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From: Al Taylor [Al.Taylor@bbrslaw.com]
Sent: Thursday, November 13, 2008 3:35 PM
To: Filings@psc.state.fl.us
Cc: Jay Brew; paul.lewisjr@pgnmail.com; John Burnett; Jean Hartman
Subject: FPSC Docket No. 080501-EI - PCS Phosphate Petition to Intervene and Protest
Attachments: PCS Phosphate_Protest 2008 SOC.doc

- a. Person responsible for filing

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- b. Docket No. 080501-EI, Petition for waiver of Rule 25-17.250(1) and (2)(a), F.A.C., which requires Progress Energy Florida to have a standard offer contract open until a request for proposal is issued for same avoided unit in standard offer contract, and for approval of standard offer contract
- c. Filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs
- d. Total Pages = 28
- e. Petition to Intervene, Protest of Proposed Agency Action and Petition for Formal Administrative Hearing of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (attached as PCS Phosphate Protest 2008 SOC.doc)

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11/13/2008

DOCUMENT NUMBER-DATE

10596 NOV 13 08

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition for waiver of Rule 25-)
17.250(1) and (2)(a), F.A.C., which requires) Docket No. 080501-EI
Progress Energy Florida to have a standard) Filed: November 13, 2008
offer contract open until a request for)
proposal is issued for same avoided unit in)
standard offer contract, and for approval of)
standard offer contract.**

**PETITION TO INTERVENE,
PROTEST OF PROPOSED AGENCY ACTION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A
PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.201, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”), through its undersigned attorney, files its Petition to Intervene and Protest to Commission Order No. PSC-08-0706-TRF-EI, which granted a waiver of Florida Administrative Code provisions regarding the basis for determining the avoided costs for Progress Energy Florida (“PEF”) and approved PEF’s Standard Offer Contract for energy and capacity purchased from renewable energy and small qualifying facilities. In support thereof, PCS Phosphate states as follows:

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

White Springs Agricultural Chemicals, Inc.
d/b/a PCS Phosphate – White Springs
15843 SE 78th Street, P.C. Box 300
White Springs, Florida 32096

DOCUMENT NUMBER-DATE

10596 NOV 13 08

FILED-COMMISSION CLERK

3. All pleadings, motions, orders and other documents directed to the petitioner should be served on:

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Notice of Receipt of Agency Action

4. PCS Phosphate received notice of the Commission's proposed agency action on or about October 24, 2008.

Statement of Affected Interests

5. PCS Phosphate is a manufacturer of fertilizer products with plants and operations in or near White Springs, Florida that are located within PEF's electric service territory.¹ PCS Phosphate receives electric service under various PEF tariffs. In addition, PCS Phosphate uses waste heat recovered from the manufacture of sulfuric acid to cogenerate electric energy. This electric energy production is considered renewable energy pursuant to Section 366.91(2)(b), Florida Statutes. PCS Phosphate uses that renewable energy to offset its load and sells excess energy to PEF.

¹ PCS Phosphate mines phosphate ore on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

6. On April 2, 2007, PEF filed its petition for approval of its 2007 standard offer contract for purchases of firm capacity and energy from reliable energy producer or qualifying facility less than 100 kW tariff in alleged conformance with Commission rules 25-17.0832, 25-17.200 — 25.17.310, Florida Administrative Code. On June 11, 2007, the Commission issued Order No. PSC-07-0433-TRF-EQ preliminarily approving PEF's filing. On July 2, 2007, PSC Phosphate protested that order. ("PCS Phosphate 2007 Protest") After the resolution of the numerous motions, a prehearing conference was scheduled for March 24, 2008 and the evidentiary hearing was set for April 10-11, 2008, with post-hearing briefs due on May 9, 2008. On February 15, 2008, PCS Phosphate presented the testimony of Martin J. Marz recommending changes to PEF's standard offer contract that would encourage renewable energy production through the use of more fair and equitable terms. As explained below, although PCS Phosphate and PEF filed testimony in that docket, no hearing was held to resolve the disputed issues addresses in those filings.

