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Subject: FPSC Docket 120009-EI - PCS Phosphate's Pre-Hearing Statement

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b. Docket No. 120009-EI, In Re: Nuclear Cost Recovery Clause

c. Filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs

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e. PCS Phosphate's Pre-Hearing Statement

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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: **Nuclear Cost Recovery Clause**)
_____)

**Docket No. 120009-EI
Filed: August 6, 2012**

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

Pursuant to the Florida Public Service Commission’s February 20, 2012, *Order Establishing Procedure*, Order No. PSC-12-0078-PCO-EI, (“*Procedural Order*”) and the June 29, 2012 *First Order Revising Order Establishing Procedure*, Order No. PSC-12-0341-PCO-EI (“*Revised Procedural Order*”), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”), through its undersigned attorney, files its Prehearing Statement.

A. APPEARANCES

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B. WITNESSES

PCS Phosphate will sponsor no witnesses.

C. EXHIBITS

PCS Phosphate may offer exhibits based on responses to discovery requests as well as the testimony offered by Progress Energy Florida (“PEF”) and other party witnesses at the hearing.

D. STATEMENT OF BASIC POSITION

In March 2012, Commission Order No. PSC-12-0104-FOF-EI approved a stipulation and settlement agreement among PEF, the Office of Public Counsel (“OPC”) and other consumer party intervenors, including PCS Phosphate. The Stipulation specifically addressed various issues concerning the Levy Nuclear Project (“LNP”), including in particular the level of LNP costs that may be recovered from customers in 2013, and for subsequent years through the first billing cycle in 2018. Insofar as PEF’s filing in this docket comports with the terms specified in the Stipulation, and provided that the Commission determines that PEF has carried its burden of proving the reasonableness of its actual and estimated LNP expenditures, PCS Phosphate does not dispute PEF’s filing relating to LNP in the 2012 proceeding. PCS Phosphate, however, remains concerned that planned LNP activities following the issuance of a combined construction and operating license (“COL”) for the project will generate untenable and unsustainable consumer rate impacts absent a material restructuring of LNP project ownership. PCS Phosphate urges the Commission to remain vigilant throughout the period covered by the Stipulation regarding the long-term financial implications of any decision by PEF to pursue construction of the Levy Project.

The Stipulation also addressed at some length rate-making issues associated with the damaged Crystal River unit 3 containment structure, including replacement fuel and purchased power costs connected to the extended plant outage, repair costs and schedule, and potential unit retirement cost recovery matters. The Stipulation needed to address immediate rate impacts to consumers and both repair and retirement tracks because PEF had not determined whether to actually attempt to repair the unit. This situation arose

from the still-unfolding fallout from the containment delamination that occurred in March 2011 during the attempted repair of the September 2009 delamination event. The March delamination, and subsequent further damage that occurred in June 2011, revealed that successful repair of the CR3 containment would require a far more extensive, and expensive, effort. In fact, the physical and engineering complexities of the contemplated repair raised for the first time the possibility that repair may not be physically or economically feasible. Next, following the March 2011 event, PEF's recovery of its insurance claims for both replacement fuel and project repair costs under its policy with Nuclear Electric Insurance Limited ("NEIL") became immeasurably more complicated. In the year following the last nuclear cost recovery hearing, PEF status reports to the Commission in Docket No. 100437-EI and the Company's discussions with financial analysts have revolved around the following essential questions:

1. What are the estimated cost and schedule for CR3 containment repair?
2. Is the repair likely to be successful?
3. Will NEIL fully cover the estimated cost of CR3 repairs?
4. When will a final disposition of PEF's claim with NEIL be resolved?

In the Stipulation, and its reports to the Commission in Docket No. 100437-EI, PEF has asserted that repairs would require approximately 30 months to accomplish, with a projected cost reaching \$1.3 billion. PEF has not formally updated that assessment, but the CR3 repair or retire decision has become even more controversial in the wake of the Duke Energy/ Progress Energy merger that concluded in early July, resulted in the immediate dismissal of CEO Bill Johnson, and featured all of the uncertainties associated with the CR3 repair, including in particular NEIL coverage of repair costs, as a core

reason for the Duke Energy board's unprecedented action. Jim Rogers, the new Duke Energy CEO, is expected to appear to discuss these issues and respond to Commission questions at a status conference in Docket No. 100437-EI that is scheduled for August 13, 2012.

Given this remarkable confluence of events, the fact that the Commission does not have answers to any of the core questions noted above,¹ and the substantial likelihood that they will remain unanswered by the time the record closes in this proceeding, PCS Phosphate holds very serious reservations concerning PEF's on-going expenditures for the CR3 power uprate ("EPU" or "Uprate") project that PEF seeks to recover through the NCRC. Specifically, PEF requests Commission approval of \$49 million in revenue requirements for clause recovery for the Uprate in 2013, projects \$110 million in continued CR3 Uprate expenditures in 2013, and at least \$76 million total in 2014 and 2015. Franke Rebuttal Testimony at 10. In light of the circumstances described above, it is unreasonable and imprudent for PEF to incur any further CR3 EPU costs or obligations at this time. PEF has an obligation to avoid or defer all possible uprate expenditures, including procurement of long lead time equipment, until all CR3 containment repair issues have been satisfactorily resolved.

