

REDACTED

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 050001-EI

**In re: Fuel and Purchased Power Cost Recovery Clause
with Generating Performance Factor**

Progress Energy Florida, Inc.'s Petition for Approval of
Waterborne Transportation Service Contracts

EXHIBIT "C"

**Dry Bulk Fuel Transportation and Delivery Agreement
Between Progress Fuels Corporation and AEP MEMCO, LLC**

(REDACTED VERSION)

DOCUMENT NUMBER-DATE

06466 JUL -8 13

FPSC-COMMISSION CLERK

CONFIDENTIAL

**DRY BULK FUEL
TRANSPORTATION AND DELIVERY AGREEMENT
BETWEEN
PROGRESS FUELS CORPORATION
AND
AEP MEMCO LLC**

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DBF TRANSPORTATION AND DELIVERY AGREEMENT

This AGREEMENT (hereinafter the "Agreement") is made and entered into and effective as of the ____ day of _____ 2004, between PROGRESS FUELS CORPORATION, a Florida corporation, One Progress Plaza, St. Petersburg, Florida 33701, (hereinafter "PFC") and AEP MEMCO LLC, a Delaware limited liability company, One Riverside Plaza, Columbus, Ohio 43215, (hereinafter "MEMCO").

WHEREAS, PFC has purchased and will continue to purchase Dry Bulk Fuel (hereinafter "DBF") for use in electric generating units owned and operated by Progress Energy Florida (hereinafter "PEF") near Red Level, Citrus County, Florida, (the "Generating Units") and PFC is in need of transportation services to move such DBF from certain origin docks on the Inland Waterways System to the New Orleans, Louisiana, area;

WHEREAS, MEMCO is a contract carrier on the Inland Waterways System and owns or leases marine equipment capable of moving PFC's DBF from the origin docks to the New Orleans, Louisiana, area for transfer to and trans-shipment across the Gulf of Mexico by other carriers.

WITNESSETH:

For and in consideration of mutual covenants, provisions, benefits and agreements hereinafter made and contained and other good and valuable consideration flowing between the parties hereto, MEMCO and PFC do hereby covenant and agree as follows:

ARTICLE I. Definitions

The following definitions are used herein:

A. "origin docks" shall mean docks or terminals located at various Mile Points on the Kanawha, Big Sandy and Ohio Rivers as specified in Article V or other docks or terminals on the Inland Waterways System mutually acceptable to the parties hereto.

B. "transfer point" shall mean the International Marine Terminals Partnership transfer facility, Mile 57, Lower Mississippi River, or other mutually agreeable transfer terminal on the Mississippi River between Mile 30 AHP and Mile 230 AHP, Baton Rouge.

C. The term "ton" or "net ton" as used herein shall mean a ton of 2,000 pounds of avoirdupois weight.

D. The term "DBF" shall mean any dry bulk fuel, such as bituminous coal, sub-bituminous coal, petcoke, or synfuel.

ARTICLE II. Term

This Agreement will be for three (3) years and shall commence January 1, 2005 ("Commencement Date") and shall expire December 31, 2007. This Agreement shall remain in full force and effect with respect to any cargo tendered prior to, but not delivered to the transfer point, before the termination date of this Agreement.

ARTICLE III. Quantity

The Minimum Quantity of DBF to be shipped hereunder will be five hundred thousand (500,000) net tons per calendar year beginning on the Commencement Date (a "Contract Year"). The Maximum Quantity of DBF that PFC shall have the right to ship and that MEMCO will be obligated to transport during any Contract Year is two million, three-hundred thousand (2,300,000) tons. PFC shall provide MEMCO written notice of contract year tonnage requirements at least ninety (90) days prior to the start of a new contract year, which amount will be between the Minimum Quantity and Maximum Quantity.

ARTICLE IV. Tender and Delivery

A. PFC will notify MEMCO in writing (fax or letter) of the monthly scheduled tonnage at each origin dock thirty (30) days prior to the placement month. Each delivery schedule shall specify the tonnages to be tendered at each origin dock during that month and the approximate weekly loading requirements at each origin dock.

B. All tenders of DBF by PFC pursuant to this Agreement shall be made in approximately equal monthly increments or as otherwise agreed by the parties hereto, but in any event in increments of an average of a least 1,700 net tons per river barge. PFC reserves the right to alter monthly ratable schedules in order to satisfy inventory or operating conditions as required by a maximum of 15% of the total annual tonnage for any applicable Contract Year; provided that, notwithstanding the foregoing, the total annual tonnage that MEMCO is obligated to transport during any Contract Year will not exceed the Maximum Quantity.

C. For each tender of DBF hereunder, PFC shall provide a river barge manifest to MEMCO showing the barge weight determined in accordance with Article IX. The manifest shall also show the name or number of the barge, the weight of the DBF loaded, barge draft before and after loading and the date and time each barge commenced loading and finished loading.

D. MEMCO shall furnish marine equipment which shall be suitable and fit for the purposes contemplated hereunder, and in particular, MEMCO shall furnish a sufficient number of river barges to load PFC's DBF when it is tendered to MEMCO as provided in this Agreement and sufficient motive power to move those barges in accordance with the reasonable loading schedules provided by PFC. MEMCO shall provide, operate and maintain the marine equipment used hereunder in a good and seaworthy condition, working order and repair, and MEMCO shall cause the marine transportation equipment to be operated in a manner considered safe by prudent operators of river marine transportation equipment. Barges delivered to origin docks

shall be free of ice, water, metal and prior loading cargo material. Barges delivered to destination dock(s) shall be free of standing water in the cargo area. In addition, once a barge is loaded, any water in the cargo box related to rain water or a condition of the DBF and not due to the fault of MEMCO shall be the responsibility of PFC if, and only if, removal of said water is required to facilitate unloading.

E. MEMCO shall coordinate the delivery of empty river barges in accordance with a mutually agreeable schedule with PFC and the origin dock(s) and shall provide reasonable advance notice of arrival as required by each origin dock or the transfer point. Attachment A outlines the specifics of our agreement on loading requirements for Kanawha and Big Sandy docks.

F. Delivery of DBF to and the loading of the DBF in river barges at the origin docks shall be the sole responsibility of PFC and shall be done by PFC at its sole expense. PFC shall tender DBF only at origin docks having loading facilities capable of loading a minimum of three (3) 1,700net ton river barges per day without unusual shifting or loading delay. PFC shall require its DBF suppliers or others loading DBF on its behalf into MEMCO's river barges to be governed by MEMCO's instructions regarding the height of the load, weight of cargo, draft of the river barge and other instructions which MEMCO may deem necessary for safe transportation where variable waterways conditions and anticipated weather conditions make such precautions desirable. PFC shall also require its DBF suppliers or others loading DBF on its behalf into MEMCO's river barges to distribute the DBF in the barges so as to insure an even draft. If not so loaded, MEMCO reserves the right to refuse to accept the DBF, and PFC shall in that event require the DBF suppliers and others loading DBF on its behalf into MEMCO's river barges to make such redistribution at PFC's own expense as will meet MEMCO's requirements.

