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Subject: FPSC Docket No. 100437-EI PCS's Answer to PEF's Motion to Bifurcate
Attachments: PCS-response to CR3 Bifurcation FINAL.pdf

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- b. Docket No. 100437 -EI, Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.
- c. Filed on behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs
- d. Total Pages = 7
- e. Answer of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs to Progress Energy Florida's Motion to Bifurcate Proceeding

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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

**Examination of the outage and replacement)
fuel/power costs associated with the CR3)
steam generator replacement project, by)
Progress Energy Florida, Inc.)**

**Docket No. 100437-EI
Filed: April 11, 2011**

**ANSWER OF
WHITE SPRINGS AGRICULTURAL CHEMICALS, INC.
d/b/a PCS PHOSPHATE – WHITE SPRINGS TO
PROGRESS ENERGY FLORIDA’S
MOTION TO BIFURCATE PROCEEDING**

Pursuant to Rule 28-106.204, Florida Administrative Code, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (“PCS Phosphate” or “PCS”), through its undersigned attorney, files this Answer to Progress Energy Florida, Inc.’s (“PEF’s”) Motion to Bifurcate (“Motion”). PEF’s Motion follows from the utility’s contemporaneous announcement that the planned re-start of its Crystal River 3 (“CR3”) nuclear unit has been delayed indefinitely.

As is explained below, PCS Phosphate opposes bifurcating the proceeding at this time. In its Motion, PEF has not provided sufficient information for a reasoned decision to be reached with respect to its proposal, and the Commission accordingly should judge it to be premature. It is the understanding of PCS that the utility has begun performing evaluations that are required to gain a fuller understanding of the causes and ramifications of the latest setback at the Crystal River 3 unit. Until Progress Energy is prepared to provide a more informed assessment of the situation, the Commission should either deny the Motion with the opportunity for PEF to raise it at a more appropriate time, or defer a decision on the Motion until parties and the Commission can be adequately informed.

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BACKGROUND

On April 4, 2011, as required by Order No. PSC-11-0108-PCO-EI, PEF filed a status update regarding the anticipated return to service of the CR3 unit. Although intended to provide a detailed assessment of the project status, this report is stunningly terse given the dramatic import of the information that was disclosed. In its previous report on January 24, 2011, PEF had described in considerable detail its efforts to repair the concrete delamination to the containment building that occurred during the steam generator replacement, the re-tensioning process that the utility was following to restore the building to operating condition, and the planned completion of those activities (at the time stated to be the end of March 2011). In this update, in the briefest of terms, PEF notified the Commission that it detected additional concrete delamination of the containment structure during pass 101 of 112 planned re-tensioning passes. Progress noted the location of the newly discovered concrete separation (Bay 5-6), but could provide no assessment of its cause. PEF indicated that a complete engineering assessment is being performed but the utility could no longer reasonably estimate a probable return to service date for the unit.

Concurrent with the filing of the status update, PEF filed the instant motion to bifurcate the CR3 outage prudence proceeding into two distinct phases. PEF proposes that the first phase would limit the hearing scope to the prudence of its actions from the inception of the steam generator replacement project through the discovery of the second delamination event on March 14, 2011. In a subsequent second phase, PEF proposes to limit the scope to a prudence analysis of its actions from the discovery of the second delamination event until the ultimate resolution of the problem. In support of its motion to bifurcate the proceeding, PEF asserts that such action will “resolve[] all issues previously raised by the parties regarding

case scheduling.” Motion at 4. Progress also claims that the bifurcation it suggests would provide for “the most efficient use of the Commission’s resources” as bifurcation would allow the parties and the Commission to proceed “with a prudence determination of issues that can now be resolved in a timely manner while the evidence is not stale and the facts are available to all parties and the Commission.” Motion at 5.

ARGUMENT

It is apparent that the new concrete separation of the containment structure is a grave event. At this juncture, neither Progress Energy nor any intervenor can gauge the ramifications of this setback. It could range from bad (several additional months of outage), to poor (a very protracted further outage for repairs and assessment), to grim (the fundamental integrity of the structure may be compromised). Assuming any of those paths at this time would be rank speculation because PEF has only begun to perform the evaluations that are required of the situation.

