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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause )  
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Docket No. 100009-EI  
Filed: September 10, 2010

POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS  
OF WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.  
d/b/a PCS PHOSPHATE – WHITE SPRINGS

Pursuant to the Public Service Commission's February 25, 2010, Order Establishing Procedure, Order No. PSC-10-0115-PCO-EI, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate" or "PCS") submits its post-hearing statement of issues and positions. Except as described below, the PCS Phosphate positions on issues remain as stated in the Pre-hearing Order issued August 20, 2010.

**OVERVIEW**

The core concern of PCS Phosphate in this docket is more immediate and consequential than very distant fuel price "guesstimates" or speculation concerning the expected impact on Florida power prices of national climate change legislation that has not been enacted and remains a matter of considerable speculation. Rather, it is now apparent that the combined effect of the nuclear cost recovery rule, the newly disclosed delay in the Levy Nuclear project ("LNP" or "Levy"), the project cost increase, and the loss of expected joint ownership participation in the project poses a calamitous inter-generational equity dilemma and excessive customer rate impacts for at least the next decade with no real prospect for mitigating those risks and costs by sharing them with anyone else. The Commission must also recognize that part of Progress Energy Florida's

(“PEF” or “Progress”) rationale in deferring about \$1 billion in planned project spending until a COL is issued must be to avoid getting any deeper into a project whose prospects are now decidedly dim. PCS urges the Commission to undertake a more searching examination of Levy’s risks, realistic prospects, and financial and rate implications.

## **I. ABBREVIATED STATEMENT OF FACTS**

### **A. General**

In 2009, Progress announced that the expected in-service dates of its proposed Levy project would be delayed a minimum of 20 months.<sup>1</sup> Progress had assumed that the Nuclear Regulatory Commission (“NRC”) would grant a Limited Work Authorization (“LWA”) to permit PEF to perform a variety of site preparation, excavation and dewatering tasks during the pendency of the LNP license application proceedings at the NRC. That presumption proved to be unwarranted and incorrect. PEF did not obtain the LWA, and this development materially affected PEF’s aggressive timeline for LNP. Significantly, during the 2009 NRC proceeding, PEF did not elaborate on the extent of the expected schedule delay and project cost increases because, Progress asserted, it had not completed its assessment of the full ramifications of this change in circumstance.

In the utility’s filing on April 30 this year, Progress disclosed that it has now elected to extend the expected in-service dates of LNP units 1 and 2 by five and five and one half years, respectively, to mid-2021 and the end of 2022. Tr. 970, 1077. PEF estimates that this schedule change will add more than \$5 billion, roughly 30%, to the total installed cost of the units (including AFUDC, fuel and transmission), and bring the

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<sup>1</sup> PEF *Petition for Approval of Nuclear Costs*, May 1, 2009, in Docket No. 090009-EI, pp. 9-10.

current estimated total cost to approximately \$22.5 billion. Tr. 141, 976-77; Exh. 6 (TGF-3, sch. TOR-2, p. 4).

With this delay in the project, PEF also abandoned its prior plan for engineering, staffing, procurement and other non-licensing activities for the Levy project. Instead, PEF announced an extended “partial suspension” of work undertaken pursuant to its EPC agreement with the Westinghouse Consortium, as well as its intent to suspend or defer up to a billion dollars of planned capital spending until the NRC issues a construction and operating license (“COL”) for the Levy units. Tr. 954, 960-61. This change from a “full speed ahead” approach to “hold everything” pending receipt of a COL could not be accommodated within the terms of the EPC agreement that PEF executed on December 31, 2008, without triggering various provisions that carried adverse consequences for PEF, or breaching the EPC altogether. In this regard, PEF announced that it has negotiated a third EPC amendment that would accommodate scaling back or ceasing planned engineering, procurement and other non-licensing activities for a protracted period.

