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e. PCS Phosphate's Post-Hearing Brief and Statement of Issues and Positions

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause)
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Docket No. 110009-EI
Filed: September 8, 2011

**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 Florida Public Service Commission’s March 29, 2011, *Order Establishing Procedure*, Order No. PSC-11-0179-PCO-EI, and the June 3, 2011 *First Order Revising Order Establishing Procedure*, Order No. PSC-11-0245-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 9, 2011.

OVERVIEW

In this year’s proceeding, the Commission properly deferred consideration of Crystal River 3 power uprate (“EPU”) issues until Progress Energy Florida (“PEF” or “Progress Energy”) is able to provide greater clarity with respect to the cost, timing, and advisability of repairing that unit’s damaged containment structure. That deferral results in the stipulated removal of approximately \$16.6 million in CR3 EPU dollars from PEF’s initial proposed cost recovery factor for 2012.

With respect to the Levy Nuclear project (“Levy” or “LNP”), trends for the key external factors needed to support new nuclear construction (e.g., natural gas prices, load growth, prospects for national climate change legislation) continue to be negative or have become more negative. More than ever, PEF’s continued pursuit of construction of the

LNP units hangs upon Florida ratepayer support mandated by the nuclear cost recovery statute and rule rather than economic logic.

PEF's 2010 expenditures for Levy were significantly less (roughly \$61 million) than the PEF estimate used to establish the 2011 cost recovery factor. Tr. 1550. This over-recovery was due primarily to PEF's over-estimation of the costs required to suspend or defer procurement of long lead time equipment ("LLE") items as the utility implemented its plan to curtail project spending pending receipt of a construction and operating license ("COL") from the Nuclear Regulatory Commission ("NRC"). In addition, PEF projects further slowing of spending for the Levy project in 2011 and 2012. Finally, PEF has acknowledged additional delays in the expected receipt of a COL from the NRC for Levy (to mid-2013 "at the earliest"). This slippage is significant because PEF does not project material increases in LNP project spending until it has secured the COL.

These developments collectively should lead to a material decrease in the nuclear cost recovery factor in 2012 compared to the cost recovery factor currently in effect. Progress Energy, however, proposes to maintain the cost recovery factor at an inflated level by accelerating the amortization of the LNP rate management plan approved in 2009. Given the precarious state of the Florida economy and the continued slippage in the Levy licensing schedule, accelerating the amortization of those costs is not warranted.

Finally, while the utility remains elusive about its ultimate commitment to go forward with the project, it is apparent that PEF's decision to proceed with LNP procurement and construction as a practical matter requires that PEF secure at least 50% joint ownership in LNP by other parties. There is no other way to mitigate what otherwise will be crushing bill impacts to PEF ratepayers. Once the COL is issued,

PEF's capital spending plan for the project accelerates dramatically, and consumer rate impacts rise in step to excessive levels. Further, PEF's schedules clearly reveal that the financing demands to service the project will quickly dominate nuclear cost recovery revenue requirements. Exh. 151 (TGF-3, sch. TOR-3, pp. 5-6). The financing burden of the project will create cash flow demands of Progress Energy that will leave no "wiggle room" to shift cost recovery to later periods, which are expected to pose even greater cost recovery and cash flow challenges anyway.

Given these circumstances, PCS requests that the Commission make the following specific findings in its order:

1. PEF's overestimation of procurement deferral / wind-down disposition costs for the Levy project in 2010 does not justify continuing an inflated nuclear cost recovery factor in 2012. PEF should not be permitted to amortize more than \$60 million of prior period costs included in the Rate Management Plan in the 2012 cost recovery factor.
2. The Commission should state that nuclear cost recovery clause recovery of LNP expenditures beyond the scope of PEF's pursuit of a COL for the Levy Nuclear Project shall not be authorized unless PEF has secured sufficient joint ownership participation in LNP to mitigate the rate impacts on PEF ratepayers to reasonable levels, including a pro rata contribution by such joint owners of costs previously recovered from PEF customers pursuant to the nuclear cost recovery rule.

I. ABBREVIATED STATEMENT OF FACTS

In last year's shift from an aggressive license-procurement-construction plan for LNP to a slower approach that is predicated upon receipt of the COL before PEF makes a final decision to proceed, a major area of uncertainty concerned the immediate costs that Progress Energy would incur to defer, suspend or cancel commitments already made toward the acquisition of long lead time equipment. PEF's testimony in this docket revealed that the actual costs that the utility incurred for that purpose proved to be

substantially less than the amount PEF estimated last year. Tr. 1693-94. Those costs are one-time, non-recurring items, and PEF indicates that it has effectively completed the LLE disposition for major equipment purchases. Tr. 1693; Exh. 162.