G. PFC warrants that origin docks shall provide safe berths with a minimum of nine feet (9') of draft.

H. The DBF to be transported hereunder shall be unloaded at the transfer point at no expense to MEMCO except for normal fleeting and shifting charges.

I. MEMCO will use open hopper barges. If barges with covers are placed by MEMCO for loading, for MEMCO's convenience, all charges to handle covers at loading and unloading shall be for MEMCO's account.

J. To ensure that PFC maintains adequate control over quality, weights and other important parameters, no transfer of DBF between barges will be made without PFC's prior approval. PFC hereby grants MEMCO this approval for all routine transfers, but retains the option of withdrawing this approval as necessary to accommodate special circumstances.

K. PFC reserves the right to request that DBF shipments be expedited at no additional cost during critically low inventory situations.

ARTICLE V. Freight Rates

During the term of this Agreement, PFC agrees to pay MEMCO the following rates per net ton for the transportation and delivery of DBF from the following origin docks to the transfer point:

A. For the first 201,000 tons (Estimated Carry Over Tons) during contract year 2005 (Actual Carry Over Tons will be established after December 31, 2004):

<u>Rates</u>	<u>Origin</u>	<u>Milepoint</u>
	<u>Kanawha River</u>	
	KRT Quincy, Marmet Pool	
	London Pool	
	<u>Big Sandy River</u>	
	All docks	

1
2
3

<u>Rates</u>	<u>Origin</u>	<u>Milepoint</u>	
	<u>Ohio River</u>		
[REDACTED]	Ceredo, WV, KRT Ceredo River Dock		1
[REDACTED]	ORC Huntington	306.5	2
[REDACTED]	Transcontinental Terminals	406.0	3
[REDACTED]	Louisville & Jefferson Riverport	618.5	4
	<u>Upper Mississippi</u>		
[REDACTED]	Cahokia	175.0	5

The above rates will be escalated, if required, in accordance with Article V of the contract between the parties dated November 1, 2001, as amended.

B. For all tons in excess of the Carry Over Tons:

<u>Rates</u>	<u>Origin</u>	<u>Milepoint</u>	
	<u>Kanawha River</u>		
[REDACTED]	All docks		6
	<u>Big Sandy River</u>		
[REDACTED]	All docks		7
	<u>Ohio River</u>		
[REDACTED]	ORC Huntington	306.5	8
[REDACTED]	KRT Ceredo	315.0	9
[REDACTED]	Transcontinental Terminals	406.0	10
[REDACTED]	Louisville & Jefferson Riverport	618.5	11
	<u>Upper Mississippi</u>		
[REDACTED]	Cora	98.5	12
[REDACTED]	Cahokia	175.0	13
[REDACTED]	Keokuk	371.0	14

PFC may from time to time purchase DBF for shipment by MEMCO at origin docks other than those for which Base Freight Rates are specified above. In that event, additional Base Freight Rates shall be provided by MEMCO to PFC which reasonably relate to the Base Freight Rates herein, taking into consideration distances, operating conditions, loading conditions, and fuel escalation or de-escalation as provided herein.

The freight rates set forth in the table above are composed of a fixed component and a fuel component. The fixed component charge represents all charges other than fuel. This

component of the rate shall remain fixed for the term of the contract. Such charges shall include, but not be limited to, all port charges, fleeting charges, existing taxes and any other charges associated with the transportation of DBF. The fuel component of the rate shall be subject to a quarterly adjustment with the quarter prior to the effective date of the contract serving as the base period.

PFC and MEMCO also agree the initial base price for raw fuel included in the freight rates set forth in the table above is [REDACTED] per gallon, excluding any applicable taxes. The freight rate will be subject to fuel escalation/de-escalation, which will be calculated on a quarterly basis beginning January 1, 2005 and based on the prior quarter's average fuel price on Friday of each week. In the event the raw fuel price rises above [REDACTED] per gallon, the freight rate will be adjusted by taking the percentage change in fuel times twenty five percent (25%) of the base rate. In no case shall the adjusted price go below the initial base rate set forth in the table above.

The fuel price used for escalation/de-escalation will be the average price per gallon of #2 diesel fuel as posted by Opis Gulf Baton Rouge, Louisiana, or if MEMCO has changed its principal supplier of fuel, such other comparable unaffiliated third-party fuel supplier that posts its price weekly (each Friday, or if Friday is not a business day, the closest business day preceding Friday) for the quarter preceding the period to be adjusted.

ARTICLE VI. Governmental Impositions

The parties also recognize that, during the continuance of this Agreement, legislative or regulatory bodies or the courts may adopt laws, regulations, or policies which impact PFC's costs and which make it impossible or economically impractical for PFC to utilize in PEF's Generating Units the existing or like kind and quality of DBF which thereafter would be transported hereunder. If, as a result of the increased costs associated with the adoption of such laws, regulations, or policies, PFC decides that it will be impossible or economically

impractical for PFC to utilize in PEF's Generating Units DBF which would be transported hereunder, PFC shall so notify MEMCO and thereupon PFC and MEMCO shall promptly consider whether corrective actions can be taken in the transportation and utilization of the DBF at PEF's Generating Units; and if, in PFC's judgment, such actions will, without unreasonable expense to PFC, make it impossible and economically impractical for PFC to so utilize DBF which thereafter would be transported hereunder without violating any applicable law, regulation or policy, PFC shall have the right, upon six (6) month's prior notice to MEMCO, to terminate this Agreement without further obligation hereunder on the part of either party; provided, however, that, if the impracticality of PFC's utilizing the DBF is only on economical grounds, MEMCO may, at its option, prevent such termination by agreeing to reimburse PFC for such expense to the extent that PFC deems such expense to be reasonable.

