

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Establishment of Rule on
Renewable Portfolio Standard**

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**Docket No. 080503-EI
Filed: September 5, 2008**

**COMMENTS ON PROPOSED RULEMAKING OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A
PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to Florida Public Service Commission Staff's solicitation of comments, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate"),¹ through its undersigned attorney, files these comments on the August 11, 2008 version of the draft Renewable Portfolio Standard ("RPS") rules.

OVERVIEW

Florida needs to maximize energy production from renewable and low carbon-emitting resources to reduce the State's greenhouse gas footprint and improve electric system reliability while meeting growing demand. This is a tall order that must be addressed comprehensively to be effective. At a minimum, the Commission's RPS rule and practices should aggressively promote production by the most economic renewable resources and actively encourage peak period renewable energy production that will offset utility reliance on combustion turbines and high cost power purchases. This policy should be reflected in the final RPS rule.

¹ White Springs operates energy intensive mining and chemical manufacturing facilities in Florida that also produce a substantial amount of electric energy with no incremental air emissions by capturing and using heat created by its sulfuric acid manufacturing operations. See "An Assessment of Renewable Electric Generating Technologies for Florida," prepared by the Florida Public Service Commission and the Department of Environmental Protection, January 2003, pp. 34-35, for a description of

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The Legislature sought to promote low- or non-emitting energy production from renewable sources in a manner that supports economic growth, protects the economic viability of Florida's existing renewable energy facilities, improves the operation of the state's electric systems and increases the state's fuel diversity, thereby minimizing reliance on natural gas. Fla. Stats. 366.92(1). Further, in crafting the RPS requirement, the Florida Legislature indicated that electric utilities could comply with a renewable energy requirement through direct purchases of renewable energy from qualified resources or the acquisition of renewable energy credits ("RECs"). See for example, Section 366.92(3), which provides that:

The commission shall adopt rules for a renewable portfolio standard requiring each provider to supply renewable energy to its customers directly, *by procuring*, or through renewable energy credits. . . . (emphasis added.)

Notwithstanding the above, the draft RPS rule is premised solely upon the creation, acquisition and tracking of RECs to achieve and demonstrate compliance, and avoids addressing utility direct purchases of renewable energy. While administratively expedient, the draft rule leaves much unaddressed. The draft rule also would create a preference for Class I renewable (wind and solar) resources by establishing minimum thresholds for energy to be supplied by these without regard for potential reliability or economic impacts this practice might create (other than through a REC price cap). PCS Phosphate urges the Commission to adopt a rule that embraces a more flexible, comprehensive, and, we believe, effective approach.

It bears noting at the outset that the RPS requirement enacted this year supplements pre-existing state policy favoring renewable energy production. Rule 25-17.001(5)(d), F.A.C., for example, encourages electric utilities to aggressively pursue nontraditional resources of power generation "including cogenerators with

"Phosphate Plants and Exothermic Reactions" as a renewable energy resource.

high thermal efficiency and small power producers using renewable fuels.”² To expand Florida’s renewable energy production beyond that achieved by pre-existing practices, as the legislation plainly intends, the RPS rule should address terms applicable to the purchase of renewable energy as well as the purchase and sale of RECs.

Through inaction, the draft rule presumes that any compensation to a renewable energy supplier for the energy produced and capacity made available will be determined by the avoided cost of the contracting utility. This issue should not be addressed by default. Section 366.92(3)(b)1 F.S., states that the Commission’s rule “*shall include* methods of managing the cost of compliance with the renewable portfolio standard, whether through direct supply or procurement of renewable power or through the purchase of renewable energy credits.” (emphasis added.)

PCS Phosphate is not suggesting a complete re-write of the avoided cost rule in this docket. Nonetheless, in the RPS rule, the Commission must clearly eliminate certain unnecessary regulatory barriers by authorizing more flexible and innovative utility billing, pricing and contracting provisions for renewable resources, and particularly sources that have, or could achieve, high availability during periods of peak electric demand. In this regard, the Legislature specifically provided that:

...the commission may approve projects and power sales agreements with renewable energy producers and the sale of renewable energy credits needed to comply with the renewable portfolio standard. In the event of any conflict, this subparagraph shall supersede sec. 366.91(3) and (4).

Thus, the Legislature has authorized, indeed, it has instructed the Commission to pursue

² See In re: *Petition for approval of negotiated renewable energy contract with Manatee Green Power, LLC, by Florida Power & Light Company*, docket No. 070677-EQ, Order No. PSC-08-116-PAA-EQ, issued February 22, 2008.

innovative policies to achieve renewable energy policy goals. By exercising such judgment, the Commission will not only comply with the requirements of the 2008 Energy Act but also with its overarching jurisdictional responsibility to consider impacts to customers and overall electric system reliability. PCS Phosphate offers several limited suggestions that are summarized below and reflected in the attached “blacklined” changes to the draft rule.

17.400 Florida Renewable Portfolio Standard

PCS Phosphate recommends that the draft rule be amended by adding a provision to section (4)(a) “Compliance,” that authorizes and encourages contractual flexibility between utilities and renewable energy providers to promote renewable energy production and peak period renewable energy production. This provision would supersede any potentially conflicting limitations that might apply under 25-17.082 or 25-17.0832 if the Commission were to determine that the proposed terms in a contract were reasonable and advanced Florida’s energy goals. In this fashion, the Commission could, and should, allow for greater flexibility in the procurement of renewable energy and allow parties to negotiate an array of terms and conditions, including alternative billing options and methods, contract length and performance criteria.

17.410 Florida Renewable Energy Credit Market

The Commission should not establish a specific cap on the price of RECs as proposed in the draft rule. The cost of RPS compliance to ratepayers is a very serious consideration in light of the host of factors, including nuclear pre-construction costs, that are increasing electric rates throughout Florida, but a specific REC price cap in the rule is almost certainly ill-advised. Rather, the Commission should authorize utilities to negotiate the price they pay for RECs, subject to the dictates of the marketplace and the

Commission's review for prudence. Such an approach would serve to encourage the development of new renewable projects while also promoting the economic well-being of existing facilities.

CONCLUSION

To address needed contractual flexibility and a more pragmatic RPS approach, PCS Phosphate proposes limited revisions to the draft rule set forth in the Attachment to these comments. By incorporating these suggestions, the RPS rule will better encourage the development of Florida's renewable resources innovation and avoid unnecessary restrictions and barriers to maximizing renewable energy production.

Respectfully submitted this 5th day of September, 2008

/s/ James W. Brew

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