Progress Energy proposes a 2012 revenue requirement to support the Levy project of \$75.3 million. Tr. 1550. That amount is adjusted to reflect a \$5.8 million true-up amount for 2010 and reduced by \$60.8 million to reflect a refund of the 2011 over-recovery. This would produce a net revenue requirement for 2012 clause recovery of roughly \$20 million, but PEF proposes to amortize \$115 million of the 2009 LNP rate management plan in the 2012 cost recovery factor. Tr. 1550; Exh.185. Thus, PEF's proposed LNP revenue requirement for 2012 recovery of \$135.4 million is primarily associated with recovery of out-of-period costs (the amortization of the 2009 rate management plan). This circumstance illustrates the importance of consumer rate impact mitigation, the inherent difficulty in managing those impacts in nuclear cost recovery proceedings, and the utter impracticality of that mitigation method once project construction begins.

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 2009.¹ 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

¹ See Order PSC-09-0208-PAA-EI.

five years rather than one.² In accordance with that approved rate moderation plan, \$60 million of the \$147 million in nuclear cost recovery charges that PEF recovered in the 2011 factor related to amortization of costs approved in 2009. Continued application of that approach would include \$60 million to amortize rate moderation costs in the 2012 factor.

Progress Energy previously has conceded that customer rate and bill impacts are always an important consideration. *See* Docket No. 100009-EI, Tr. 1155-56. PEF's testimony in this docket only presented estimated customer bill impacts associated with Levy for the period 2010-12. Tr. 1709; Exh. 163. This represents the period of limited project spending prior to receipt of the COL for the units. Progress Energy witness Elnitsky recognized that circumstances change significantly once LNP construction begins. His testimony stated:

The customer ability to pay for and support new nuclear development will, of course, be tested again in future years, however, beyond the LNP COL when work on the project will increase to meet the current, estimated in-service dates for Levy Units 1 and 2 in 2021 and 2022.

Tr. 1709. The level of understatement in that remark is dispelled immediately upon review of PEF's schedules in this filing. Mr. Elnitsky readily conceded that project spending and ratepayer impacts dramatically increase immediately after that quiescent period. PEF witness Elnitsky acknowledged that between 2012 and 2013 the cost recovery factor would double, and between 2013 and 2014 it would triple. Tr. 1905; 1910-11.

In response to a Staff discovery request, PEF calculated expected rate impacts under "with" and "without" LNP scenarios based on the current project estimates,

² Order PSC-09-0783-FOF-EI.

assuming all alternative generating capacity would be natural gas-fired, and net of estimated fuel and emissions costs savings estimates. See Exh. 176. As acknowledged by PEF witness Foster, by 2019, customer rate impacts associated with Levy (compared to a natural gas driven resource plan) will be approximately ten times higher than the proposed cost recovery factor for 2012. Tr. 1594. The expected nuclear cost recovery factor during this extended period will be multiples of the level that the Commission determined in 2009 would produce unacceptably high customer bill impacts. For the period 2016-2020, a typical residential customer using 1,000 kwh per month will pay more than \$400 annually to support Levy's mounting costs than they would otherwise see on their electric bill. Tr. 1595. For energy intensive manufacturing loads, the impacts similarly will be devastating. Finally, even assuming the highly unlikely prospect that Levy is constructed on time and on budget, once the units actually enter commercial service, base rates would need to increase by well over 100% compared to existing rates. Exh. 151, (TGF-3, sch. TOR-3).

II. STATEMENT OF BASIC POSITION

The importance of mitigating customer rate impacts caused by the Levy nuclear project cannot be understated. This need stems from the expected costs of the units, the size of the PEF customer and retail sales base, and the fact that Progress Energy never had a need for the capacity of the second Levy unit when it expects to place that unit into commercial service. To its credit, Progress Energy has recognized the need to mitigate bill impacts over the past three years, and the Commission quite properly has endorsed the mitigation measures that PEF has requested. The potential bill impacts that prompted those measures, however, are but a taste of the impacts that will be visited upon PEF

ratepayers once project construction begins. Also, recent bill impacts have been mitigated by two steps:

1. The Commission has spread recovery of approved costs over a period longer than one year; and
2. PEF has reduced LNP expenditures.