The parties recognize that, during the continuance of this Agreement, legislative or regulatory bodies or the courts may adopt laws, regulations, or policies which impact MEMCO's transportation cost and which will make it impossible or economically impractical for MEMCO to continue delivery hereunder. If, as a result of the increased costs associated with the adoption of such laws, regulations, or policies, MEMCO decides that it will be impossible or economically impractical for MEMCO to continue delivery hereunder, MEMCO shall so notify PFC and thereupon MEMCO and PFC shall promptly consider whether corrective actions can be taken in the transportation of the DBF for PEF's Generating Units; and if, in MEMCO's judgment, such actions will, without unreasonable expense to MEMCO, make it impossible and economically impractical for MEMCO to continue to deliver DBF hereunder without violating any applicable law, regulation, policy or restriction, MEMCO shall have the right, upon six (6) month's prior notice to PFC, to terminate this Agreement without further obligation hereunder on the part of either party; provided, however, that if the impracticality of MEMCO's continuing to transport

DBF hereunder is only on economical grounds, PFC may, at its option, prevent such termination by agreeing to reimburse MEMCO for such expense to the extent that MEMCO deems such expense to be unreasonable.

ARTICLE VII. Free Time and Demurrage

A. During each Contract Year, PFC will have five (5) days all purpose free time, including Saturdays and Sundays but not holidays, that occur during free time to load and unload each barge. Laytime for the purpose of free time and demurrage shall commence the first 7:00 a.m. following placement, actual or constructive, for the purpose of loading or unloading, and shall end the first 7:00 a.m. following completion of loading or unloading. Loading or unloading shall be deemed as utilizing one full day notwithstanding that said barge had actually been loaded or unloaded and has been released to MEMCO in less than a 24 hour period. Once free time expires, all days are invoiced per this Agreement.

B. At the close of each calendar quarter, demurrage will be calculated for the barges unloaded during such quarter and an invoice for demurrage, if any, will be provided to PFC.

C. Barges will earn one credit for each day of free time not used. Credits will offset demurrage days for barges not loaded and unloaded within the free time. The demurrage account will be settled quarterly: March 31, June 30, September 30 and December 31 of this Agreement. MEMCO will prepare the calculation within thirty (30) days after the end of each quarter and shall invoice PFC for demurrage. Debits will be billed at [REDACTED] per debit. Unused credits shall not be carried over from one quarter to the next.

D. PFC shall pay demurrage invoices within thirty (30) days after the receipt thereof.

ARTICLE VIII. Dead Freight

Minimum invoice tonnage is 1,400 net tons per each rake barge and 1,600 net tons per each box barge unless lower tonnage is requested by MEMCO or force majeure conditions necessitate loading a barge (or barges) to less tonnage than stated herein. Origin docks will load to drafts requested by MEMCO. MEMCO will provide adequate lead time when advising PFC and origin docks of changes in requested drafts.

ARTICLE IX. Payment

On or about the first day and fifteenth day of each calendar month during the term hereof, MEMCO will invoice PFC for all river barge unloadings at destination docks during the preceding fifteen day period. Payment of the invoice shall be due thirty (30) days after the receipt thereof. Freight is deemed earned upon loading, cargo lost or not. Weights of the DBF transported shall be based upon the river barge manifest which will be delivered to MEMCO by PFC upon loading. Manifest weights shall be determined at the origin docks by railroad weights or by belt scales, when available, which shall be calibrated in accordance with ASTM Standards. When belt scales are not available or available belt scales are inoperative by reason of breakdown, the weight of the DBF in a barge shall be determined by the railcar number and official rail weight for each car dumped into each barge, if applicable; the truck number and scale weight for each truck dumped into each barge, if applicable; or by an independent gauging company selected by PFC and at PFC's sole expense; or by draft measurements of the barge to be taken before and after loading, by a person selected by PFC and at PFC's sole expense, with tonnages to be calculated in accordance with the barge calibration tables.

ARTICLE X. Vessel Position Reports/ETA

For each weekday during the term of this Agreement, MEMCO shall provide PFC, as requested by PFC (via telephone, fax or other mutually agreed methods) the location of the marine equipment in service under this agreement or at MEMCO's option, provide PFC with access to internet websites and/or databases that contain such information; provided, however, that PFC shall have no authority over the operation of MEMCO's river equipment. In addition, MEMCO shall notify the transfer point superintendent or his designated agent of the expected date of arrival as each tow or group of river barges departs the New Orleans, Louisiana, harbor.

ARTICLE XI. Insurance

A. Insurance coverage. MEMCO warrants that it will at its cost be insured by responsible insurance carriers for risks assumed hereunder by MEMCO or have established a program of self-insurance. Upon request, MEMCO shall provide PFC with evidence of such insurance. In addition, such policies shall be endorsed to provide the following:

1. A waiver of subrogation against PFC.
2. A thirty (30) day notice of material changes or cancellation to be forwarded to PFC, except ten (10) days notice shall be given for non-payment of premium.

B. MEMCO's Liability. MEMCO shall be liable at law for any loss or damage to the Cargo, except as herein provided:

MEMCO shall not be liable for any loss of, damage to, or expense in connection with the Cargo in an amount exceeding \$500.00 per ton or the agreed value, whichever is less.

Notwithstanding anything herein to the contrary, MEMCO only assumes liability for Cargo safely aboard a barge.

Subject to the limitations on recovery set forth in this Agreement, MEMCO assumes liability for general average, salvage charges and physical damage to or loss of the Cargo subject

to the terms, conditions and limitations of the MEMCO's cargo insurance policy; provided, however, that MEMCO shall not be liable for delay in the delivery of the Cargo, or for loss of, damage to, or any expense in connection therewith, caused directly or indirectly by or resulting from or arising out of: shrinkage, expansion, or other change due to natural causes; any vice or defect in the Cargo unless caused by the barge being stranded, sunk, burnt or in collision; the act or default of PFC or consignee; the physical act of loading or unloading, when not performed by MEMCO; the authority of law, including without limitation, quarantine and embargo; radiation, nuclear reaction or contamination; or acts of the public enemy hostilities or warlike operations, whether or not there be a declaration of war.

ARTICLE XII. Event of Default and Damages

If an Event of Default (as hereafter defined) occurs with respect to a party (the "Defaulting Party") at any time during the term of this Agreement, the other party (the "Non-Defaulting Party") may, in its sole discretion, do any or all of the following: (i) establish a date (which date shall be no earlier than the date that such notice is given to the Defaulting Party) ("Early Termination Date") on which this Agreement shall terminate, (ii) withhold any payments (except payment for services rendered), (iii) suspend performance under this Agreement and/or (iv) exercise such other remedies as may be provided in this Agreement or by applicable law. An event of default with respect to any party ("Event of Default") shall mean any of the following: (i) the failure of either party to make when due, any payment required hereunder if such failure is not remedied within seven business days after notice of such failure is given to the Defaulting Party by the Non-Defaulting Party; (ii) the failure of either party to comply with any or all of its other respective obligations in good faith as herein set forth and such noncompliance is not cured within thirty calendar days after notice thereof to defaulting party; (iii) failure to provide adequate security for or assurance of its ability to perform its further obligations under this Agreement within 72 hours of a

reasonable written request by the Non-Defaulting Party; (iv) either party (a) filing a petition in bankruptcy, (b) having such a petition filed against it, (c) becoming otherwise insolvent or unable to pay its debts as they become due; or (v) the failure of a party's guarantor, if any, to perform any covenant set forth in its guaranty, or such guaranty shall expire or be terminated or shall cease to guarantee the obligations of such party hereunder, or such guarantor shall become subject to any of the events specified in (iv) (a), (b) or (c).