The utility explained that in 2009 PEF asked the Consortium to evaluate a menu of 24 and 36 month schedule slippage scenarios, and not the five year (60 month) shift in the LNP schedule that PEF now intends to pursue. Tr. 949-50. Upon review of the Consortium’s evaluations, PEF determined that even a 36 month delay would not result in a realistically achievable schedule. Tr. 860-62, 947-48, 1106. Further, PEF repeatedly emphasized that a host of external factors ranging from licensing delays, sluggish load growth, federal and state environmental and energy policies, the economy in general, and conditions in financial markets have appreciably increased the “enterprise risks” associated with the LNP project, and that these increased risks likely will adversely affect

project cost and schedule. Tr. 862, 1039-40.<sup>2</sup> PEF explained that these rising risks and the changed NRC licensing timeline for Levy mandated a more extended project delay, and Progress opted for the proposed 60 month delay in the expected in-service date for the units. *Id.* The additional delay aimed to allow time for some resolution to occur with respect to LNP's licensing, project and enterprise risks, and to build sufficient "float" into the new schedule for the company to consider it realistic. *See* Tr. 1106-07.

### **B. PEF Assessment of Levy Project Options**

Progress acknowledges that its decision concerning the Levy project schedule is a watershed event for the project that calls into question the reasonableness of continuing to proceed with LNP at all (especially in light of the increasing risks and uncertainties). Given this circumstance, PEF determined that a bare assessment of the technical feasibility of Levy was not sufficient and that a broader evaluation was needed of whether continuing with LNP was in the best interests of PEF and its ratepayers. Tr. 1083. Progress explained that the company's senior management considered three basic project options:

1. Cancelling its EPC agreement for Levy (which would effectively cancel the project);
2. Continuing as planned with LNP siting, engineering and procurement ("full speed ahead"), but assuming a minimum 36 month project delay; or
3. Reducing project spending to the extent feasible in the near-term until the NRC issues a COL for the units.

PEF states that it was pre-disposed to avoid project cancellation because, in its view, the company did not want to foreclose future new nuclear generation construction

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<sup>2</sup> Progress, the Office of Public Counsel and SACE all agree that the risks associated with the Levy project overall have increased.

in Florida. Tr. 1034, 1086-87. With PEF not prepared at this time to entertain project cancellation seriously as long as the EPC issues could be resolved, and with a reduction in near-term project spending an absolute necessity in light of the licensing delays, Progress justified its proposed re-alignment in project spending based on the expected costs of the three options over the limited time period 2010-12. Tr. 954-56. As is discussed below, PEF's evaluation of these options was incomplete and inadequate.

### **C. The Consequences to PEF Ratepayers of the LNP Project Delay**

The immediate effect of the PEF decisions concerning the Levy project is a near-term reduction in project spending (expenditures are deferred until a COL is issued, not avoided) that translates into a slightly lowered nuclear cost revenue requirement<sup>3</sup> for 2011 and 2012, but the delay produces a significant increase in overall LNP project cost (as a result of both AFUDC and increases in expected project costs). Exh. 6, sch. TOR-2, p. 4. Placing most elements of the Levy project in "cold storage" while PEF pursues a COL for the project also removes any expected project benefits (putative fuel and emissions cost savings) further in time. Further, the project delay has effectively sidetracked the utility's efforts to secure joint ownership participation in the Levy project for the foreseeable future.

The five year delay in LNP forces any potential joint owner in the project that has currently identified a resource need to commit capital elsewhere. *See* Exh. No. 222.<sup>4</sup> For potential owners looking further into their future, PEF concedes that there is no reason to expect that any will make a financial commitment to LNP until greater clarity has been

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<sup>3</sup> Although PEF projects dramatically lowered LNP spending levels in 2011, \$60 million of the proposed \$147 million that Progress seeks for recovery in 2011 relates to amortization of 2010 nuclear spending in accordance with PEF's Rate Management Plan approved in Order No. PSC-9-0783-FOF-EI.

<sup>4</sup> Seminole Electric Cooperative Ten Year Site Plans showing the deletion of LNP capacity from its generation expansion plan between 2009 and 2010 and a decision instead to install 180 MW of peaking capacity.

provided concerning the entire litany of enterprise and project risks. Tr. 1096. At this point, it would be rank speculation to surmise when, or if, that circumstance will ever occur.

