

**Shawna Senko**

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**Subject:** FPSC Docket No. 140009 - Prehearing Statement of PCS Phosphate  
**Attachments:** p-pcs\_prehearing\_statement\_7032014 F.pdf

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b. Docket No. 140009-EI, In Re: Nuclear Cost Recover Clause

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

d. Total Pages = 8

e. PCS Phosphate's Prehearing Statement



**D. STATEMENT OF BASIC POSITION**

In March 2012, the Commission issued Order No. PSC-12-0104-FOF-EI which approved a stipulation and settlement agreement among DEF, the Office of Public Counsel (“OPC”) and other consumer party intervenors, including PCS Phosphate. In November 2013, in Order No. PSC-13-0598-FOF-EI, the Commission approved the Revised and Restated Stipulation and Settlement Agreement (“RRSSA”) among Duke and the intervenor settling parties. As a consequence, the primary focus of the 2014 NCRC proceeding for Duke relates to the utility’s efforts to wind down its involvement in the aborted Levy Nuclear Project (“LNP”), and comparable efforts to shut down its existing Crystal River Unit No. 3 nuclear station following Duke’s determination that the containment building had been irreparably damaged in the course of Duke’s attempt to replace the unit’s steam generator.

Generally, PCS Phosphate does not contest recovery through the NCRC of CR3 EPU costs that the Commission has addressed in prior dockets, but maintains that a Commission prudence determination with respect to DEF’s on-going CR3 asset disposal actions is premature and should be deferred to the 2015 proceeding. Since that process seems to be at a relatively early stage, the Commission will not possess facts sufficient to make such determinations this year.

With respect to LNP, the RRSSA specifies a fixed cost recovery factor that should apply to the 2015 factor for some or all of that year. The suits (and counter-suits) initiated earlier this year between Duke and Westinghouse Electric Company (“WEC”), however, have materially complicated Duke’s efforts to extricate itself from the engineering,

procurement and construction contract (“EPC”) that it signed with the WEC-Shaw Stone & Webster consortium for LNP at the end of 2008. The complications include:

- The disposition of long lead time equipment ordered and fabricated for Levy that DEF customers have already paid for through NCRC factor charges;
- In excess of \$54 million in payments that Duke claims it made to WEC for work that was never actually begun; and
- WEC’s claim that it performed approximately \$500 million in engineering, licensing and AP1000 support activities that are properly billed to Duke.

At this date, Duke’s asset disposition efforts are on-going, and a prudence determination should be deferred until a more complete picture is available. With respect to the Duke-WEC claims, it is reasonable to expect that final and binding rulings on those suits will take some time. In the meantime, the Commission in this docket should make clear that DEF’s consumers are not mere insurers of any outcome, litigated or settled, that may eventually transpire. In particular, the Commission should adopt a rebuttable presumption that any disposition of LNP long lead time equipment to WEC should reflect the original cost of those items charged to Duke consumers. Similarly, the Commission should put Duke on notice that it would be presumptively imprudent to charge Duke customers for work billed by WEC that was not actually performed. PCS Phosphate reminds the Commission that the Commission has not previously reviewed or approved the Levy EPC agreement from which all of the above claims and counter-claims arise. Finally, as stated in the RRSSA, all going forward actions by Duke to pursue a construction and operation license (“COL”) from the Nuclear Regulatory Commission for Levy are Duke’s responsibility. The Commission should not countenance any effort by Duke to fund those activities through settlement of the EPC termination disputes.

**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 DEF:

**Duke Energy Florida, Inc., Issues**

**DEF – Levy Project Issues**

**Issue DEF 1:** Should the Commission find that during the years 2012 and 2013, DEF’s project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project?

**PCS Phosphate:** No position.

**Issue DEF 2:** Has DEF reasonably accounted for COL pursuit costs pursuant to paragraph 12(b) of the 2013 revised and restated stipulation and settlement agreement?

**PCS Phosphate:** No position at this time.

**Issue 2A:** What jurisdictional amounts should the Commission approve as DEF’s final 2012 and 2013 prudently incurred cost for the Levy Units 1 & 2 project?

**PCS Phosphate:** No position.

**Issue DEF 3:** Should the Commission approve DEF’s Levy Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?

**PCS Phosphate:** No position at this time.

**Issue DEF 4:** What action, if any, should the Commission take in the 2014 hearing cycle with respect to the \$54,127,100 in Long Lead Equipment milestone payments, previously recovered from customers through the NCRC, which were in payment for Turbine

**Generators and Reactor Vessel Internals that were never manufactured?**

**PCS Phosphate:** PCS Phosphate adopts the position of the OPC. Duke customers should be fully credited for amounts paid by Duke and charged to ratepayers for work not actually performed for the LNP project.

**Issue DEF 5:** What restrictions, if any, should the Commission place at this time on Duke's attempts to dispose of Long Lead Equipment?

**PCS Phosphate:** PCS Phosphate adopts the position of the OPC.

**DEF - CR3 Uprate Project Issues**

**Issue DEF 6:** Should the Commission find that during the years 2012 and 2013, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

**PCS Phosphate:** No position.

**Issue DEF 7:** What jurisdictional amounts should the Commission approve as DEF's final 2012 and 2013 prudently incurred cost for the Crystal River Unit 3 Uprate project?

**PCS Phosphate:** No position.

**Issue DEF 8:** Should the Commission approve DEF's Crystal River Unit 3 Uprate Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?

**PCS Phosphate:** No position.

**DEF – Ultimate Issue**

**Issue DEF 9:** What is the total jurisdictional amount to be included in establishing DEF's 2015 Capacity Cost Recovery Clause Factor?

**PCS Phosphate:** PCS Phosphate adopts the position of the OPC.

**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* with which PCS Phosphate cannot comply.

Respectfully submitted the 2nd day of July, 2014.

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 2<sup>nd</sup> day of July 2014 to the following:

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