ARTICLE XIII. Arbitration

In the event there shall be any dispute arising out of or under this Agreement or concerning its interpretation, enforcement or termination (either actual or threatened) or in the event the parties are unable to reach mutual agreement as provided in any part hereof, such dispute shall be decided by arbitration conducted pursuant to and in accordance with the rules of the American Arbitration Association. All such arbitration proceedings shall be held in the city of Tampa, Florida, or another mutually agreeable location.

ARTICLE XIV. Force Majeure

The term "force majeure" means any event which is beyond the reasonable control of and occurs without fault or negligence of the party asserting the force majeure, and which wholly or partly prevents the performance of any of the duties and responsibilities of the party asserting the force majeure (other than obligations of such party to pay or expend moneys for or in connection with the performance of such party's duties and responsibilities under this Agreement), including, but not limited to, an act of God or an act of the public enemy; fire; flood; low water; ice; explosion or other serious casualty; unusually severe weather; war (whether declared or not); warlike circumstances; mobilization; revolution; riot or civil commotion; legal intervention; regulations or order of governmental authority; strike; lockout or other labor disputes shall be solely at the

discretion of the party having the difficulty; breakdowns of or damage to plant, equipment or facilities; or outs, outages and downtime.

The failure, as a result of force majeure as provided herein, of any supplier of PFC to deliver DBF to it pursuant to contracts or commitments between the supplier and PFC shall constitute an event of force majeure assertable by PFC against MEMCO. The failure of PEF, as a result of an electric generating unit outage or an environmental regulatory requirement at the Generating Units, which is beyond the reasonable control of PEF and occurs without fault or negligence on the part of PEF, to use or accept DBF to be supplied by PFC and delivered by MEMCO under this Agreement shall constitute an event of force majeure assertable by PFC against MEMCO.

If because of force majeure either PFC or MEMCO is unable to carry out its obligations to each other under this Agreement (other than obligations of such party to pay or expend monies for or in connection with the performance of such party's duties and responsibilities under this Agreement), and if such party gives to the other written notice of such force majeure within three (3) business days after the occurrence thereof, then the obligations of both parties under this Agreement shall be totally excused to the extent, but only to the extent, made necessary by such force majeure and only during its continuance, provided that the effect of such force majeure shall be eliminated insofar as possible with all reasonable dispatch, and neither party shall be liable to the other for loss or damage caused by such force majeure.

For the purposes of demurrage, calculation only and without prejudice to the positions or contentions of either party as to what type of an event constitutes a valid force majeure within the meaning of this Agreement, it is understood and agreed that force majeure resulting from breakdowns or damage to plant equipment or facilities, outages, and downtime, whether foreseeable or not, must exceed twenty-four (24) hours in duration or downtime before it can be claimed as a force majeure for demurrage calculation purposes. However, if an event of force

majeure occurs and does exceed the twenty-four (24) hour limit, for demurrage calculation purposes, credit will be taken back to the first hour of downtime. If a force majeure situation continues beyond one hundred eighty (180) days, either party shall have the right to terminate this Agreement.

ARTICLE XV. Attorneys' Fees; Notices

In the event either party should default under the terms hereof or fail to perform any of the terms and conditions required under the terms hereof, each party shall pay its own attorneys fees and expenses.

All notices under this Agreement shall be in writing, and if to PFC shall be properly given if delivered in person or sent by fax No. 727/824-6601 to its Vice President, CSX/Barge Coal Procurement, or sent by registered or certified mail addressed as follows:

Mr. Al Pitcher
Vice President-Coal Procurement
Progress Fuels Corporation
One Progress Plaza
Post Office Box 15208
St. Petersburg, Florida 33733

with a copy to:

Vice President, Legal Department
Progress Energy
410 S. Wilmington Street
Raleigh, NC 27609

and if to MEMCO shall be properly given if delivered in person or sent by fax No. 614/324-6899 to its President, or sent by registered or certified mail addressed as follows:

Mr. Mark Knoy
President
Memco Barge Line
Suite 600
16090 Swingley Ridge Road
Chesterfield, Missouri 63017

with a copy to:

Mr. John Crespo
Senior Counsel
AEP MEMCO LLC
One Riverside Plaza
Columbus, Ohio 43215

or such other address as either party may designate in writing to the other.

ARTICLE XVI. Savings Clause

If any paragraph or provision of this Agreement shall be declared invalid by any court of competent jurisdiction, such decree shall not affect any other paragraph or provision of this Agreement and each shall remain in full force and effect.

ARTICLE XVII. Corporate Authority

Each party represents to the other that it has full corporate authority and the necessary approval to enter into and perform this Agreement in accordance with its terms.

ARTICLE XVIII. Indemnity

MEMCO agrees to indemnify, defend and hold PFC harmless from any and all suits, actions, causes of action, and claims of action of whatever character which may be brought or made against, including fees and expenses of counsel incurred by PFC, as a result, directly or indirectly, of MEMCO's (or its agents', servants' or employees') breach of this Agreement. PFC agrees to indemnify, defend and hold MEMCO and/or the owners of vessels employed by it in the performance of DBF transportation hereunder, harmless from any and all suits, actions, causes of action and claims of action of whatever character which may be brought or made against, including fees and expense of counsel incurred by, MEMCO, and/or said owners of vessels as a

result of PFC's (or its agents', servants' or employees') breach of this Agreement. Neither party hereby assumes responsibility for damage or injury to employees of the other party.

ARTICLE XIX. Assignment

Neither party may assign its rights under this Agreement without the other party's written approval. However, notwithstanding the above, both parties may assign their respective rights, duties, obligations and interests in and to this Agreement to a subsidiary, affiliate, or successor in interest with equal or greater creditworthiness as the assigning party and that is wholly-owned or controlled by American Electric Power Company, Inc. or Progress Energy, Inc., as appropriate and in such case the assigning party or parties shall be relieved of its responsibilities and obligations under this Agreement.

ARTICLE XX. Captions

The captions in this Agreement are for the convenience of reference only and shall not be defined or limited to any of the terms or provisions hereof.