Neither method will be available once project construction begins in earnest.

Florida's nuclear cost recovery statute, Section 366. 93 F.S. creates a severe inter-generational equity problem by permitting billions in ratepayer contributions to project costs before the proposed power plants produce benefits of any kind. It seems certain that the Legislature did not contemplate those payments would be of such magnitude that they would have a destructive impact on economic growth or materially constrain the economic recovery of areas served by PEF from the recession. Early cost recovery intended to support nuclear power development is one thing. Crushing rate impacts associated with that recovery that becomes a regional economic millstone is quite another. PEF's current path premised on sole ownership of LNP is not economically sustainable.

PCS Phosphate has expressed concerns dating to the Need docket for the Levy project that PEF was attempting to build too much nuclear capacity at far too great a cost. Other parties are expressing similar mis-givings as the core economic factors (declining and flattening natural gas prices and the absence of climate change legislation in the foreseeable future) have turned distinctly negative. More significantly, the Office of Public Counsel's ("OPC") testimony suggests that PEF's own strategic resource thinking seems headed toward considerably further delays in the projected LNP in-service dates (from 2021/22 to 2027/29). Tr. 2004. PCS agrees with OPC that Levy now seems viable only under the most implausible assumptions, and also agrees that significant further delays or

project cancellation appear to be the most probable outcomes. In effect, PEF appears to be buying time (with ratepayer money) in the hope that a dramatic change in circumstances favorable to LNP will transpire before the NRC issues a license to build it.

While the odds of LNP deferral or outright cancellation certainly have increased, the prospect that PEF might actually attempt what it currently is proposing on paper, *i.e.*, to build both 1,100 MW Levy units as the sole owner, seems more and more remote. Indeed, none of PEF's strategic planning scenarios discussed in this proceeding assume that PEF retains more than a 50% stake in the LNP project. *See* Exhs. 170 and 191. Even the utility's existing, approved plan, its "Program of Record" in 2010, assumed a 50% PEF ownership interest in Levy. Tr. 2155-57; Exh. 191. The reason for this is readily apparent. The financial burden on PEF and its customers will be far too severe to be sustainable with PEF as the sole owner even if the project costs were to be fixed at the current project estimates. Adding the inevitable delays and cost increases that will be encountered once construction begins completes a financially untenable picture.

Progress Energy seems to be fully aware of this circumstance, as is evidenced by the co-ownership assumptions in its strategic planning documents. OPC and other intervenors recognize it. Certainly, the prodding by Staff and the Commission concerning LNP joint ownership indicate an on-going concern with respect to the on-rushing wave of dramatic customer bill impacts. Thus, the crucial question concerns how close to rate-making Armageddon will the Commission allow this process to approach before taking appropriate action to protect consumers and provide PEF with the guidance it requires. In the view of PCS Phosphate, delayed Commission action on such a transparently critical matter is detrimental to PEF, ratepayers and the public interest in PEF's franchise area. PCS urges the Commission to establish conditions that must be met to mitigate

consumer rate impacts if PEF intends to proceed with the Levy project beyond receipt of the COL.

PEF continues to report to the Commission concerning its talks with potential LNP joint owners. See Tr. 1732-34. As we continue to see, the Levy delays and the aura of uncertainty surrounding the project are resulting in missed opportunities. Last year, Seminole Electric dropped a possible interest in LNP from its resource plan.³ This summer, the Florida Municipal Power Agency announced its plan to take an interest in the new VC Summer nuclear units, which are Westinghouse AP1000 units to be built in South Carolina for commercial operation in 2016 and 2019 (roughly the dates originally slated for the Levy units). Tr. 1912-13; Exh. 209. FMPA was among the potential owners that PEF has contacted. Tr.1912-13. There is not an unlimited pool of potential joint owners for the LNP project in Florida. In fact, that group is small by definition and it is shrinking as other parties make resource decisions that require future commitments.

Also, the reticence of potential joint owners to commit any capital to the project at this time 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. The costs are too high, the risks are too great, and there are much better ways to invest in economic infrastructure improvements.

Progress continues to maintain that it could fund and own 100% of both LNP units, but that leads directly to the devastating rate impacts on PEF ratepayers that are discussed above. Progress plainly requires guidance from the Commission on this issue,

³ See Docket No. 100009-EI, Exh. 222.

and procrastination in confronting this concern is not in the public interest or the interest of PEF shareholders. PCS Phosphate urges the Commission to require PEF to file a long-term rate mitigation plan for its nuclear construction program, and to put Progress Energy 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 and to provoke action with respect to joint ownership that might improve the prospects that these units will actually be built.

