BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy Florida, Inc. for Approval of Standard Offer Contract for the Purchase of Firm Capacity and Energy from a Renewable Energy Producer or Qualifying Facility Less Than 10 kW Tariff	DOCKET NO. 070235-EQ **Filed: August 29, 2007**

PROGRESS ENERGY FLORIDA, INC.'S MOTION TO STRIKE PORTIONS OF PCS PHOSPHATE'S PETITION TO INTERVENE AND PROTEST OF PROPOSED AGENCY ACTION

Pursuant to Rule 28-106.204, Florida Administrative Code, Progress Energy Florida, Inc. ("PEF") files this Motion to Strike portions of the petition filed in this docket by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("PCS Phosphate") and states:

1. On July 2, 2007, PCS Phosphate filed a Petition to Intervene, Protest of Proposed Agency Action and Petition for Formal Administrative Hearing. The petition protests the Proposed Agency Action of the Florida Public Service Commission ("Commission" or "PSC") approving PEF's Standard Offer Contract for energy and capacity purchased from renewable energy and small qualifying facilities.

2. Much of PCS Phosphate's petition, however, is directed to the Commission's policy on renewable standard offer contracts, as reflected in Commission Rules 25-17.200 through 25-17.310, Florida Administrative Code, rather than to disputed issues in the Commission's Proposed Agency Action Order approving the Standard Offer Contract. The Commission Staff has recognized that such broad-based challenges to Commission policy are inappropriate in this docket. *See* Staff Recommendation on Motion for More Definite Statement, or in the Alternative, Motion to Dismiss, Docket Nos. 070232-EQ, 070234-EQ, 070235-EQ, and 070236-EQ (August 16, 2007), at pp. 7-8.

3. The Staff Recommendation, which was adopted by the Commission at the August 28, 2007, Agenda Conference, concerns a petition filed by the Florida Industrial Cogeneration Association ("FICA") in this docket and in the dockets concerning Standard Offer Contracts of the other Investor-Owned Utilities ("IOUs"). The FICA petition, like PCS Phosphate's, challenges the Commission's Proposed Agency Action Orders approving the Standard Offer Contracts. The Staff Recommendation states:

> Staff also disagrees with FICA's characterization of these proceedings. Several of the "disputed issues of fact," "disputed issues of law," and "statement of ultimate facts" contained in FICA's Petition seem to generally take issue with the Commission's policy on renewable standard offer contracts as reflected in Commission Rules 25-17.200 through 25-17.310, Florida Administrative Code, rather than identify disputed issues contained in the Commission's PAA Orders. [footnote omitted] Further, included under the "Statement of Substantial Interests" portion of its Petition, FICA alleges that "one of the purposes of these proceedings is to implement legislative directives that require the promotion of renewable energy resources such as waste heat." FICA Petition at page 2.
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> The Orders that FICA has protested specifically find that Gulf, FPL, PEF, and TECO's Standard Offer Contracts and associated tariffs are in compliance with Rules 25-17.200 through 2-17.310, Florida Administrative Code. These rules, which became effective on May 8, 2007, implement Section 366.91, Florida Statutes, which addresses renewable energy. The Commission adopted these rules after a lengthy rulemaking proceeding which included numerous rule development workshops, several Commission Agenda Conferences, and a rulemaking hearing. [footnote omitted] FICA participated in the rule proceeding. The arguments raised by FICA with respect to whether the approval contracts will promote renewable energy as required by Florida law, or whether they meet the intent of the Florida Legislature, are not appropriate for this proceeding which was designed to address the compliance of the contracts with the requirements of the rules.

Staff Recommendation at pp. 7-8.

4. The PCS Phosphate petition also raises many issues that are inappropriate for this proceeding. For example, much of PCS Phosphate's petition attacks PEF's 2007 Ten-Year Site Plan ("TYSP"), which was filed in accordance with Rule 25-22.071, Florida Administrative Code, on April 1 of this year. A challenge to the Commission's approval of PEF's Standard

Offer Contract should not encompass challenges to PEF's TYSP. Although IOUs are required to continuously offer standard contracts based on a portfolio approach of utility fossil-fueled units that are identified in the utility's annual TYSP, nothing in the Commission's rules gives a renewable energy generator the authority to attack a utility's choice of unit types in its TYSP in the course of challenging Proposed Agency Action on a Standard Offer Contract. That is precisely what PCS Phosphate attempts to do in its petition.

5. Moreover, like FICA, PCS Phosphate also raises issues concerning whether PEF's Standard Offer Contract will promote renewable energy production. These allegations go to the Commission's policy decisions in its rules, not to whether the Standard Offer Contract complies with the rules.

6. Thus, the following allegations of PCS Phosphate's petition are beyond the scope of this proceeding and should be stricken:

General Allegations

- "The 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." (¶ 6).

- "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." (¶ 7).

Disputed Issues of Material Fact and Law

- "*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." (¶ 9).

- "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 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)." (¶ 10).

- "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." (¶ 11).

- "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 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." (¶ 12).

- "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.'" (¶ 14).

- [Concerning contractual terms] "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.' [footnote omitted] Thus, to address its statutory obligation to promote the development of renewable energy, the Commission needs to require PEF to modify the following terms: . . . " (¶ 16).

Ultimate Facts Alleged

- "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." (¶ 17).

- "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." (¶ 18).

- "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." (¶ 19).

- "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." (¶ 20).

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

7. For the reasons expressed, PEF respectfully requests that the Commission grant this Motion to Strike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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