In practical terms, PEF should halt, avoid or minimize all CR3 uprate expenditures in 2012-14. The Commission should require a specific and detailed justification for each and every Uprate expenditure that is not deferred until the

¹ Last week, PEF's new corporate Chief Executive Officer refused to commit to any repair or retirement decision on CR3 before the end of 2012, but acknowledged that the cost estimates for the contemplated repair are "trending upwards." See Duke Energy Management Second Quarter 2012 Results – Earnings Call Transcript, August 2, 2012.

containment structure issues are resolved. The nuclear cost recovery statute aimed to promote responsible investment in nuclear energy in Florida, but never intended to countenance wasting ratepayer dollars on a doomed project. The EPU project clearly is not feasible if the containment repair is not accomplished, and it is not reasonable under the exceptional circumstances that now prevail to charge consumers for EPU costs under the blithe presumption that the containment repair will proceed. PCS Phosphate would support continued deferral of all prudence questions associated with the CR3 EPU project, and further requests that all further Uprate cost recovery similarly be deferred.

E. STATEMENT ON SPECIFIC ISSUES

With respect to the various issues presented in this proceeding, PCS Phosphate takes no position regarding the resolution of the issues with respect to Florida Power & Light. PCS Phosphate takes the following positions on the specific issues presented below as they pertain to PEF:

Generic Legal Issue

Issue 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes?

PCS Phosphate: Yes. Florida's nuclear cost recovery statute, Chapter 366.93 F.S., authorizes, indeed it requires, the disallowance of qualified costs that are unreasonably or imprudently incurred. Such disallowances should include any carrying costs which are associated with non-prudently incurred expenditures.

Progress Energy Florida, Inc., Issues

PEF – Legal/Policy

Issue 2: Does the Commission have the authority to disallow recovery of any AFUDC equity on the Crystal River Unit 3 Uprate project in 2012 and 2013 due to the delay caused by the lack of implementation of a final decision to repair or retire Crystal River Unit 3? If yes, should the Commission exercise this authority and what amount should it disallow, if any?

PCS Phosphate: PCS Phosphate agrees with OPC that the Commission has broad powers under Chapter 366 F.S. to disallow unreasonably or imprudently incurred costs. Those powers extend to early recovery of such costs through the nuclear cost recovery clause. The CR3 EPU project unarguably has been delayed, and may never be completed, as a result of the CR3 containment damage. The Commission certainly possesses the authority to consider whether any portion of the AFUDC equity component associated with the project should be recovered in rates.

Issue 3: Does the Commission have the authority to defer all determinations of prudence and reasonableness for the Crystal River Unit 3 Uprate project (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority?

PCS Phosphate: PCS Phosphate agrees with OPC that the Commission possesses authority to defer consideration of prudence and long-term feasibility questions associated with the CR3 Uprate. There is no denying that deferring such decisions until the utility has actually made essential decisions relative to CR3 is the preferred and common sense approach to these questions.

PEF – Levy Units 1 & 2 Project

Issue 4: Do PEF’s activities since January 2011 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: PCS Phosphate agrees with and adopts the position of the OPC.

Issue 5: Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of 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: PCS Phosphate agrees with and adopts the position of the OPC.

Issue 6: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

PCS Phosphate: No position.

Issue 7: What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

PCS Phosphate: No position.

Issue 8: Should the Commission find that, for 2011, PEF’s project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

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

Issue 9: What system and jurisdictional amounts should the Commission approve as PEF’s final 2011 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

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

Issue 10: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

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

Issue 11: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Levy Units 1 & 2 project?

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

PEF – Crystal River Unit 3 Uprate Project

Issue 12: Should the Commission approve what PEF has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing the Crystal River Unit 3 Uprate 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. PEF's feasibility analysis fails to properly consider the uncertainty regarding the future of the CR3 project.

Issue 13: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

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

Issue 14: Were all of the actual Crystal River Unit 3 Uprate project expenditures prudently incurred or expended in 2011 in the absence of a final decision to repair or retire Crystal River Unit 3 in 2011?

PCS Phosphate: No. The Commission should defer a determination on this issue until PEF has satisfactorily resolved all CR3 containment repair questions.

Issue 15: What system and jurisdictional amounts should the Commission approve as PEF's 2011 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?

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

Issue 16: Is it reasonable for PEF to incur or expend all of the estimated and projected Crystal River Unit 3 Uprate project expenditures in 2012 and 2013 in the absence of a final decision to repair or retire CR3?

PCS Phosphate: No. PEF should halt, avoid and minimize all CR3 EPU expenditures until PEF has satisfactorily resolved all CR3 containment repair questions.

Issue 17: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?

PCS Phosphate: None. PCS Phosphate agrees with and adopts the position of the OPC.

Issue 18: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Crystal River Unit 3 Uprate project?

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

PEF – Final Fall-out Issue

Issue 19: What is the total jurisdictional amount to be included in establishing PEF's 2013 Capacity Cost Recovery Clause factor?

PCS Phosphate: No position.

F. STIPULATED ISSUES

None.

G. PENDING MOTIONS

None.

H. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

I. OBJECTIONS TO QUALIFICATIONS OF WITNESS AS EXPERT

None at this time.

J. REQUIREMENTS OF ORDER ESTABLISHING PROCEDURE

There are no requirements of the *Procedural Order* or the *Revised Procedural Order* with which PCS Phosphate cannot comply.

Respectfully submitted the 6th day of August, 2012.

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

s/ James W. Brew _____

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished by electronic mail and/or U.S. Mail this 6th day of August 2012 to the following:

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