7. On March 21, 2008, consistent with discussions among the parties and Commission Staff which acknowledged that no resolution of the disputed 2007 standard offer contract issues could be reached before PEF filed its 2008 Standard Offer Contract, PCS Phosphate filed for a Motion for Continuance requesting that:

that the Commission hold all the activities in this docket in abeyance and toll all deadlines, postpone the prehearing conference set for March 24, 2008 and the evidentiary hearing set for April 10-11, 2008 until after a new docket to address PEF's April 1, 2008 standard offer filing is opened.

On April 2, 2008, the Commission issued Order No. PSC-08-02-17-FOF-EQ which held, in part, that "Docket No. 070235-EQ shall remain open to address the protest which has been filed as to that docket."

8. On April 1, 2008, PEF filed its petition requesting approval of a standard offer contract and associated tariffs. Pursuant to its Ten-Year Site Plan for 2008-2017, PEF designated a combined cycle unit to be located at Suwannee as its avoided unit. On July 15, 2008, PEF filed the petition for rule waiver and approval of standard offer contract which opened this docket. In this filing, the company asserted that a request for proposals has been issued for the Suwannee unit and that it has no upcoming planned power purchases. Accordingly, PEF requested a waiver of rule in order to continue to use the costs associated with the Suwannee unit as the full avoided cost basis for the standard offer contract. On July 23, 2008, PEF filed a motion to withdraw its initial standard offer contract and COG-2 rate schedule that had been filed on April 1, 2008, in Docket No. 080187-EQ.

9. In Order No. PSC-08-0706-TRF-EI (the "Order"), the Commission granted PEF a rule waiver regarding PEF's proposed avoided cost payments, and approved PEF's Standard Offer Contract for purchasing firm capacity and energy from renewable energy producers and qualifying facilities with a capacity less than 100 MW. In this Protest, PCS Phosphate does not challenge the Commission's grant of the rule waiver PEF requested but seeks a final resolution concerning unreasonable non-price terms and conditions that continue to be reflected in PEF's Standard Offer Contract. As explained below, contrary to the provisions of Section 366.91, Fla. Statutes, which articulates an express state policy to promote renewable energy production, PEF's Standard Offer Contract imposes unnecessary and onerous terms which will have a chilling effect on renewable energy development and production.

Disputed Issues of Material Fact and Law

10. PEF asserts that it has changed certain terms in its latest standard offer contract (in response to the issues raised in the PCS protest to its 2007 filing), the most important concerns raised by PCS Phosphate with respect to the 2007 PEF contract still remain in the utility's revised 2008 contract. These concerns range from the unnecessarily complicated nature of the contract to specific terms discussed in the PCS protest and Mr. Marz' testimony which were unaddressed by PEF and have not been adjudicated. For example, the Conditions Precedent in Section 5(a) still remain infeasible for an entity that is seeking to develop a new generating facility to meet PEF's power needs. Similarly, contrary to the Commission's statement, the right of first refusal provision in Section 6.2 directly contradicts Rule 25-17.280 F.A.C., which states that "a utility shall not . . . place any condition upon such government incentives in a negotiated or standard offer contract, unless agreed to by the renewable generating facility."

11. In Docket No. 070235-EQ, PCS Phosphate identified many of the contractual provisions that impose the burdensome and inequitable obligations and restrictions on potential renewable energy suppliers (with no corresponding responsibilities imposed on PEF). In order to avoid repeating arguments previously presented to the Commission, PCS Phosphate incorporates the PCS Phosphate 2007 Protest, which is attached (without exhibits) as Appendix A to this Protest. PCS Phosphate notes that the issues raised in the 2007 Protest remain, for the most part, open and unresolved, and thus continue to be ripe for Commission consideration. PCS Phosphate further requests that its pre-filed testimony by Martin Marz be incorporated into the record of this docket.

Ultimate Facts Alleged

12. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will discourage the development of and investment in renewable resources in contradiction of the intent of the Florida Legislature.

13. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, is unnecessarily complicated and burdensome.

14. PEF's proposed Standard Offer Contract imposes terms and conditions on renewable suppliers that are unreasonable, do not comport with standard industry practice, and serve as unnecessary barriers to renewable energy development in Florida.

Laws Entitling Petitioner to Relief and Relation to Alleged Facts

15. The rules and statutes entitling PCS Phosphate to relief include but are not necessarily limited to the following: Sections 120.569 and 120.57(1), Florida Statutes, which entitle PCS Phosphate to an administrative hearing for the reasons presented above; Section 366.91 and 366.92, Florida Statutes, which enumerate the requirements to promote the development of renewable energy resources; and Rules 25-17.200 through 25-17.310, Florida Administrative Code, by which the Commission has implemented the requirements of Section 366.91.