ARTICLE XXI. Confidentiality

Each party hereto recognizes that this Agreement contains confidential commercial information, the public disclosure of all or any part of which could be damaging to the parties hereto. Accordingly, each party hereto agrees not to disclose any of the terms or provisions of this Agreement to any person or persons not a part hereto, except for affiliated corporations or unincorporated divisions of the parties hereto, without the prior consent in writing thereto of the other party hereto, which consent shall not be unreasonably withheld, except to the extent such party is legally compelled to make such disclosure pursuant to applicable law or to the extent such disclosure is reasonably necessary in connection with any regulatory, administrative or other legal

proceeding in which such party, or any such affiliated corporation or unincorporated division, is involved. When disclosure is made within the terms of the above mentioned exceptions, such disclosure shall be made only to the extent reasonably necessary. It is further understood and agreed that whenever any such information is disclosed by any party hereto in accordance with the above mentioned exceptions, such party will advise each person to whom disclosure is made of the confidential nature of the information disclosed and, except for routine regulatory reporting by PFC, provide written notice of such disclosure, in advance thereof, if possible, to the other party to this Agreement.

ARTICLE XXII. Applicable Law

The laws of the State of Florida shall govern the validity, construction and performance of this Agreement and all controversies and claims arising thereunder, but notwithstanding anything to the contrary in this Agreement, general maritime law of the United States shall in each applicable instance govern the construction of this Agreement and the performance of the parties hereto to the extent applicable.

ARTICLE XXIII. Entire Agreement

This instrument embodies the entire agreement and understanding between PFC and MEMCO as of the date of commencement of performance of this Agreement, and there are no agreements, understandings, conditions, warranties or representation, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein or superseded hereby as of the date of commencement of performance of this Agreement. This Agreement may be modified only in writing signed by both parties.

ARTICLE XXIV. No Waiver of Performance

The failure of either party to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of such performance of any such term, covenant or condition, but each party's obligation with respect to such future performance shall remain in full force and effect.

ARTICLE XXV. Environment, Health, and Safety

A. Compliance and Indemnification. MEMCO shall comply with all applicable EHS laws and shall indemnify PFC against any EHS claims and costs arising from MEMCO's performance under this Agreement.

B. Audits. PFC may audit MEMCO's EHS compliance. Within thirty (30) days of PFC's request, MEMCO shall deliver to PFC (1) all records regarding (a) MEMCO's actual or alleged violations of EHS laws and (b) EHS claims asserted against MEMCO, in each case in the five year period preceding PFC's request and (2) any executed consent form(s) necessary for PFC to obtain from regulatory agencies and other third parties information regarding MEMCO's EHS compliance.

C. Definitions (as used in this Article XXV).

1. Claim means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.

2. EHS means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.

3. Indemnify means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.

4. Law means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.

5. Manage or management, with respect to any material, means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

ARTICLE XXVI. Counterparts

This Agreement shall be executed in two or more counterparts, each of which shall be deemed an original and both of which when taken together shall constitute one and the same instrument.

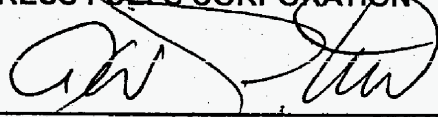
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate.

WITNESS:

Roberta G. Ott

Mary J. Kuderick

PROGRESS FUELS CORPORATION

By 

A. W. Pitcher
Vice President—Coal Procurement

Date Executed: 12/21/04

WITNESS:

Robert M. Bloch

Susanne C. Cooney

AEP MEMCO LLC

By 

Mark K. Knoy, President

Date Executed: 12/30/05

ATTACHMENT A
Page 1 of 2

Loading Requirements By Origin River

Big Sandy

1. Barges shall be placed ratably throughout the week of delivery. Assuming Monday delivery, a week shall be defined as Monday through Friday. Please see Attachment B. This format shall be used to define the number of barges to be placed on a given day.
2. In the event MEMCO, due to operational problems, is unable to deliver barges on the first and/or second working day of the week, the schedule shall be adjusted to include Saturday and/or Sunday in that work week.
3. If first delivery day is later than Wednesday of that week, then PFC shall load as many barges as possible the balance of the week. Barges loaded shall not be less than the normal distribution for that week and the balance must be rescheduled at a mutually agreeable time.
4. Any barges arriving prior to the delivery week in which they are scheduled shall not go on placement until the day scheduled as defined in number one. That is to say if the schedule for a week is 15 or 3 per day and 6 arrive on Saturday, then 3 would be placed on Monday and 3 on Tuesday.
5. Constructive Placement of barges shall be at the Ceredo's fleet on the day scheduled. In the event the barge(s) cannot be shifted to the dock and the dock has requested the barge(s), then MEMCO must be notified immediately to discuss placement.
6. MEMCO must be notified of all cancellations in no less than 5 working days prior to the week of delivery. This is intended to cover minor changes or cancellations.
7. All other conditions as described in Articles III and IV of the master contract shall remain in effect.

ATTACHMENT A
Page 2 of 2

Loading Requirements By Origin River

Kanawha River

1. Barges shall be placed ratably throughout the week of delivery. Assuming Monday delivery, a week shall be defined as Monday through Friday. Please see Attachment B. This format shall be used to define the number of barges to be placed on a given day.
2. All barges shall be placed upon arrival at the loading facility unless the facility is unable to take barges. In that event, MEMCO shall have the right to constructively place barges at nearby fleeting area. This is intended to address situations that arise because the loading facility's fleet is full.
3. PFC must advise MEMCO of any cancellations 5 working days prior to the delivery week.
4. All other conditions as described in Articles III and IV in the master contract shall remain in effect.

Ceredo—Rail Transfer

1. All changes and/or cancellations must be received by MEMCO a minimum of 5 working days prior to the train scheduled arrival date.
2. Barges arriving early shall be placed on the train scheduled arrival date regardless of the barges actual arrival at Ceredo. In the event the train is delayed within the 5 day notification period stated in #1, MEMCO shall make best efforts to utilize the barges on placement. Note: Barges shall remain on placement until an alternative is found and those days accumulated shall be counted in the average agreement as debits.
3. All other conditions as described in Articles III and IV in the master contract shall remain in effect.