Progress continues to maintain that it could fund and own 100% of both LNP units, but that it continues to seek joint owners in order to share project risks and to mitigate rate impacts on PEF ratepayers. Tr. 1169-70. However, notwithstanding its steadfast position on full or partial ownership, the increased prospects that PEF may remain the sole owner on this project in the long term likely is a chilling thought for PEF management and shareholders, particularly once the COL is issued and both the LNP cash flow demands and consumer rate impacts increase dramatically. *See* Exhs. 6, sch. TOR-3, pp. 5-6; and 188.

## **II. STATEMENT OF BASIC POSITION**

The customer rate impacts of the Levy nuclear project already had become a prime focus of Progress' nuclear cost recovery filings prior to the schedule shift announced in this docket. This, very simply, is a function of the expected costs of the units, the size of the PEF customer and retail sales base, and the fact that Progress never had a need for the capacity of the second Levy unit when it expects to place that unit into commercial service. In both prior years in which PEF has requested recovery of Levy costs through the nuclear cost recovery rule, the utility has perceived (correctly) that the customer rate and bill impacts of its requested nuclear cost recovery revenue requirement would be excessive. In both prior instances, PEF requested and received Commission approval to defer a substantial portion of its authorized recovery over a more extended period.

In Order PSC-08-0749-FOF-EI, the Commission approved \$418 million in nuclear cost recovery for 2009, but subsequently approved PEF's request to defer recovery of \$198 million of that amount to 2010 in order to mitigate rate impacts in 2009.<sup>5</sup> In 2009, PEF received authorization to recover \$444 million in nuclear cost recovery revenue requirements (including the prior \$198 million deferral), but also requested and received Commission approval to establish a Rate Management Plan which permitted Progress to defer approximately \$273 million of that amount for recovery over five years rather than one.<sup>6</sup> In accordance with that approved rate moderation plan, \$60 million of the \$147 million in nuclear cost recovery charges that PEF seeks to recover in this year's docket for 2011 relate to amortization of prior period costs. *See* Tr. 136-37; Exh. 5, sch. P-1, p.4.

PEF's previous proposals to moderate near term rate impacts of its nuclear construction program properly took into account the effect of the recession on its customers' ability to pay for that program. Progress, however, also concedes that customer rate and bill impacts are always an important consideration. Tr. 1155-56. With that basic concern in mind, it is impossible to examine the expected LNP customer rate impacts of the revised project schedule, as is shown on Exhibit 188, without recognizing that a day of reckoning between project capital spending requirements and PEF customers' ability to pay will be reached long before the units enter commercial service unless there is substantial joint ownership participation in both units.

Under PEF's proposed "extended partial suspension" approach, the NCRC rate in 2014 will be quadruple the proposed level for 2011. Exh. 188. By way of comparison, in

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<sup>5</sup> *See* Order PSC-09-0208-PAA-EI.

<sup>6</sup> Order PSC-09-0783-FOF-EI.



its petition for nuclear cost recovery last year, PEF claimed that its proposed NCRC rate for residential customers in 2010 would be \$12.63/1000 kwh without adoption of the proposed rate management plan that the Commission eventually approved (and which cut that rate for 2010 almost in half). *See* PEF *Petition for Approval of Nuclear Costs* in Docket No. 090009-EI, p. 2. As shown on Exhibit No. 188, under the new LNP project schedule, PEF expects its NCRC rate in 2014 (\$23.78/1000 kwh) will be double the level that PEF asserted last year would have produced unacceptably high customer rate and bill impacts without its rate management plan. By 2014 (customers will still be paying roughly \$57 million for the 2009 rate management plan in that year),<sup>7</sup> there will not be any time or place to shift LNP cost recovery dollars. *See* Exhibit 188. Based on the revised capital spending plan, five years later (i.e., 2019), the NCRC rate and base rate impacts of Levy will be double the 2014 rate level, and commercial service of the units will still be years away. *Id.* Once the units actually enter commercial service, base rates would need to increase by well over 100% compared to existing rates, assuming a best case scenario in which everything else goes perfectly and project costs do not increase any further. Exh. 188 and *see* Exh. 30, p. 11. The stunning consumer impacts associated with these expected rates are unavoidable.