III. SPECIFIC ISSUES

ISSUE 36: What amount from the deferred balance of the Rate Management Plan approved in Order No. PSC-09-0783-FOF-EI should the Commission approve for recovery in 2012?

PCS Phosphate: *PEF recovery of the deferred balance of its Rate Management Plan in 2012 should be limited to \$60 million.*

In Order No. PSC-09-0783-FOF-EI, PEF recognized the significant impacts that its planned expenditures on LNP would have on its customers and proposed to reduce those impacts by deferring the recovery of \$274 million in approved nuclear costs over a five-year period. Order No. PSC-09-0783-FOF-EI at 38. PEF recovered \$36.6 million of that amount in 2010, leaving roughly \$240 million to be recovered over the following four years. PEF recovered one-fourth of that in 2011 (\$60 million) and contemplated comparable recoveries over the remaining three years (2012-14).

In this filing, however, PEF seeks to offset the refund of \$60.8 million in 2011 over-recoveries tied to the utility's overestimation of the costs related to the winding down and/or deferral of procuring long lead-time equipment by increasing the proposed amortization of rate management plan costs from \$60 million to \$115 million. *See*

Exh. 185. This results in a cost recovery revenue requirement for the 2012 factor that is slightly less than the level used to establish the 2011 factor, but it is also nearly double the revenue requirement associated with PEF's actual LNP spending for the current period (\$75 million). Also, the 2011 cost recovery factor, as noted above, was materially inflated by PEF's over-estimation of procurement wind-down costs. The level of the 2011 factor is not presumptively reasonable for 2012. To the contrary, in this difficult economy, perpetuating an inflated nuclear cost recovery factor should be avoided.

In contrast, maintaining the 2009 rate management plan amortization at \$60 million for 2012, when netted against the refund of the 2011 over-recovery, will produce a revenue requirement for 2012 that approximates PEF's expected spending on Levy for the period (\$75-80 million). That level of cost recovery better reflects project spending and avoids unnecessary customer bill impacts.

In 2012, PEF ratepayers will continue to face a challenging economic climate. They also will be forced to cope with inflated fuel charges associated with the costs of replacement power stemming from the extended forced outage of Crystal River Unit 3 ("CR3"). This is not a good time to accelerate the deferred cost amortization.

Progress Energy ties its request for accelerated recovery to the significant increase in LNP expenditures in 2013 and 2014 that would occur if the NRC issues a license for Levy by mid-2013 and PEF decides to proceed with the project as its sole owner. Tr. 1568. However, a reality check is required at this point. First, PEF now concedes that it hopes to receive a COL for Levy by the middle of 2013 "at the earliest." Tr. 1681. This much softer description of the licensing expectations for LNP stands in sharp contrast to prior year's declaration of licensing milestone expectations. OPC's testimony points to PEF strategic planning assessments that appear to contemplate substantial further delays

in the Levy project. Tr. 2003-04; Exh. 170. While PEF disputes the implications that can reasonably be drawn from the alternative resource scenarios that the utility's senior management discussed at a planning retreat, that does not explain the fact that PEF's March 2010 current "Program of Record" (the actual plan approved by PEF senior management), which is used as the baseline to comparing the alternative scenarios, contemplates that PEF will carry no more than a 50% stake in both LNP units. Tr. 2155-57. That assumption either completely misrepresents the impact of Levy on PEF's future capital requirements, capacity and energy resources and customer bill impacts (and rendering all references to it as a baseline pointless), or it captures an implicit assumption that has not been formalized.

All of the above factors strongly suggest that PEF requires substantial joint ownership levels in LNP or it will not move forward with the project beyond the licensing stage. Of course, if PEF were to secure such joint participation levels, the cost recovery from PEF ratepayers, including recoveries authorized for 2012, should be ratably refunded at some point. In sum, given the persistent negative trends, a struggling economy, and the need for meaningful joint ownership participation, the Commission should continue a smooth amortization of costs deferred in accordance with its 2009 order and limit the 2009 rate management plan amortization recovered in 2012 to \$60 million.

Respectfully submitted this 8th day of September, 2011.

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Dated: September 8, 2011

CERTIFICATE OF SERVICE

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