ATTACHEMENT B

Page 1 of 1

KANAWHA AND BIG SANDY RATABLE PLACEMENT SCHEDULE

TOTAL BARGES FOR THE WEEK	MON	TUES	WED	THUR	FRI	SAT	SUN
1	1						
2	1	1					
3	1	1	1				
4	1	1	1	1			
5	1	1	1	1	1		
6	2	1	1	1	1		
7	2	2	2	1			
8	2	2	2	2			
9	2	2	2	2	1		
10	2	2	2	2	2		
11	3	2	2	2	2		
12	3	3	2	2	2		
13	3	3	3	2	2		
14	3	3	3	3	2		
15	3	3	3	3	3		
16	4	3	3	3	3		
17	4	4	3	3	3		
18	4	4	4	3	3		
19	4	4	4	4	3		
20	4	4	4	4	4		
21	5	4	4	4	4		
22	5	5	4	4	4		
23	5	5	5	4	4		
24	5	5	5	5	4		
25	5	5	5	5	5		

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 050001-EI

**In re: Fuel and Purchased Power Cost Recovery Clause
with Generating Performance Factor**

Progress Energy Florida, Inc.'s Petition for Approval of
Waterborne Transportation Service Contracts

EXHIBIT "D"

Progress Fuels Corporation
Transloading Bid Solicitation

(REDACTED VERSION)

PROGRESS FUELS CORPORATION
TRANSLOADING BID SOLICITATION

GENERAL

Progress Fuels Corporation (PFC) has purchased and will continue to purchase Dry Bulk Fuel (DBF) for use in electric generating stations owned and operated by Progress Energy Florida (PEF) located near Red Level, Citrus County, Florida. PFC is in need of transloading services in the New Orleans area of the Mississippi river. These services include unloading DBF from river barges or import vessel and transfer either to ground storage and then to sea-going vessel or directly to sea-going vessel for shipment to PEF. The specifics of this request and the bidding procedures to be followed are outlined below.

QUANTITY AND TERM

The term of this solicitation shall be for three (3) years starting November 1, 2004 and ending October 31, 2007. PFC anticipates the quantity of DBF requiring inland transportation services to be between 1,000,000 to 2,500,000 short tons per contract year. The actual tonnage to be transloaded in a given year will be determined by power plant fuel burn forecasts supplied by PEF and overall transportation and inventory level requirements. PFC is agreeable to setting a minimum volume of DBF tonnage to be transloaded each year. Should PFC fail, for reasons other than Force Majeure, to tender minimum DBF tonnage in any contract year Terminal shall be entitled to payment, as liquidated damages and not as a penalty, a dead ton charge for each ton of DBF not tendered for such service. Please provide a rate for shortfall tonnage in your proposal. Alternately, PFC will consider a provision for adding shortfall tons to the next contract year's minimum requirements.

PFC will provide a contract year tonnage declaration no later than September 30 of the preceding contract year. During a contract period, PFC reserves the right to alter monthly unload and load schedules in order to satisfy inventory or operating conditions as required.

RIVER BARGE REQUIREMENTS

DBF will be delivered to terminal in open hopper barges having a maximum width of 35 feet and length of 205 feet. PFC shall provide terminal the name of the barge carrier, each barge number and applicable tonnage, name designation of storage yard or direct transfer instructions, and estimated time of arrival at terminal. Terminal will guarantee discharge of river barges within four (4) days after the first 7:00 am following barges' constructive placement at terminal. Should terminal fail to discharge barges within the time frame herein barge demurrage will be reimbursed by terminal at a rate of [REDACTED] per barge day. Should freetime and demurrage rate change from PFC's existing contract, PFC and Terminal shall meet in good faith to negotiate new terms. Barge demurrage calculations will be reconciled on a quarterly basis.

Terminal must provide adequate and safe berth for river barges and each barge shall be adequately moored while in terminal's custody. All U. S. Coast Guard regulations must be complied with.

Terminal will blade clean barges following unloading for re-delivery to PFC's barge carrier.

PFC shall make efforts to deliver DBF to terminal fairly evenly spread throughout the term of this agreement. However, some shipment scheduling and delivery will be beyond the control of PFC.

IMPORT VESSELS

PFC requires the transloading facility be able to receive imported vessels. These vessels are typically handy size to panamax in size. The vessels can be gearless, geared or conveyor belt equipped. Terminal must be able to discharge, or allow for discharge, each of these kinds of vessels. Vessels shall be blade cleaned by terminal where applicable. PFC requires a rate matrix for the various discharge options. Such options include geared, gearless and conveyor vessels as well as direct transferring tonnage to sea going ABS-classed covered hopper barges and tugs (hereinafter referred to together as the "TOW" or "TOWS") or to storage area. Terminal must be capable of backing vessel discharge rates in order to provide demurrage free unloading of import vessels. Terminal must be able to receive import cargo from a belted vessel at a minimum sustained rate of 2,000 metric tons per hour. Specific terms and conditions for each voyage will be addressed by individual letter agreements.

LOADING SEA GOING BARGES

The equipment to be loaded hereunder is seagoing covered hopper barges and tugs or other marine equipment, to be determined, acceptable to the terminal. PFC requires priority of berthing for it's TOWS (i.e., PFC tow loads as soon as a berth is available, ahead of other vessels in the queue). Terminal must be able to accept TOW Notice of Readiness and load TOW (S) 24 hours per day, seven days a week, SHINC. Notice of Readiness to load shall be tendered by TOW and accepted by Terminal upon tying up at the berth, if available, or arrival of TOW at nearby anchorage if berth is not available. Laytime begins upon acceptance of NOR by Terminal and ends upon completion of loading and release of TOW by Terminal.

PFC requires Terminal to provide demurrage free transloading service. Currently, PFC has 14 hours freetime to load 16,000 tons of DBF, on average, into its TOWS. Should freetime and demurrage rate change from PFC's existing contract, PFC and Terminal shall meet in good faith to negotiate new terms. PFC will not pay dispatch. Demurrage calculations are to be reconciled on an annual basis.

PFC does not require compaction of DBF during the loading process. Terminal must be able to load PFC TOWS directly from river barges or from stockpile or from both simultaneously. Terminal must be able to do two way and occasionally three way precision blending. PFC reserves the right to change the load plan of previously scheduled cargoes on short notice in critical situations.

Due to operating conditions at PEF, weather, and other discharge ports, vessel arrival at Terminal may vary significantly from originally scheduled load dates. Terminal must be sufficiently flexible in operation to reasonably accommodate schedule variations.

STOCKPILE

PFC requires ground storage capability of at least two separate piles in order to segregate different grades of DBF amounting to a minimum of 260,000 tons. PFC requires the storage area to be soil cement or some other type of paved base. Stockyard area must be configured to allow for proper drainage of water and to prevent commingling of our DBF with other terminal commodities.

PRICING

Transloading rates shall be fixed for the duration of the contract and must represent all charges. Such charges shall include, but not be limited to, all port charges, fleeting charges, tractor cleaning services, docking and undocking services, stockpile fees (including storage, maintenance and compaction), existing taxes, blending, sampling and any other charges associated with the transloading of DBF. In your proposal please state any transloading volume incentive discounts that would apply in a contract.