In response to a discovery request, PEF attempted to calculate rate impacts under “with” and “without” LNP scenarios based on the current project estimates, assuming all alternative generating capacity would be natural gas-fired, and net of estimated fuel and emissions costs savings estimates. *See* Exh. 76. SACE disputes most aspects of the assumed project benefits, arguing both that the benefits likely have decreased with declining natural gas prices and that the project risks are even greater than PEF will

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<sup>7</sup> Tr.140.

acknowledge. Tr. 637-40. There seems little doubt that expected fuel savings benefits for LNP have diminished given the apparent abundance of natural gas supplies in the U.S.

The reticence of potential joint owners to commit any capital to the project based on their independent assessments of the high project cost, rising project risks and declining or speculative benefits is thoroughly understandable. It is conceivable that other Florida entities eventually may elect to invest in a nuclear project that already is tipping the scales at \$10,000/kW, but at today's natural gas prices that seems a considerable long shot, and, in all likelihood, imprudent. The costs are too high, the risks are too great, and there are much better ways to invest in economic infrastructure improvements.

It also is conceivable that Progress may indeed choose to go it alone, fund and construct both LNP units on its own, and rely exclusively on PEF ratepayers to bear that spectacular burden in rates. This path seems similarly remote in probability when considering the above-noted consumer rate impacts and the unrelenting financial pressures that PEF will face. With the redundant references in its testimony to increasing enterprise risks, Progress certainly has signaled that the slightest twitch from a rating agency relating to LNP that may affect the utility's financial parameters, Congressional action (or inaction) deemed unfavorable to new nuclear power development, lingering difficulties concerning the NRC's approval of the AP1000 design, or at least a dozen other developments that are "external" to the LNP project (some possible and others highly probable) will lead to project termination.

One immediate but unanswered question is whether PEF would have already reached a final decision point with this project but for the fact the utility so far has been

reimbursed by consumers for its LNP efforts pursuant to the nuclear cost recovery rule. PCS Phosphate appreciates the powerful incentive that the nuclear cost recovery rule provides for PEF to continue with the Levy project. PCS addressed the need to counter-balance that incentive with consumer safeguards in the Levy Need docket precisely because today's situation was foreseeable given the costs, risks and history of commercial nuclear plant construction.<sup>8</sup> The nuclear cost recovery rule, however, never aimed to encourage a utility to use ratepayer dollars to perpetuate a project that no longer makes sense. The challenge the Commission now faces is how to confront this very serious condition (unaffordable rate impacts, rising project costs and risks, and no risk-sharing through joint owners) by reconciling the requirements of the nuclear cost recovery rule and its over-arching responsibility to ensure fair and reasonable rates for utility service pursuant to Chapter 366, Florida Statutes.

PEF has admitted that this situation requires an assessment that transcends project technical and physical feasibility. Tr. 1099-1100. OPC has recommended that the Commission require Progress to assess in detail a fourth Levy option, i.e., cancelling the project after receipt of a COL from the NRC, which PEF currently projects will be issued before the end of 2012. Tr. 711. In our view, OPC's recommendation is the minimum that the Commission should instruct Progress to submit in its NCRC filing next year. Consistent with that recommendation, the Commission should defer a prudence finding and cost recovery for some or all of the estimated cost recovery differential between cancelling LNP now and cancelling it in 2013. Such action is both warranted and fully consistent with the Commission's authority under 25-6.0423(5) F.A.C. Finally, PCS Phosphate further urges the Commission to require PEF to file a long-term rate mitigation

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<sup>8</sup> See testimony of Peter A. Bradford in Docket No. 080148-EI.

plan for its nuclear construction program, and to put Progress on notice that absent substantial joint participation or other meaningful rate mitigation measures, it will not authorize project spending for Levy beyond the NRC licensing process. This seems, at this point, the only effective way to safeguard Florida consumer interests.