By logical extension, it does not make sense to consider whether bifurcating this prudence docket is in the public interest until the Commission and all parties have a better appreciation of the status of the unit, the repairs required and the prognosis for accomplishing it. For example, if PEF learns that the outage will be extended only a few months due to the second delamination event, bifurcation would be an unnecessary and complicating procedure. If, however, the new delamination radically alters the timeline for the unit’s return to service, the magnitude of the repairs required and the attendant costs, PEF and the active parties should discuss whether an alternative procedure is appropriate. Given the uncertainty that now prevails regarding the unit’s status and prognosis, PCS Phosphate urges the Commission to

deny the Motion or to hold it in abeyance until such time as sufficient information can be produced concerning the repair outlook for CR3.

Certainly, the default presumption should be to reject bifurcating a prudence docket initiated to assess PEF's management of a single event (the CR3 steam generator replacement) and consequences that are directly linked to that activity. PCS recognizes that the suggestion inherent in PEF's Motion is that testimony and the hearings in the prudence docket could be delayed substantially if, as planned, they are conducted after the unit returns to service. The on-going discovery that is occurring in advance of the filing of testimony and regular PEF status reports should, however, protect against the loss of potentially relevant evidence during the time associated with the new delays.

PCS Phosphate is one of the parties that previously has expressed concerns about waiting an indefinite period before a hearing is conducted in the prudence docket. Consumers, after all, are paying for potentially disputed replacement fuel costs in the fuel adjustment clause subject to refund. That position was, of course, premised on PEF's then-projected return to service for CR3 by the end of 2010, and later by the end of the first quarter of 2011. PEF's proposed schedule for the case, the recommendations of other parties and the Commission Staff in the prudence and fuel clause dockets, and the Commission's decision in those matters were similarly linked to PEF's stated expectation that the unit's return to commercial service was reasonably *imminent*.

PCS Phosphate appreciates PEF's effort to address parties' concerns regarding finality with respect to ultimately recoverable or un-recoverable costs, but its Motion would not accomplish that objective. Bifurcation does not provide finality with respect to either the CR3 outage or its rate consequences. It only adds complexity. Progress' Motion suggests a path of

duplicative litigation tracks that would be expensive and time consuming for intervenors and the Commission. It would not be more efficient for the Commission or any participant.

Moreover, PCS Phosphate is concerned that bifurcation of the prudence docket could form a serious impediment to efficient examination of the attendant issues. PEF offers no particular rationale for beginning the phase II scope on March 15, 2011. That date simply marks the latest setback in the efforts to repair the containment building. As the circumstances surrounding the problems at the Crystal River unit are still unfolding, it is likely that factual disclosures may be revealed that apply to either or both of the proposed phases. Given the highly unsettled circumstances, parties could face objections in Phase I that certain matters should be entertained later or that issues raised in Phase II should have been presented sooner. PCS firmly adheres to its view that Progress' motion to bifurcate this docket is premature, but if the Commission entertains the notion of such a division of the proceeding it must ensure that sufficient flexibility is provided to ensure that the bifurcation does not impede a full examination of all prudence questions.

Next, although bifurcation of the prudence proceeding may be problematic, the Commission certainly should consider whether the new developments warrant a change in the treatment of excessive (i.e., above insurance coverage levels) replacement fuel costs in the fuel clause. That, however, is a matter that should be addressed in Docket No. 110001-EI.

At this stage, PEF's priority should continue to be the prompt and safe repair of CR3 rather than litigation of a "Phase I" prudence review. Accordingly, the rational path is for PEF to update the Commission and parties on a regular basis, for PEF to continue to provide discovery on the unfolding outage, and for PEF and the active parties to employ informal exchanges and discussions to facilitate full and timely information disclosure.

WHEREFORE, PCS Phosphate respectfully requests that the Commission delay acting on PEF's Motion to Bifurcate, or in the alternative, deny the Motion without prejudice to refiling once PEF, the Commission and the intervenors all have a better understanding of the facts regarding the additional delamination issues affecting the CR3 unit.

Respectfully submitted,

s/ James W. Brew

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CERTIFICATE OF SERVICE

I HEREBY certify that a true copy of the foregoing Answer to Progress Energy Florida, Inc.'s Motion to Bifurcate Proceeding has been furnished by electronic mail and/or U.S. Mail this 11th day of April 2011 to the following:

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