Request for Relief

WHEREFORE, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests

(1) that the Commission enter an order allowing it to intervene as a full party in this docket;

(2) that the Commission conduct an administrative hearing to determine

whether the terms and conditions of PEF's Standard Offer Contract are unreasonable and will discourage the development of renewable energy resources;

(3) that for the sake of administrative efficiency and to reduce the burden upon the parties, the Commission incorporate into the official record of this proceeding all of the testimony and exhibits presented in Docket No. 070235-EQ; and

(4) that the Commission grant PCS Phosphate such other relief as may be deemed appropriate.

Respectfully submitted this 13th day of November, 2008

/s/ James W. Brew

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*Attorneys for
White Springs Agricultural Chemicals Inc.
d/b/a PCS Phosphate – White Springs*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Intervene has been furnished by electronic mail and/or U.S. Mail this 13th day of November 2008 to the following individuals:

/s/ James W. Brew

Progress Energy Florida, Inc.
Mr. Paul Lewis, Jr.
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740

Progress Energy Service Company, LLC
John T. Burnett
P.O. Box 14042
Saint Petersburg, FL 33733-4042

APPENDIX A

PCS Phosphate's Protest of PEF's 2007 Standard Offer Contract (without exhibits)

DOCUMENT NUMBER-DATE

10596 NOV 13 8

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of standard)	
offer contract for purchase of firm capacity)	Docket No. 070235-EQ
and energy from renewable energy producer)	Filed: July 2, 2007
or qualifying facility less than 100 kW tariff,)	
by Progress Energy Florida, Inc.)	

**PETITION TO INTERVENE,
PROTEST OF PROPOSED AGENCY ACTION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A
PCS PHOSPHATE – WHITE SPRINGS**

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rules 25-22.039 and 28-106.201, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate”), through its undersigned attorney, files its Petition to Intervene and Protest to Commission Order No. PSC-07-0493-TRF-EQ, which approved the Standard Offer Contract of Progress Energy Florida (“PEF”) for energy and capacity purchased from renewable energy and small qualifying facilities. In support thereof, PCS Phosphate states as follows:

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

White Springs Agricultural Chemicals, Inc.
d/b/a PCS Phosphate – White Springs
15843 SE 78th Street, P.C. Box 300
White Springs, Florida 32096

3. All pleadings, motions, orders and other documents directed to the petitioner should be served on:

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Notice of Receipt of Agency Action

4. PCS Phosphate received notice of the Commission's proposed agency action on or about June 12, 2007.

Statement of Affected Interests

5. PCS Phosphate is a manufacturer of fertilizer products with plants and operations in or near White Springs, Florida that are located within PEF's electric service territory.² PCS Phosphate receives electric service under various PEF tariffs. In addition, PCS Phosphate uses waste heat recovered from the manufacture of sulfuric acid to cogenerate electric energy. This electric energy production is

² PCS Phosphate mines phosphate ore on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

considered renewable energy pursuant to Section 366.91(2)(b), Florida Statutes. PCS both uses that renewable energy to offset its load and sells excess energy to PEF.

6. In the above-referenced docket, Commission Order No. PSC-07-0493-TRF-EQ (the "Order") approved PEF's Standard Offer Contract for purchasing firm capacity and energy from renewable energy producers and qualifying facilities with a capacity less than 100 MW. This Standard Offer Contract is intended to implement Section 366.91, Fla. Statutes, which articulates an express state policy to promote renewable energy production. The PEF Standard Offer Contract, however, will undermine rather than effectuate that policy. The Standard Offer Contract imposes unnecessary and onerous terms, and offers contract payments that are understated and inadequate. Collectively, those prices and terms will have a chilling effect on renewable energy development and production.

7. Further, PEF's standard offer capacity payments are linked to the utility's decision first announced in its 2007 Ten Year Siting Plan ("TYSP") to abandon a planned coal-fired generation addition for 2013. PEF instead will rely on increased power purchases and natural gas-fired generation. This change in course shown in the 2007 TYSP will lead to a PEF system that gets 44% of its energy from oil- and gas-fired generation (compared to 32% today). This year's TYSP charts a course wholly at odds with express Florida policy to reduce its already excessive reliance on natural gas and restore a more balanced generation fuel mix. That TYSP policy, which is not sustainable, understates the full avoided cost that should be reflected in the renewable standard offer.

