

**Ruth Nettles**

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**Sent:** Monday, March 30, 2009 3:30 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** 'mary.smallwood@ruden.com'; Connie Kummer; Jean Hartman; Jeanette Sickel; 'John T. Burnett'; 'Karin Torain'; 'Mary Anne Connors'; 'Paul Lewis'; Jay Brew  
**Subject:** Docket Nos. 080501 / 070235 - PCS Phosphate's Prehearing Statement  
**Attachments:** PCS Prehearing Statement.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

Docket No. 070235-EQ In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100kW tariff, 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 = 10  
e. Prehearing Statement of White Springs Agricultural Chemicals, Inc. d/b/s PCS Phosphate – White Springs

F. Alvin Taylor  
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DOCUMENT NUMBER-DATE

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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 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.

DOCKET NO. 080501-EI

In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100kW tariff, by Progress Energy Florida, Inc.

DOCKET NO. 070235-EQ

**Dated: March 30, 2009**

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

Pursuant to the Order Establishing Procedure, Order No. PSC-09-0066-PCO-EI, issued January 30, 2009 (“*Procedural Order*”), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate White Springs (“PCS Phosphate”) hereby files its Prehearing Statement.

**A. APPEARANCES**

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**B. WITNESSES**

PCS Phosphate will call the following witness:

Martin J. Marz – Mr. Marz will testify regarding changes which should be made to the standard offer contract to modify or eliminate unreasonable terms and conditions that are inconsistent with the State of Florida’s objective to encourage renewable energy generation. These changes primarily concern Progress Energy Florida’s (“PEF”) methodology for determining capacity payments to an RF/QF, and non-price terms and conditions of the standard offer contract that are not required by, and have not been addressed specifically by the Commission’s regulations or the proposed agency action in Docket No. 070235 but have a substantial impact on renewable energy development.

**C. EXHIBITS**

Through Mr. Marz, PCS Phosphate will sponsor the following exhibits:

- a. Supplemental Direct Testimony – Exhibit MJM-1 – Proposed Changes to PEF’s Standard Offer Contract
- b. Supplemental Direct Testimony – Exhibit MJM-2 – Capacity Factor of PEF’s Combined Cycle Units
- c. Direct Testimony – Exhibit MJM-3 – Excerpts from Vandolah Power Company and PEF Tolling Agreement, and
- d. PCS Phosphate’s Petition to Intervene, dated November 13, 2008.

PCS Phosphate may have additional exhibits based on PEF witness David Gammon’s testimony at the hearing.

**D. STATEMENT OF BASIC POSITION**

Florida has adopted an energy strategy for the State that places a high priority on

the promotion of renewable energy production. This is reflected throughout applicable Florida statutes and regulatory requirements, most succinctly in the objectives articulated in Rules 25-17.001(d) and 25-17.200, Florida Administrative Code. The purpose of a standard offer contract is to facilitate renewable energy goals by establishing price, terms and conditions that a renewable energy producer can accept with no further negotiation. Given the limited cost-effective generation supply options available to Florida consumers today, other than increasing reliance on natural gas for electric generation, the Commission should carefully scrutinize the standard offer contract for RF/QFs for terms and conditions that may impede production from such alternative resources. In addition to ensuring compliance with existing state policies, this scrutiny will have the added benefit of removing barriers to satisfying the requirements of proposed renewable portfolio standards.

The Commission's review of utility's standard offer contracts has focused primarily on the energy and capacity pricing provisions based on designated avoided fossil-fueled units consistent with the requirements of Rule 25-17.250, Florida Administrative Code. A standard offer contract, however, is a complete contractual package that includes numerous price and non-price terms, conditions and requirements. These non-price terms, conditions and requirements may have a significant bearing on renewable energy production and development. For the most part, Rule 25-17.250, F.A.C., neither requires nor permits specific non-price terms and conditions. Indeed, the rule does not discuss these provisions at all. Moreover, no presumption of reasonableness attaches to the terms and conditions filed by PEF in its standard offer contract that are not required by the rule. PEF must affirmatively establish that those

provisions help further Florida's renewable energy objectives.

As explained in PCS Phosphate's Petition to Intervene and the Direct Testimony of Martin J. Marz, PEF's standard offer contract contains provisions that are not consistent with the specific provisions of the Commission's regulations or the statutory policies and purposes that govern renewable energy policy. As an example, PEF imposes a methodology for calculating a RF/QF's capacity payments that not a single natural gas fired unit in its power plant inventory satisfies. Similarly, PEF demands an option to purchase a renewable energy supplier's environmental attributes without paying for that option. In addition to these price-related provisions, PEF demands a variety of the non-price terms and conditions that are unreasonable

Because the standard offer contract is inconsistent with both the specific instructions in the Commission's regulations as well as the policy provisions of the Florida statutes and Commission regulations, the Commission must either reject PEF's proposed standard offer contract or mandate required changes to the contract. In particular, the Commission should require PEF to (i) revise its methodology for calculating capacity payments; (ii) include all costs associated with the avoided unit; and (iii) adopt non-price terms and conditions that are commercially reasonable and reflect standard industry practice. With respect to this last element, in Exhibit MJM-1, PCS Phosphate has revised the standard offer contract to be more fair and equitable to both parties while still recognizing the unique circumstances of a standard offer contract. The proposed revisions are generally based on industry-standard agreements or contracts to which PEF was a party. These changes are required for the standard offer contract to comply with and serve its intended function and the policies and purposes set forth at

Section 366.91, Florida Statutes, and Rules 25-17.001 and 25-17.200, F.A.C..

Each investor-owned electric utility in Florida is required to re-file its standard offer contract every April. In order for changes that the Commission may order to PEF's 2008 standard offer contract in this docket to have any remaining relevance and vitality, the Commission should direct PEF to incorporate those changes into all subsequent versions of PEF's standard offer contract unless PEF expressly proposes and justifies any departure in a future filing.

**E. STATEMENT ON SPECIFIC ISSUES**

PCS Phosphate's witness Martin J. Marz will testify regarding the following issues:

**Issue 1: Is the standard offer contract filed by Progress Energy Florida on July 15, 2008, in compliance with Rules 25-17.200 through 25-17.310, Florida Administrative Code?**

**PCS Phosphate**: No. The standard offer contract fails to meet the purposes set forth at Rules 25-17.001 and 25-17.200 through 25-17.310, Florida Administrative Code, because it fails to (i) promote the development of renewable energy; (ii) protect the economic viability of Florida's existing renewable energy facilities; (iii) diversify the types of fuel used to generate electricity in Florida; (iv) lessen Florida's dependence on natural gas and fuel oil for the production of electricity; (v) minimize the volatility of fuel costs; (vi) encourage investment within the state; (vii) improve environmental conditions; and (viii) minimize the costs of power supply to electric utilities and their customers.

PEF's failure in this regard stems from the numerous terms and conditions in the standard offer contract that conflict with the specific requirements of the Commission's regulations. Mr. Marz' testimony and exhibits address specific terms that are

unreasonable and propose remedies based on standard industry practice and terms adopted in PEF's negotiated contracts that should have general applicability.

**Issue 2: Does the standard offer contract filed by Progress Energy Florida on July 15, 2008, contain terms and conditions that are not consistent with Rules 25-17.001 and 25-17.200 through 25-17.310, Florida Administrative Code?**

**PCS Phosphate:** Yes. PEF has proposed terms and conditions that are inconsistent with the FPSC's regulations. For example, Rule 25-17.0832(4)(e)8, F.A.C. requires PEF to establish "performance standards [that] approximate the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit over the term of the contract". However, PEF has imposed minimum performance standards that neither the avoided unit nor any similar unit in PEF's generation fleet actually satisfies. As another example, Rule 25-17.0832(4)(f)1, F.A.C. states that if a utility elects to require some form of assurance, such "[p]ayment or surety shall be refunded upon completion of the facility and demonstration that the facility can deliver the amount of capacity and energy specified in the contract". (emphasis added) Rather than accept this requirement, PEF refuses to refund any surety upon satisfaction of the specified conditions.

**Issue 3: Do the non-price terms and conditions of the PEF's standard offer contract that are not required by Florida Statutes or Commission regulations comply with the policies and purposes set forth in Section 366.91, Florida Statutes and Rules 25-17.001 and 25-17.200, Florida Administrative Code?**

**PCS Phosphate:** No. PEF has proposed contractual terms and conditions that are onerous, one-sided, commercially unreasonable and beyond the scope of the Commission's regulations. These provisions therefore fail to comply with the policies and purposes set forth at Section 366.91, Florida Statutes, and Rules 25-17.001 and 25-17.200, Florida Administrative Code.

**Issue 4: Does the standard offer contract’s methodology for determining an RF/QF’s capacity payments comply with the requirements of Rules 25-17.200 through 25-17.310, Florida Administrative Code?**

**PCS Phosphate**: No. First, PEF failed to include all appropriate cost components in its calculation of the cost of the avoided unit. Second, PEF’s methodology for calculating an RF/QF’s capacity payment is (i) inconsistent with the characteristics of the avoided unit and its existing gas-fired units and (ii) fails to acknowledge the nature of renewable generation.

**Issue 5: Should Docket 070235-EQ , Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc., be closed?**

**PCS Phosphate**: Subject to the acceptance into the record of this proceeding of the Direct Testimony of Martin J. Marz , as well as the testimonies of David Gammon, if requested by PEF, yes

**Issue 6: Should this docket be closed?**

**PCS Phosphate**: This docket should be closed following Commission review and acceptance of all standard offer contract revisions required by the Commission’s order in this docket.

**F. STIPULATED ISSUES**

None.

**G. PENDING MOTIONS**

None.

**H. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY**



None.

Notice of Intent to Use Confidential Documents at Hearing:

PCS Phosphate may utilize the following confidential documents at hearing:

- a. Tolling Agreement between Vandolah Power Company LLC and PEF, dated August 29, 2007;
- b. Energy Purchase and Sale Agreement between BG&E of Florida LLC and PEF, dated July 25, 2007;
- c. Energy Purchase and Sale Agreement #2 between BG&E of Florida LLC and PEF, dated December 7, 2007;

PCS Phosphate may identify additional documents based on the responses to its discovery requests received between now and the hearing date, or in response to PEF witness David Gammon's testimony at the hearing.

**I. OBJECTIONS TO QUALIFICATIONS OF WITNESS AS EXPERT**

PCS Phosphate believes this question is not applicable, as it understands that PEF's sole witness, David Gammon, is only testifying as a fact witness.

**J. REQUIREMENTS OF ORDER ESTABLISHING PROCEDURE**

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

Respectfully submitted the 30<sup>th</sup> day of March, 2009.

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

*s/ James W. Brew*

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*d/b/a/ PCS Phosphate – White Springs*

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished by

Electronic Mail and/or U.S. Mail this 30th day of March 2009, to the following:

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*s/ James W. Brew*

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