Payment terms are thirty (30) days net from receipt of proper invoice. Services shall only be billed upon discharge of DBF at the terminal. Barge weights shall be based on origin weights consistent with each coal supply agreement held by PFC. Origin weight shall form the basis for import coal vessels.

CONTRACT PROVISIONS

The winning bidder will be expected to enter into a contract that will, among other things, include the following provisions:

Terminal will bear the risk of cargo loss, normal industry shrinkage excepted, and any demurrage charges from river barges, ocean vessels and TOWS which exceed the free time allowed. Terminal shall be required to report shipment information and tonnage reconciliation on a daily, weekly, and monthly basis by telephone, fax or other mutually agreeable methods. Terminal shall be responsible for meeting all regulatory requirements e.g. environmental, Coast Guard, etc. Terminal shall maintain dock area to allow for safe berthing of PFC's vessels and barges.

PFC anticipates generally ratable delivery of barges and vessels to Terminal. However, due to various operating issues PFC may have to alter schedules to suit its inventory or PEF's requirements. PFC requires transloading services on a 24hour/7 day per week basis; SHINC.

PFC requires ASTM certified sampling of all inbound, outbound and directly transferred DBF. PFC requires blending capability of up to 1% accuracy by weight as necessitated by PFC's

blending plan(s). PFC requires Terminal to provide metal detectors and magnets sufficient to prevent metal from going into stockpiles or outbound to vessels.

The contract will contain other commercially reasonable terms and conditions customarily found in contracts for similar services, including but not limited to, provisions dealing with standards of performance, risk allocation, insurance levels, force majeure, events of default, remedies, and others.

BID PROCEDURES

To insure proposals are responsive to PFC's needs and provide a uniform basis for evaluation, bidders are requested to provide the information on the attached Transloading Bid Form, complete the rate quotes on Attachment A and send Sealed Bid Packages to:

Transloading Bid Proposal
Progress Fuels Corporation
— 200 Central Avenue
— St. Petersburg, FL 33774

Failure to properly mark bid "Transloading Bid Proposal" on the exterior of the sealed envelope could result in non-consideration of the bid. Additionally, enclosed is a draft contract that will provide additional insight on PFC's requirements. As part of your bid response, please specify any exceptions your firm may have regarding the terms and conditions in our draft contract.

Bid packages must be received no later than 5 PM DST July 15, 2004. Bids received after this date and time will not be evaluated or considered and returned to the bidder. The bidder shall be responsible for the completeness and accuracy of all information contained in and used in preparation of its proposal and for having supplied all necessary information. Bid packages that are incomplete may not be evaluated. Revised proposals, if any, must be received before the closing deadline for evaluation.

Any award will be based on PFC's overall evaluation process and not on price alone. The evaluation will include price, stockyard capacity, services provided, financial stability, credit worthiness and other pertinent factors. Field inspections by PFC personnel or PFC's designated representative(s) may be required to verify the accuracy of information provided in proposals. PFC reserves the right to reject any and all proposals which in PFC's sole judgment are determined to not be in its best interest.

Bid proposals shall remain open for a period of 60 days beyond the closing date of this solicitation. Proposals represent a firm offer to supply transloading services at the prices and under the terms provided in your proposal, subject to the execution and delivery of a contract, the first draft of which will be provided by PFC. Should you have questions of desire to schedule a presentation, please call Mike Lelak at 727-824-6680.

RIVER TRANSLOADING

Stockyard Equipment Description (Include name, age, rated stack out and reclaim rates, and other pertinent information).

Stockyard Description (Include configuration, size (acres), base material, storage capacity, blending capabilities, weigh bins and/or belt scales and other pertinent information).

River Barge Unloading Capabilities (Include unload rates, equipment used, backup unloader system(s), barge capacity of fleeting area and any other pertinent information).

Please provide details on your ship loading capability, including tons per hour, belt size and speed, load out equipment (manufacturer, fixed or traveling, etc), the number of berths available and any other pertinent information:

RIVER TRANSLOADING
Continued

Major Customer Listing (Include company name, tonnage transloaded during the past two years, Contact Person and phone number). Please list at least three:

Subcontractors (Include company name, contact person and phone number, and description of services rendered):

Financial Information (provide last five years of audited financial statements and other relevant information):

Please provide a copy of your terminal manual (operating rules and regulations).

ATTACHMENT A

RIVER TRANSLOADING CHARGES

RATE

River Barges

Unloaded to stockyard
Unloaded directly to TOW

Import Vessels

Vessel self discharge (grabs) to storage
Vessel self discharge (grabs) direct to TOW

Vessel self discharge (conveyor) to storage
Vessel self discharge (conveyor) direct to TOW

Gearless vessel terminal discharge to storage
Gearless vessel terminal discharge direct to TOW

DBF TRANSFER & STORAGE AGREEMENT

This DBF Transfer & Storage Agreement, made and entered effective _____, by and between _____, having an address at _____, hereinafter referred to as "Terminal" and Progress Fuels Corporation, Bank of America Building, One Progress Plaza, St. Petersburg, FL 33701, hereinafter referred to as "Shipper"; and

Whereas Terminal operates a bulk transloading facility on the Mississippi River near _____, Louisiana at approximately Mile __ AHP, which is capable of receiving quantities of bulk Dry Bulk Fuel (DBF) by river barges or import vessel for unloading and direct transfer into sea-going vessels and/or for unloading to storage onshore and reloading to sea-going vessel; and whereas, Shipper will deliver DBF by river barges or import vessel to the vicinity of _____, Louisiana, such DBF to be transferred to sea-going vessels for shipment from the Mississippi River; and whereas Shipper desires to contract with Terminal for the transshipment of such DBF through such bulk transloading facility, including unloading of the DBF from river barges or import vessel and transfer either into shore storage and then to sea-going vessel or directly to sea-going vessel; and Terminal represents that it is capable of receiving, transferring, and stockpiling DBF in volume and that it is willing to contract to provide the services herein contemplated.

Now therefore, in consideration of the foregoing and the mutual covenants contained herein, it is agreed by the parties as follows:

ARTICLE I: TERM AND AGREED QUANTITIES

The term of this Agreement will commence November 1, 2004 and will expire on October 31, 2007, subject to the early termination provisions set forth below. The minimum volume per contract year shall be one (1) million tons. The maximum tonnage per contract year shall be 2.5 (2.5) million tons.