Disputed Issues of Material Fact and Law

8. Disputed issues of material fact and law include, but are not limited to, the following:

9. *PEF's Avoided Costs Rates Are Understated:* On the same day that PEF submitted its petition to approve its Standard Offer Contract, the utility also submitted the 2007 version of its TYSP. For purposes of this proceeding, the 2007 TYSP contained one significant change from the 2006 TYSP. Specifically, in the new TYSP, PEF removed two supercritical coal-fired generating units from its planned generation capacity additions. Construction of these units, according to the 2006 TYSP, was scheduled to commence in June 2008 and June 2009, respectively.

10. As a direct result of the removal of these units from PEF's planned capacity addition, the next avoidable fossil fueled unit identified in PEF's TYSP will now be a combined cycle unit scheduled to come into service in 2013. Thus, because under the new TYSP there will be no unit to be "avoided" until 2013, PEF offers no "normal" monthly capacity payment to RF/QFs until 2013 (except for those received pursuant to the prepayment options for post-2013 capacity).

11. PEF's avoidance of the monthly capacity payment for calendar years 2010, 2011 and 2012 discourages the production of renewable energy for sale to PEF. Consequently, the Commission should have completed its review of PEF's TYSP before accepting PEF's Standard Offer Contract. This review of the TYSP should include a thorough inquiry into the basis of PEF's decision to remove the coal-fired facilities from the utility's planning horizon.

12. PEF's removal of the planned coal-fired units and determination to increase its reliance on natural gas and power purchases is openly at odds with the Florida goal to reduce reliance on natural gas for electric generation and improve the diversity of the fuels utilized by Florida's generators. PEF concedes in its 2007 TYSP that, as a result of its decision to remove the coal-fired facilities and construct primarily natural gas-fired units for its additional capacity needs, natural gas will be the energy source for 43.6% of PEF's energy needs in 2011, more than double the percentage in 2006. *See* PEF's 2007 TYSP, Schedule 62. This increased dependence on natural gas will undoubtedly lead to higher prices to PEF's customers. The Commission should carefully examine the validity and basis for PEF's removal of the coal-fired facilities, in both this proceeding and in the proceeding for PEF's 2007 TYSP before approving a Standard Offer payment schedule.

13. *PEF's Standard Offer Contract is Unnecessarily Complicated:* As currently constructed, the Standard Offer Contract consists of approximately seventy pages of contractual language that includes a number of excessive restrictions and unneeded obligations that will deter renewable energy investment and production. These are discussed in greater detail below. Any potential renewable energy producer confronted with the Standard Offer Contract must question whether the substantial undertaking required to satisfy the numerous conditions is worthwhile.

14. Contrary to the direction of Section 366.92, Florida Statutes, the proposed mess of terms and provisions will neither "promote the development of renewable energy" nor "minimize the costs of power supply to electric utilities and their customers."

15. In contrast to the unnecessarily burdensome procedures proposed by PEF for its Florida operations, the treatment of RF/QF analogous generators in North Carolina and South Carolina by PEF's affiliated utility (Progress Energy Carolinas) demonstrates

that a more straight-forward, uncomplicated approach can be implemented. Specifically, the tariff provisions in South Carolina only encompass three pages, and in North Carolina, five pages. Within this limited space, Progress Energy Carolinas is able to clearly set forth the payments that a supplier can expect to receive as well as the conditions necessary to receive those payments. This concise presentation of the conditions surrounding the provision of alternative energy supplies is much more conducive to the development and utilization of these resources than PEF's current proposal, as this simple approach reduces the burden placed on both the supplier and the utility. The Commission should require PEF to revise the Standard Offer Contract to simplify its terms and reduce the difficulty of compliance with those terms.

