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Subject: FPSC Docket 110001-EI - PCS Phosphate's Post-Hearing Brief and Statement of Issues and Positions
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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Fuel and Purchased Power)	
Cost Recovery Clause with Generating)	Docket No. 110001-EI
Performance Incentive Factor)	Filed: November 8, 2011
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**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 February 25, 2011 *Order Establishing Procedure*, Order No. PSC-11-0132-PCO-EI, and as ordered at the Commission’s Hearing in this proceeding, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”) files this Post-Hearing Brief and Statement of Issues and Positions with respect to Progress Energy Florida (“Progress” or “PEF”). All issues in this proceeding have been resolved except for Issue 1C, and the effect of the Commission’s determination on that issue on the total costs that PEF ultimately should be authorized to recover in its 2012 fuel and capacity factors (*see* Issues 10, 11, 20, 22, 27, 28, 29, 30, 31 and 33). Issue 1C concerns the appropriateness of interim recovery of \$176 million in replacement fuel costs caused by the extended outage of the Crystal River 3 (“CR3”) nuclear generating unit that are subject to a Commission decision on the prudence of such costs in a separate proceeding (Docket No. 100437-EI).

As explained below, PCS Phosphate urges the Commission to deny such interim recovery. Deferring recovery of disputed CR3 replacement fuel and capacity costs pending a final order in the prudence docket is warranted under current circumstances, and such a decision lies within the discretion of the Commission. Unlike in 2010, when PEF maintained that the return to commercial service of CR3 was imminent (*i.e.*, before the end of that year), circumstances have dramatically changed. The essential upshot of those changes is that PEF

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disclosures in 2011 have revealed pervasive uncertainty with respect to almost every material aspect of the CR3 outage. Following the additional CR3 containment building delaminations that have occurred this year, expected return to service of the unit now seems to be three years away at best, and the extent of insurance coverage applicable both to unit repairs and replacement power costs now appears to be inexplicably unsettled. Further, PEF's very decision to proceed with repairing the unit at all, announced this summer, is couched in tentative terms. The only true certainty is that the cost burden associated with this historically extended outage has increased significantly. The Commission has established a procedural schedule that will lead to findings of fact and a prudence determination in 2012, at least as to the October 2009 delamination of the CR3 containment structure. By that time, additional clarity also should be forthcoming with respect to PEF's insurance claims and coverage. Given these circumstances, the Commission should defer recovery of all replacement costs associated with the CR3 outage.

STATEMENT OF POSITION AND DISCUSSION

ISSUE 1C: Should PEF be permitted to recover the costs of replacement power due to the extended outage at Crystal River 3 in this docket?

POSITION: **No. Given the change in circumstances revealed in 2011, the Commission should not authorize PEF to recover CR3 replacement power costs subject to refund, prior to the Commission's CR3 prudence determination.**

In last year's fuel and capacity cost proceeding (Docket No. 100001-EI), the Commission faced a circumstance in which it had established a separate docket to evaluate the prudence of the actions and decisions of Progress with respect to the extended forced outage of the Crystal River unit 3 nuclear plant that ostensibly began two years earlier (*i.e.*, in

December 2009 once the outage passed the original return to service date for the planned outage to replace the unit's steam generators that began in September of that year). In that fuel cost recovery docket, PEF expressed confidence that the repairs to CR3 would be completed and the unit returned to service before the end of 2010, *i.e.*, a matter of days following issuance of the final order in the docket. *See* Order No. PSC-10-0734-FOF-EI, issued December 20, 2010 ("2010 Fuel Cost Order") at p. 4.

In that same docket, the Commission considered whether it would be lawful and appropriate to 1) permit recovery of CR3 replacement power costs subject to refund, 2) disallow recovery of those costs pending a determination of ultimate cost recovery in the outage prudence docket, or 3) approve current clause recovery of a portion (half) of the requested replacement power costs. After reviewing historic orders and practice in this area, the Commission properly held that it possessed legal authority to adopt any of the postulated cost recovery strategies. 2010 Fuel Cost Order at pp. 5, 12 and 17.

Given the legal latitude to fashion reasonable and fair relief for costs that ultimately will be reconciled either way to the findings rendered in the prudence docket, the Commission indicated that rate stability, avoidance of rate shock to consumers and timeliness of recovery were all factors to be taken into account. *See* 2010 Fuel Cost Order at pp. 11-16. Also, considering the facts in hand at that time, including in particular the expected imminent return to commercial service of CR3, both the scope of prudence issues and the magnitude of the replacement dollars at stake seemed to be fairly well bounded. Based on all of the above considerations, the Commission decided to authorize recovery of approximately \$139 million of CR3 replacement power costs in excess of insurance coverage in the 2011 fuel factor, subject to refund. *See* 2010 Fuel Cost Order at p. 17.

In the docket now pending before the Commission, the entire algebra of the factors for the Commission to weigh has changed. First and foremost, the Florida economy has not snapped back from the Recession, but continues to struggle. In the plainest terms, Florida consumers would rather put more money toward reducing high interest credit card balances and other debt than pay inflated fuel cost charges in 2012 that may be refunded with a miniscule commercial paper interest rate at some future time.¹ In short, in this economy, the timing of cost recovery is important to consumers, and present circumstances do not support current recovery of CR3 replacement power costs subject to refund.

PEF, of course, wants to see recovery sooner rather than later, but the investment community knows full well that ultimate cost recovery will be decided in the prudence case, Docket No. 100437-EI, and in the utility's negotiations with its insurer, Nuclear Electric Insurance, Ltd. ("NEIL"), over insurance coverage and proceeds. Tr. 476. Prior Commission decisions to defer recovery of PEF costs have not ruffled investors or the rating agencies. *See* Tr. 489-90. That is to be expected, because the sophisticated investment community analysts that follow Progress Energy securities understand that a decision in this docket to defer replacement cost recovery, or not, has no bearing on ultimate cost recovery. In the meantime, investors have fully taken into account all of the uncertainty associated with the Florida CR3 dockets, and Progress Energy stock is still trading at or near all time highs. Tr. 477-478.

In bottom-line terms, PEF proposes to increase its 2012 Fuel Cost Recovery factor by \$3.99/ 1,000 kwh compared to the approved factor now in effect. Exh. 27A, Revised Sch.

¹ The commercial paper rate applicable to PEF currently is roughly 1.0%. Tr. 534, 589.

E10. Since the utility's fuel costs generally have declined,² the proposed increase in this rate is driven by increased natural gas generation and purchase power costs caused by the CR3 outage. PEF reports a 2011 under-recovery associated with the fact that PEF erroneously projected last year that CR3 would operate throughout 2011 and produce approximately one-fifth of PEF's net generation.³ PEF's estimated costs for 2012, of course, assume no generation from CR3 at all.⁴

If CR3 replacement power costs are deferred, the proposed 2012 factor would be reduced by \$4.70/1,000 kwh, or an amount that would completely offset the proposed increase in the factor. Exh. 77, PEF Response to Staff Interrogatory 102(c). Thus, the Commission must choose between increasing consumer rates solely to accommodate the effect of the CR3 outage, or keeping fuel charges roughly constant from 2011 to 2012 while Phase I of the prudence case is litigated and decided. Considering the economic climate, the Commission should not saddle PEF consumers with an actual rate increase to cover tentative cost recovery.

Next, it is beyond dispute that the circumstances associated with CR3 have dramatically changed. Immediately following the Commission's vote in the fuel cost docket in November 2010, PEF announced new delays in the expected CR3 in-service date from the end of 2010 to the end of the first quarter in 2011. Tr. 397-398. As we know, this was followed by the devastating disclosure in March 2011 that PEF's attempt to repair CR3 had in fact produced a new delamination of the containment building. This, in turn, was followed by

² See Tr. 508-509.

³ In Docket No. 100001-EI, PEF estimated that the unit would produce approximately 6.7 million megawatt-hours of power in 2011. Tr. 559.

⁴ PEF consumers continue to pay for all CR3 costs that are included in base rates.