Should Shipper tender less than the minimum volume in a contract year, Shipper shall pay Terminal an amount equal to the tonnage deficit (actual tonnage shipped under the contract subtracted from the minimum tonnage) multiplied by \$____ per net ton. In the event shipper tenders less than the minimum volume, Terminal shall invoice shipper as soon as practicable after the end of the contract year in which the deficit occurred. Such invoice shall be paid within twenty (20) days thereof. In the event of its failure to fulfill its obligations in regard to the minimum tonnage, Shipper shall have the right to carry forward such deficit tonnage and add it to the following contract year tonnage level. For purposes of calculating the tonnage deficit, force majeure as defined in Article VII hereunder shall occasion a proportional reduction in the minimum tonnage obligation during the contract year in which said force majeure occurs. For purposes of this Article I, Shipper's DBF shall be considered tendered upon its constructive placement in Terminal's fleet at _____.

ARTICLE II: SERVICES, RATES AND INVOICES

A. During each contract year of this Agreement, Terminal agrees to provide transfer services including the unloading of the DBF from river barges and transfer either into shore storage and then to sea-going vessel or directly to sea-going vessel, at Shipper's option; and Terminal represents and warrants that it is capable of receiving, transferring and stockpiling DBF in volume and that it is willing to contract to provide the services herein contemplated. Shipper agrees to pay the following throughout rates per net ton of DBF for the above listed services performed by Terminal which are in effect beginning November 1, 2004:

Storage	\$-.-	Direct	\$-.-
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B. For import DBF vessels Shipper agrees to pay the following rates per net ton of DBF (all rates include Terminal operations on stand-by and available to receive and discharge barges, when practical, throughout the vessel discharge):

Terminal crane discharge through storage: \$ _ _

*Rate includes all services, including barging and associated barge charges, unless specifically exempted elsewhere in this agreement.

Terminal crane discharge through storage: \$ _ _

*Rate includes all services, unless specifically exempted elsewhere in this agreement. This rate does not include barge chartering/handling/fleeting/shifting.

Terminal crane discharge through CBU direct to gulf barge \$ _ _

*Rate includes all services, including barging and associated barge charges, unless specifically exempted elsewhere in this agreement. Barges so designated as "direct" must be transferred to gulf barge no later than 48 hours following import vessel completion.

Full service package for vessel crane discharge through storage: \$ _ _

*Rate includes receiving DBF from vessel in river barges; barge chartering, handling, fleeting, shifting, and lashing to side of vessel; draftsmen and supervision to coordinate swap-out of loads/empties at the vessel in a prompt manner so as not to delay the vessel discharge; blade cleaning of vessel holds (inclusive of labor and equipment); later reclaim of DBF to gulf barge. Rate does not include labor or equipment to operate the shipboard cranes.

Terminal crane discharge through CBU direct to gulf barge: \$ _ _

*Rate includes all services except barge chartering/ handling
fleeting/shifting.

Vessel crane discharge through storage: \$ _ _

*Rate excludes all services listed in the full service package but
includes later reclaim from storage to gulf barge.

Vessel crane discharge through CBU direct to gulf barge: \$ _ _

*Rate excludes all services listed in the full service package.

Vessel conveyor discharge through inbound hopper through storage: \$ _ _

*Rate excludes any barging and barge services, hold cleaning,
crane operations, and all other services not necessary for a vessel
conveyor boom discharge direct to and compatible with
Terminal's inbound conveyor belt discharge hopper.

Shipper must declare an above rate option for each import vessel at least 15 days prior to
each vessel arrival.

C. Any supplemental harbor fees will be for the account of Shipper and will be invoiced as a
separate item on the invoice. Terminal will notify Shipper of changes in this fee.

D. Invoices

1. Invoices will be prepared based on barge draft survey weights, provided by
Shipper in writing to Terminal at the time cargo is loaded for delivery to Terminal. Invoices will
be issued when cargo is discharged from barges by Terminal. Invoices will be addressed to
Shipper marked, "Attn: Accounts Payable".

2. Dockage, Line Handling, Tug Assistance, and any other Terminal fees normally
billed to the vessel owner, as listed in Attachment 3, shall be for Shipper's account and billed at
completion of each loading.

3. Invoices will be due within thirty (30) days from date of invoices. Remittance
should be made to:

4. Outstanding invoice balances more than 30 days past the due date of invoice will
be assessed at 1½% interest charge per month or the maximum legal rate allowed in the State of
Louisiana, whichever is lower. Interest is not to be applied to any accumulated interest charges.

If an invoice is in dispute, the disputing party shall pay to the other party eighty
percent (80%) of the invoice amount within the time period specified above, subject to debit or

credit when the dispute is resolved without interest or penalty on the balance due. Performance shall continue during and despite any dispute.

If an invoice has gone unpaid by Shipper for more than 90 days, Terminal shall, for the amount of any unpaid invoice (not including the 20% of a disputed invoice mentioned above) have the option to assert a lien against Shippers DBF in compliance with governing laws. Such lien will allow Terminal to take possession of and/or relocate DBF within Terminal property and/or sell the same. Shipper warrants that all DBF delivered to Terminal shall be owned by Shipper or by a third party on whose behalf Shipper has authority to act.

5. Terminal charges incurred by third parties under contract to Shipper, including but not limited to barge carriers, vessel owners, surveyors, agents, etc., will be for account of the applicable third party. However, Shipper shall remain responsible for prompt payment of such charges if payment is not received within the time frame specified in Article II, 3 above. Terminal will advise Shipper of any problem accounts prior to requesting reimbursement by Shipper for such charges. Terminal will refund to Shipper any charges paid by Shipper which Terminal subsequently collects from such third party.

6. Rates include all fees, taxes, tolls, duties, or port charges applicable to Terminal as of the effective date of this Agreement, except those additional charges as specifically provided herein. Should any government or governmental agency or authority, after the date of this Agreement impose any additional tax, charge, impost, duty, toll, tariff or port charges on cargo or on the use of waterways or water improvements or facilities (herein called "charge", and such charge is not included in any other cost item stated in this paragraph), the base price shall be increased to become effective upon the effective date of any such charge, by the amount which such charge changes the cost for Terminal to perform the services for Shipper pursuant to this Agreement. Charges imposed in any other form shall be handled in an equitable manner as may be mutually agreed. Should such additional charges produce unreasonable hardship for Shipper, Shipper may elect to terminate this agreement.

7. Clean-up tons placed in storage from "Direct" barges will be billed at the "Storage" rate. Shipper and Terminal will agree on methods to measure these tons at minimum measurement expense to both parties.

ARTICLE III: GROUND STORAGE

A.. For each contract year of this Agreement, storage will be provided for up to 20% of actual throughput volume or 260,000 short tons of DBF in total, whichever is greater, distributed in a minimum of two (2) piles. