments comply with the requirements of Rules 25-17.200 through 25-17.310, Florida Administrative Code?**

**PCS Phosphate**: No. First, PEF failed to include all appropriate cost components in its calculation of the cost of the avoided unit. Second, PEF's methodology for calculating an RF/QF's capacity payment is (i) inconsistent with the characteristics of the avoided unit and its existing gas-fired units and (ii) fails to acknowledge the nature of renewable generation.

**F. STIPULATED ISSUES**

None.

**G. PENDING MOTIONS**

None. PCS Phosphate and PEF are currently in discussions regarding PEF responses to several of PCS Phosphate's first set of discovery requests, including the production of unredacted versions of requested power purchase and power sales agreements from PEF. PCS Phosphate and PEF have agreed to a form of confidentiality agreement to resolve that concern.

**H. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**

None.

**Notice of Intent to Use Confidential Documents at Hearing:**

PCS Phosphate may utilize the following confidential documents at hearing:

- a. Tolling Agreement between Vandolah Power Company LLC and PEF,



dated August 29, 2007;

- b. Energy Purchase and Sale Agreement between BG&E of Florida LLC and PEF, dated July 25, 2007;
- c. Energy Purchase and Sale Agreement #2 between BG&E of Florida LLC and PEF, dated December 7, 2007;

PCS Phosphate may identify additional documents based on the responses to its discovery requests received between now and the hearing date, or in response to PEF witness David Gammon's testimony at the hearing.

**I. OBJECTIONS TO QUALIFICATIONS OF WITNESS AS EXPERT**

Based on PEF's responses to PCS Phosphate's Interrogatory No. 19(a), PCS Phosphate believes this question is not applicable, as PEF's sole witness, David Gammon, is only testifying as a fact witness.

**J. REQUIREMENTS OF ORDER ESTABLISHING PROCEDURE**

There are no requirements of the *Procedural Orders* with which PCS Phosphate cannot comply.

Respectfully submitted the 17<sup>th</sup> day of March, 2008.

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

*s/ James W. Brew* \_\_\_\_\_

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*Attorneys for*

*White Springs Agricultural Chemicals, Inc.*

*d/b/a/ PCS Phosphate – White Springs*

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished by  
Electronic Mail and/or U.S. Mail this 17th day of March 2008, to the following:

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