16. *The Standard Offer Contract Contains Unnecessary and Burdensome Requirements:* The Standard Offer Contract imposes significant obligations and restrictions on potential renewable energy suppliers with no corresponding responsibilities imposed on PEF. The Commission's approval of these contractual terms may reduce PEF's costs, but only by eliminating the likelihood that renewable suppliers will agree to contract with PEF. However, using potential cost saving to justify such onerous terms is at odds with the intent of the Florida Legislature. As Senator Michael S. Bennett explained to the Commission, the Florida Legislature "expected [the Commission] to take some serious steps that looked at the future of the State of Florida and understood the difference between price and cost."³ Thus, to address its statutory obligation to promote the development of renewable energy, the Commission needs to require PEF to modify the following terms:

³ Transcript of November 9, 2006 hearing on the Proposed Amendments to Rule 25-17.0832, F.A.C., Firm Capacity and Energy Contracts, Docket No. 060555-EI at 10-11.

(a) Section 2 – Right of Inspection: The Standard Offer Contract provides that PEF “shall have the right *at all times* to inspect the Facility and to examine any books, records, or other documents of the RF/QF that PEF deems necessary . . .” (emphasis added). This provision grants PEF an unlimited right to an RF/QF’s facility and books that are not typical of wholesale power sales agreements. For example, in neither of the two power supply agreements that PEF filed with the Federal Energy Regulatory Commission (“FERC”) in the last year⁴ did PEF grant the capacity purchaser such unlimited access to its facilities or its records.

The unchecked access sought by PEF would complicate the ability of a supplier to operate its facility efficiently, especially in the case of a cogenerator like PCS Phosphate, whose primary business focus is its mining operations. To avoid this provision becoming a tool to dampen an RF/QF’s desire to interact with PEF, the Commission should establish reasonable limits on PEF. For example, the Commission should restrict PEF’s access to a facility to normal business hours and should impose a

⁴ PEF, filing as Florida Power Corporation, submitted two power supply agreements with FERC in the past year. The first was a five-year full requirements Cost-Based Power Sales Agreement with the City of Mount Dora, Florida (“Mount Dora Agreement”) which was submitted on November 1, 2006 in FERC Docket No. ER07-141-000. The second agreement was a Cost-Based Power Sales Agreement with Seminole Electric Cooperative, Inc. (“Seminole Agreement”) in which PEF committed to provide 150 MW of system intermediate capacity and associated energy, and 600 MW of seasonal capacity and associated energy, starting in 2014 and continuing for six years. This agreement was filed on March 30, 2007 in FERC Docket No. ER07-692-000. The Mount Dora Agreement and the Seminole Agreement are referred to collectively as the “PEF Supply Agreements.” The sections of the Mount Dora Agreement and the Seminole Agreement cited herein are provided as Attachment A and Attachment B, respectively.

reasonableness requirement on PEF's exercise of any right to facility inspection and record examination.

In addition, the Standard Offer Contract places no obligation upon PEF to maintain books and records that support its energy payments and operational decisions directly affecting the RF/QF. By comparison, in the above-referenced FERC-filed wholesale PEF Supply Agreements, the recordkeeping requirements apply to symmetrically to both parties.⁵

(b) Section 5(a) – Conditions Precedent: Pursuant to this section, within twelve months of the execution of this contract, the supplier must, *inter alia*, have (i) obtained firm transmission service, (ii) obtained all required Project Consents, (iii) obtained all required Financing Documents, (iv) obtained all required Project Contracts, and (v) satisfied the insurance requirements. While many of these provisions can be satisfied by an existing facility, they may be infeasible for an entity that is seeking to develop a new generating facility to meet PEF's power needs. For example, a project developer often may not enter into a firm transmission service agreement or a fuel supply agreement such a long time before its project has been completed. Furthermore, some of requirements that must be fulfilled, including most of the Project Consents, are not fully within the developer's control. Indeed, PEF likely will have control over the satisfaction of several of the Conditions Precedent, e.g., the electrical interconnection and operating agreement and the transmission service agreement, thus providing it with the direct ability to affect a developer's capacity to satisfy the Conditions Precedent.

⁵ See Seminole Agreement, §§ 9.4 and 9.5, and Mount Dora Agreement, Article 17.

(c) Section 6.2 – Ownership and Offering For Sale of Renewable Energy Attributes: By granting PEF an unconditional right of first refusal to purchase any Environmental Attributes, the Standard Offer Contract ignores the possibility that an existing RF/QF may have a pre-existing commitment for its Environmental Attributes. As a result, the RF/QF could not satisfy this term of the Standard Offer Contract and would be precluded from supplying PEF. To remedy this oversight, the Commission should require PEF to incorporate an exception for those cases where a RF/QF has sold or otherwise committed its Environmental Attributes prior to the execution of the Standard Offer Contract.

(d) Section 6.3 – Use of Interruptible Standby Service for Start-up: PEF offers no reason for restricting a RF/QF's ability to utilize interruptible stand-by service tariffs. There is no legitimate basis for this provision, which serves only to increase the rates that PEF can collect from the RF/QF or unreasonably limit RF/QF access to this service. This requirement should be stricken from the Standard Offer Contract.

(e) Section 7.3 – Committed Capacity Test Results: PEF's requirement that an RF/QF "demonstrate[] at least one hundred percent (100%) of Committed Capacity" is an unreasonable requirement that contradicts standard industry practice. Typically, unit-specific power purchase agreements either will accept as satisfactory a test result that is within a few percentage points of the committed capacity (e.g., 97%) or adjust the capacity results to reflect operational and environmental conditions. This adjustment approach is especially appropriate in the context of RF/QF facilities for which the fuel sources are not comparable to the fossil and nuclear fuels of traditional power plants, and because cogeneration RF/QF facilities may be subject to operational constraints imposed by the affiliated industrial

operations.

(f) Section 8.2 – Test Period: Similar to the Committed Capacity Test Results provision, the test period set forth by PEF to establish a facility’s capacity is incompatible with the nature of renewable energy facilities. For example, a solar- or wind-powered facility that is subject to the vagaries of the weather cannot be expected to maintain a steady capacity for a twenty-four hour period. In order to comply with its dual responsibility to promote renewable energy while minimizing costs, the Commission must recognize that the RF/QF facilities favored by the Florida Legislature are not the same as PEF’s historic fossil- and nuclear-fueled units, and thus the Standard Offer Contract must be revised to accommodate the operational realities of RF/QF facilities. In fact, renewable energy production facilities that demonstrate utility-like performance capabilities should receive preferred rather than punitive treatment.

(g) Section 10.1 – Detailed Annual Plan: PEF’s requirement that an RF/QF facility prepare a “detailed plan of the electricity to be generated by the Facility and delivered to PEF for each month of the following calendar year” imposes an impractical obligation upon an RF/QF. Solar- and wind-powered RF/QFs cannot forecast weather conditions in detail for the next year. Likewise, an RF/QF with an associated industrial load cannot predict in detail its precise generation output for the forthcoming year, as the output will be affected by market conditions for the industrial product.

(h) Section 10.4 – Requirement to Provide “total electrical output”: Many RF/QFs, especially a cogenerator like PCS Phosphate, produce electric energy in support of an industrial or commercial operation. PEF’s requirement that the RF/QF provides its “total electrical output” to PEF effectively mandates a “buy all/sell

all” arrangement that undercuts the net metering options provided by Rule 25-17.082(3)(a), Florida Administrative Code. This provision of the Standard Offer Contract is contrary to existing practice and Commission rules for cogenerators, and should be rejected.

(i) Section 10.5.4 – 24/7 Operating Personnel: Due to their operational nature or the sophistication of their administrative software, some RF/QF facilities do not require operational personnel to remain on duty around the clock. As a result, PEF’s requirement that “operating personnel are on duty at all times, twenty-four (24) hours a calendar day and seven (7) days a week” may impose an unnecessary operating expense that could make an RF/QF economically infeasible. PEF has not shown that this provision, which unnecessarily intrudes on a renewable producer’s operational and business practices, is required for any legitimate reason. It should be deleted from the Standard Offer Contract.

(j) Section 10.5.6 – Three Day Fuel Supply: PEF again attempts to impose a requirement that is unnecessary, burdensome, and may be inapplicable to many RF/QFs in any event. Unlike a traditional utility’s coal- or nuclear-fired generating facility, RF/QFs that utilize solar, wind and waste heat energy do not keep a fuel supply conveniently stashed in some on-site storage area. The Commission must require PEF to delete this provision, or, at a minimum, incorporate sufficient flexibility within this and other sections of the Standard Offer Contract to accommodate the different characteristics of RF/QFs.