### III. SPECIFIC ISSUES

#### Legal & Policy Issues

**ISSUE 2:** Do PEF's activities related to Levy Units 1 & 2 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

**PCS Phosphate:** \*No. PCS agrees with OPC that the LNP project no longer appears to meet the letter and intent of Section 366.93 F.S. Pursuit of a COL alone without a manifest intent to construct the units does not meet the requirements of the statute. No further advance recovery of LNP project costs should be permitted until Progress re-activates siting, engineering, procurement and other non-licensing related project activities.\*

The history of U.S. commercial nuclear power construction is littered with projects that have lain dormant while technically "active" for many years. This condition persists with respect to pending COL applications before the NRC today, including previously announced Westinghouse AP1000 units.<sup>9</sup> It appears that Levy has fallen into a category of semi-dormant projects.

The purpose of Section 366.93 F.S. is to provide advanced cost recovery to offset the financial risks to a utility of constructing nuclear generating capacity in order to bring the perceived benefits of that capacity to Florida consumers. Ratepayers are required to pay in advance for planned generating capacity, and not for a utility simply to hedge its bets at great ratepayer expense. PEF funding support for the Westinghouse AP1000

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<sup>9</sup> See e.g., Tr. 908. TVA is no longer actively pursuing its proposed Bellefonte units 3 and 4. Tr. 1014.

owners group and licensing of the Levy units, the principal activities that Progress aims to pursue at this time, without a clear intent to construct the units, do not meet the intent of the statute. Advanced cost recovery should be suspended until PEF demonstrates that it is definitively prepared to proceed with construction of the units.

**ISSUE 3A:** Does the Commission have the authority to require a “risk sharing” mechanism that would provide an incentive for a utility to complete a project within an appropriate, established cost threshold? If so, what action, if any, should the Commission take?

**PCS Phosphate:** \* Yes. Pursuant to its obligation to ensure fair, just and reasonable rates, the Commission retains the authority to require PEF to adopt appropriate measures, including risk-sharing mechanisms, to ensure ratepayers are not subjected to unnecessary and unmitigated risks or costs.\*

The Commission must always reconcile the requirements of the nuclear cost recovery rule with its over-arching responsibility to ensure that utility rates charged to consumers are fair, just and reasonable. Any indications that these two tasks are diverging or conflicting should be a cause for great concern. Moreover, the Legislature directed that the provisions of Chapter 366 should be liberally construed “for the protection of the public welfare” for precisely this reason. Section 366.01, F.S.

The alternative cost recovery authorized by Section 366.93 F.S. is expressly limited to prudently incurred costs, and the requirement that PEF annually demonstrate the on-going feasibility of completing the power plant has a similar consumer protection purpose. Section 366.93(2) and F.A.C. 25-6.0423(5)(c). When, as is presently the case, circumstances beyond technical feasibility imperil consumers, the Commission has both the authority and responsibility to act. The methods or mechanisms that may be implemented to ensure that ratepayers are charged only prudently incurred costs is left to the discretion of the Commission.

In this instance, PEF recognizes that current circumstances present the broader question of whether continuing LNP is in the best interest of PEF and its customers. Tr. 1083. There are problematic risks associated with going forward. Other entities facing similar resource needs and Florida's interest in clean energy technologies are not willing to assume those risks. It is important that PEF shareholders have "skin in the game" in order to reasonably evaluate LNP's prospects and a prudent course to pursue. The incentives for rational PEF decision-making on these critical questions are eviscerated by dollar-for-dollar reimbursement of the costs of simply postponing critical decisions because it is not their money.<sup>10</sup> This bigger concern necessarily invokes the Commission's broader authority.

The Commission can, and should, take additional time to gain greater clarity with respect to the future of LNP before finally acting on the prudence of pending costs. Since the cost recovery rule expressly contemplates taking at least two years to recover costs,<sup>11</sup> the Commission should, at a minimum, reserve judgment on some or all of the costs associated with delaying a cancellation decision to permit a fuller airing of the broader project issues than was allowed by the limited time frame of this year's proceeding. Just as it commonly establishes sub-dockets or separate proceedings to explore fuel cost related prudence issues that require greater scrutiny than the annual fuel proceeding can accommodate,<sup>12</sup> the Commission has wide latitude to determine how, when and in what forum to address broader nuclear project prudence issues. Nothing in the Nuclear Cost Recovery Rule diminishes the Commission's broad powers to conduct such proceedings.