PEF's effort to assess the cause of this cracking and to develop repair plan options, and the utility's mid-summer announcement of a tentative plan⁵ to embark upon repair of the unit that would remove and replace a substantial amount of the containment building concrete. This repair option will keep the unit out of service until mid 2014 and carries an expected repair cost of \$1.3 billion at this time.

The complications associated with this series of developments are dizzying. PEF and NEIL have yet to determine whether the outage constitutes one covered event or two (PEF's filing in this case assumes it is a single on-going event). Tr. 469-470. NEIL inexplicably has delayed or suspended replacement fuel cost payments even for months that squarely fall within the scope of single event coverage. Tr. 565-566. This suggests that PEF and its insurer do not see eye-to-eye on multiple coverage issues. Although the burden of demonstrating which costs are eligible for insurance reimbursement rests with the utility, the record in this docket provides no illumination on this dynamic other than cryptic comments that PEF and NEIL are attempting to sort things out. *See* Tr. 438-441, 470.

If this incident remains a single claim, insurance coverage for replacement fuel costs will end in mid-August 2012,⁶ at which point the magnitude of the fuel cost dollars in dispute by virtue of the prudence docket increase dramatically. Conversely, treating the March 2011 delamination as a second covered event would invoke a new waiting period before replacement cost insurance payments would resume, but those reimbursement payments would continue well beyond August 2012.

⁵ PEF claims that it is still performing the analysis and engineering required to move forward with the selected repair option. Exh. 89.

⁶ Exh. 77, PEF Response to Staff Interrogatory 96(b).

At the close of the hearings in this docket, PEF had remarkably few definitive answers to very basic questions concerning the very large uncertainties now presented. It is not clear whether PEF really will proceed to repair CR3, whether the repairs are likely to be successful, what costs will be reimbursed by insurance, or whether the tentative repair cost and schedule are at all realistic. What has been established is that an already lengthy outage of PEF's lowest running cost unit will be extended to historic proportions, and that the stakes have gotten much higher.

The Commission previously has considered whether delaying cost recovery might lead to rate shock due to higher fuel costs down the line if costs are shown to be prudent, but there is no presumption of prudence in a cost recovery docket where the utility bears the burden of proof. Further, allowing cost recovery subject to refund in the extraordinary circumstances presented here without further thought poses other serious concerns. Such recovery would erode PEF's incentive to efficiently and economically repair the unit, or might encourage procrastination regarding a potential decision to retire rather than repair the facility. It will create a contingent liability for PEF that will be material and, given the multiple phases that have been established for prudence reviews in Docket No. 100437-EI, uncertainty concerning ultimate cost recovery will necessarily persist until sometime after the unit is actually repaired successfully.

While the Commission has performed prudence reviews in the past regarding power plant force outages, there is nothing that approaches the magnitude of impacts presented by the current CR3 outage. Deferring CR3 replacement power cost recovery in this docket as PCS Phosphate recommends, will mitigate immediate impacts on consumers by avoiding a fuel charge increase that otherwise would not occur. Such deferral would "balance out" to

some extent the CR3 costs recovered subject to refund in the 2011 fuel cost factor. It would allow the Commission to make decisions regarding CR3 replacement costs in 2012 once the prudence Phase I issues have been decided and (hopefully) clarity has been provided relative to NEIL insurance coverage and limits. Considering the totality of current circumstances, the prudent course for the Commission is to defer clause recovery of the CR3 replacement power costs. The Commission has the discretion to provide real and substantial rate relief to customers in 2012 prior to the outcome of the prudence determination in Docket No. 100437-EI, and the Commission should exercise its discretion. To do otherwise, in the minds and wallets of the customers, would constitute a rate increase.

CONCLUSION

For the reasons stated above, PCS Phosphate urges the Commission to deny interim recovery of CR3 outage related fuel costs in the Progress 2011 fuel adjustment factor.

Respectfully submitted the 8th day of November, 2011.

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I HEREBY CERTIFY that a true and correct copy of PCS Phosphate's Post-Hearing Brief and Statement of Issues and Positions has been served by electronic and/or U. S. mail on this 8th day of November, 2011:

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Certificate Of Service
Docket No. 110001-EI
Page 2

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