(k) Section 11.1 – Performance Security: There are two substantial problems with PEF’s collateral requirements. First, the requirements are entirely one-sided. Although the term “Eligible Collateral” is defined to include collateral of both the RF/QF and PEF, Section 11 clarifies that this “dual” nature of the collateral is in reality a sham, as there is no actual requirement for PEF to provide any form of collateral for the benefit of the RF/QF. Thus, even though an RF/QF may be owed significant monies by PEF for the capacity and energy provided, PEF bears no obligation to provide any guarantee to the RF/QF under the contract.

The second critical issue is the actual amount of collateral required from the RF/QF. Pursuant to Table 2, an RF/QF with the highest credit rating and providing 20 MW of capacity would be required to commit \$900,000/year initially just to sell power to PEF. PEF has offered no explanation for why such a significant sum is necessary. The inequitable nature of this provision is contrary to how PEF has transacted when it supplies capacity and energy. In the earlier referenced PEF Supply Agreements, the “Acceptable Creditworthiness” provisions apply to both parties.⁶ Additionally, neither party is required to provide any collateral so long as it maintains “Acceptable Creditworthiness,” and the amount of collateral required is tied to the purchaser’s bills, and not to a credit rating. As with PEF’s own wholesale power transactions, credit requirements should be flexible and commensurate with the financial capabilities of the parties. For large entities possessing strong financial parameters, no credit requirements should be necessary or required.

⁶ See Seminole Agreement, §§ 9.6 – 9.10 and Mount Dora Agreement, Article 8(a)-(f).

(l) Section 12 – Termination Fee: PEF imposes a significant obligation on an RF/QF with no corresponding obligation on itself. While PEF should recover “prepaid” capacity payments when the associated capacity was not actually provided due to the legitimate termination of the contract, PEF also must be accountable to RF/QF if a contract is terminated due to PEF’s fault. To this end, the Commission should recognize that an RF/QF developer incurs many financial obligations that are tied to the revenues from the Standard Offer Contract. To protect the developer’s investment, the Commission should, in the event of contract termination due to PEF’s fault, require PEF to pay a termination fee corresponding to the costs that the RF/QF incurred in reliance on PEF’s fulfillment of the Standard Offer Contract.

(m) Section 14 – Default: As an extreme example of the one-sided nature of the Standard Offer Contract, not a single one of the fourteen events of default listed in this section applies to PEF. For example, pursuant to Section 14(i), the RF/QF is in default if it breaches any material provision of the Standard Offer Contract but there is no penalty for PEF’s breach of any material provision. Likewise, PEF can declare the RF/QF in breach if bankruptcy proceedings are initiated against the RF/QF, but the RF/QF has no protection if PEF befalls a similar fate. Indeed, the Standard Offer Contract does not even provide a clear basis for the RF/QF to declare PEF in default if PEF simply refused to compensate the RF/QF for the capacity and energy provided.

The Commission must recognize that no rational supplier would accept this section. As an example of this section’s incompatibility with standard industry practice, in the Edison Electric Institute’s Master Power Purchase & Sale Agreement, the events of default apply to both parties equally and clearly states that a failure to

make a required payment is grounds for default. PEF employs a similar approach in the PEF Supply Agreements, where thirteen of the fourteen total specified events of default apply equally to both parties.⁷ The Commission must afford an RF/QF with the same protections and remedies provided to PEF.

(n) Section 17 – Insurance: Although an RF/QF is required to maintain insurance coverage, there is no corresponding obligation for PEF to provide analogous coverage for the RF/QF. The Commission should require PEF to explain why any insurance requirement is necessary, as it bears no insurance obligation in its wholesale power supply agreements with Seminole Electric Cooperative and the City of Mount Dora, Florida. To the extent the Commission concludes that any insurance requirement is necessary, the insurance obligations should apply equally to PEF and the renewable energy supplier.