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<sup>10</sup> These costs are estimated to be in the range of \$400-450 million. Tr. 932-33.

<sup>11</sup> F.A.C. 25-6.0423(5)(a).

<sup>12</sup> See e.g., Docket No. 060658-EI, *Petition on Behalf of the Citizens of State of Florida to Require Progress Energy Florida to Refund \$143 Million (excess coal costs)*.

PCS Phosphate agrees with OPC's suggestions for keeping certain project costs "at risk" while the broader Levy issues are more fully examined.

**ISSUE 6:**     **Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of continuing construction and completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C., If not, what action, if any, should the Commission take?**

**PCS Phosphate:**     \*No. The circumstances presented by the LNP project delay announced in this docket mandate a broader examination of the LNP project. PEF's attempt to address those broader concerns acknowledges the importance of such an evaluation, but its assessment was inadequate and failed to address key concerns. These are discussed in Issue 7.\*

**ISSUE 7:**     **Is PEF's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Levy Units 1 & 2 reasonable? If not, what action, if any, should the Commission take?**

**PCS Phosphate:**     \*No. Given the change in circumstances associated with the revised cost and schedule for the LNP project, PEF has not established that its decision was reasonable. In particular, PEF did not adequately assess the project cancellation options. PCS agrees with OPC's findings and recommendations.\*

All parties, including PCS Phosphate, agree with PEF's assessment that continuing with the "full speed ahead" approach would not be reasonable (Option 2). With the known licensing delays and acknowledged increase in overall risks associated with LNP, continuing on that path would produce excessive consumer rate impacts, increase the likelihood of downgrades, and create other unwarranted financial pressures (*see* Exh. 30, p. 30).

In setting the new LNP project schedule with a 60 month delay, the project cost increases and evaporation of potential joint ownership commitments were inevitable. Moreover, declining fuel costs and the increasing enterprise risks are significant concerns. This circumstance properly led Progress to question the wisdom of continuing

with the project at all. The inadequacy of PEF's assessment is a separate matter discussed below, but PEF freely acknowledges that reasonable minds could differ on the threshold question of whether it should cancel Levy now.

At the outset, Progress concedes that it was not disposed to actually cancel the LNP project because it did not want to foreclose the prospect for new nuclear powered generating capacity in Florida. Tr. 1034. The presumption that it wanted to preserve the option to build additional nuclear powered generation capacity eventually obviously distorted PEF's assessment. Progress determined that LNP cancellation would minimize overall costs in the long term (Exh. 30, p. 30), but its assessment of the three project options focused upon the costs of these options for the period 2010-12. Tr. 806. Although a strategic project decision about the future course of LNP requires a long term assessment, PEF's comparison of the LNP project options dwelt on costs associated with the brief period in which it would be deferring capital expenditures.

PEF did prepare an updated cumulative present value revenue requirement ("CPVRR") analysis which, it claims, still shows net benefits over the 60 year expected license life of the units if its mid or high fuel cost scenarios and CO2 cost assumptions can be considered credible. *See* Exh. 27. However, PEF also repeated its distaste for the CPVRR model for planning and decision-making purposes, citing the need to avoid undue influence of a snapshot view of fluctuating inputs. Tr. 1202. In any event, the testimony of SACE witness Cooper sharply disputes the claimed benefits, pointing to declining fuel prices and rising project risks. Tr.636-37. Mr. Cooper certainly has a point in that PEF's "Mid reference" fuel forecast shows natural gas prices for this year (2010) at \$6.45/mmBtu,<sup>13</sup> which is demonstrably higher than the actual cost of gas today

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<sup>13</sup> *See* Exh. 27, p. 13.



(generally at or below \$4.00/mmBtu). Tr. 646-51. Also, PEF's mid-reference fuel forecasts assumes natural gas at more than \$11/mmBtu when the LNP units are now slated to enter commercial service in 2021-22, when Mr. Cooper's sources project prices significantly lower. *See* Exh. 24, p. 13.

While fuel price outlooks 20-60 years into the future must always be taken with a healthy measure of salt, the fact remains that U.S. natural gas supplies are now considered plentiful, gas prices have declined and remained relatively stable, and, most importantly, the perception that gas will be available and affordable in the future is affecting utility resource planning decisions today.

Next, the PEF assessment of its three LNP options completely disregards the impact on potential joint owner interest that results from the project cost increase and five year delay. Given the continuing concern over rate impacts, as well as PEF's historic efforts to secure joint owner participation (which began before the request for a Need determination was filed) (Tr. 1172), this should have been a primary concern. Instead, having announced the five year project delay, PEF merely acknowledges the obvious: that productive negotiations with potential joint owners are now in cold storage until those entities are prepared to address their longer term resource needs, they receive substantially greater clarity concerning project and enterprise risks, they are comfortable with those costs and risks, and they can better evaluate conventional, nuclear and emerging technology options.

PEF continued to provide its CPVRR scenarios assuming 100% LNP ownership, but that model simply assesses revenue requirements after commercial operation under a given set of revenue requirement, fuel price and emission cost inputs. It does not address the financial strain and pressures that will come to bear for the next dozen years just to

arrive at the targeted in-service dates. Consequently, whether PEF or SACE has the better crystal ball with respect to natural gas prices fifty years from now, the consistent reaction today of all potential joint owners with whom PEF has been negotiating for several years (i.e., avoiding a financial commitment of any kind in LNP) provides the clearest signal that the project is in dire straits. This, in turn, should have prompted a more detailed look at rate impacts, financing requirements and other likely financial consequences of Progress as the sole owner of LNP. The failure to do so is a material defect in that process.

With respect to PEF's Levy decision, the Staff testimony and audit report on Project Management Internal Controls (Exh.77) initially concluded that "given the uncertainties facing the company, audit staff recognizes that keeping the project [LNP] progressing, without substantial investment of cost, is a reasonable approach by PEF at this time." See Exh.77 at p. 4. Staff, however, corrected its testimony to make clear that it meant this conclusion to apply only to PEF's management controls in assessing the LNP options, and that Staff did not offer any opinions or conclusions regarding the reasonableness of PEF's project decisions at all. Tr. 778-81. Staff did not perform any evaluation of its own of the three LNP options that PEF considered, did not evaluate the reasonableness of the new proposed LNP cost and schedule, and did not inquire into any aspect of joint ownership considerations caused by the project delay. *Id.*

Given the reality that it could not proceed with LNP as previously planned and its aversion to project cancellation at this time, PEF's analysis really focused on how it could minimize project spending without actually cancelling LNP. This led to the changes it needed to negotiate in the EPC agreement in order to avoid being compelled to terminate the contract and the project by the very EPC terms it had previously negotiated.

While PEF's success in negotiating the needed EPC amendment is laudatory, it does not justify spending another \$400-450 million of ratepayer dollars for, among other reasons, receipt of a COL does not in any sense ensure that this would be sufficient to attract joint owners in the project. After all, Progress has received a Need determination, state cabinet approval, filed its COL application, executed its EPC and negotiated the latest EPC amendment, but joint ownership participation has become more remote, not less. *See Tr. 1172-73.*

In short, PEF's assessment of the ramifications of its LNP options was inadequate. The Commission should instruct PEF to file a more detailed assessment of Levy project options. The Commission also should consider conducting that inquiry in a separate docket to avoid the time constraints attached to the annual NCRC filings.

**ISSUE 14: What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for PEF's Levy Units 1&2 project?**

**PCS Phosphate:** \*PCS Phosphate agrees with and adopts the position of the OPC.\*

**ISSUE 15: What is the total jurisdictional amount to be included in establishing PEF's capacity Cost recovery Clause Factor?**

**PCS Phosphate:** \*PCS Phosphate agrees with and adopts the position of the OPC.\*

Respectfully submitted this 10<sup>th</sup> day of September, 2010.

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

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

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Dated: September 10, 2010

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of September 2010 a true copy of the foregoing has been furnished by U.S. and/or electronic mail to the following:

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