(o) Section 18.1 – Force Majeure: PEF would not permit an RF/QF to claim force majeure for an equipment breakdowns and other issues unless the RF/QF “can conclusively demonstrate” to PEF’s satisfaction that the event was not foreseeable or negligent. *Force Majeure* provisions are a basic element of wholesale power transactions, and there is no basis for PEF to impose more onerous terms on renewable energy producers than the terms common to industry practice. To remedy this fault, the Commission should modify the Standard Offer Contract to apply equally to both parties and remove PEF’s discretion to arbitrarily reject an RF/QF’s claim of force majeure. To this end, the Commission could replace the force majeure provisions in the Standard Offer Contract with the force majeure provisions of either of the PEF Supply Agreements, as they impose symmetrical terms on both contractual

⁷ See Seminole Agreement, § 12.1, and Mount Dora Agreement, Article 15.

parties.⁸

(p) Section 19 – Representations and Warranties: As with so many other sections of the Standard Offer Contract, only the RF/QF has to make any representations, warranties or covenants. PEF has provided no explanation for why the RF/QF should be required to make these representations and it should have to bear no corresponding obligation. In the PEF Supply Agreements, PEF made similar representations and warranties to those it seeks from the renewable energy supplier,⁹ so there is no apparent reason why PEF cannot make the same representations in its Standard Offer Contract. Moreover, to the extent PEF seeks to obtain more detailed representations from a renewable supplier than it provides when it supplies power, PEF should be required to justify any differences.

(q) Section 20.4 – Assignment: The Standard Offer Contract prevents an RF/QF from assigning the agreement to any entity, including any affiliate or successor in interest, unless it receives PEF's approval. Moreover, PEF does not even have to satisfy a reasonableness standard in order to justify its rejection of a proposed assignment. PEF, on the other hand, has no restriction on its ability to transfer the agreement.

The Commission should revise the assignment language so that it is symmetrical and applies evenly to both parties. In addition, neither party should be able to unreasonably withhold its consent to an assignment. These suggested changes would be consistent with standard industry practice as well as the PEF Supply Agreements,¹⁰ which could be utilized as a model for developing more equitable

⁸ See Seminole Agreement, § 17, and Mount Dora Agreement, Article 27.

⁹ See Seminole Agreement, § 11, and Mount Dora Agreement, Article 13.

¹⁰ See Seminole Agreement, § 18.5, and Mount Dora Agreement, Article 18.

language.

(r) Section 20.14 – Record Retention: Although the RF/QF must retain its performance records for five years, PEF is under no concurrent obligation to retain any of its records relevant to the agreement. The Commission should impose the same obligation of PEF as PEF would impose on an RF/QF.

Ultimate Facts Alleged

17. The absence of any capacity payment to RF/QFs for the 2008 through 2012 period is a direct result of PEF's decision to remove the two coal-fired generating facilities from its 2007 TYSP.

18. The Commission has accepted PEF's Standard Offer Contract, including the absence of capacity payments for the 2008 through 2012 period, before it completed its evaluation of PEF's TYSP.

19. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will discourage the development of and investment in renewable resources in contradiction of the intent of the Florida Legislature.

20. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, will increase PEF's dependence on natural gas and thus decrease its fuel diversity, in contradiction of the intent of the Florida Legislature.

21. PEF's increased reliance on natural gas will discourage renewable energy development and increase energy costs for all PEF customers.

22. PEF's RF/QF program generally, and its proposed Standard Offer Contract specifically, is unnecessarily complicated and burdensome.

23. PEF's proposed Standard Offer Contract imposes on renewable suppliers

onerous and one-sided obligations that do not comport with standard industry practice.

Laws Entitling Petitioner to Relief and Relation to Alleged Facts

24. The rules and statutes entitling PCS Phosphate to relief include but are not necessarily limited to the following: Sections 120.569 and 120.57(1), Florida Statutes, which entitle PCS Phosphate to an administrative hearing for the reasons presented above; Section 366.91 and 366.92, Florida Statutes, which enumerate the requirements to promote the development of renewable energy resources; and Rules 25-17.200 through 25-17.310, Florida Administrative Code, by which the Commission has implemented the requirements of Section 366.91.

Request for Relief

WHEREFORE, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs respectfully requests

- (1) that the Commission enter an order allowing it to intervene as a full party in this docket;
- (2) that the Commission conduct an administrative hearing to determine
 - (a) whether PEF's proposed capacity rates accurately reflect its true avoided costs;
 - (b) whether the terms and conditions of the proposed Standard Offer Contract will discourage the development of renewable energy resources; and
- (3) that the Commission grant PCS Phosphate such other relief as may be deemed appropriate.

Respectfully submitted this 2nd day of July, 2007,

/s/ James W. Brew

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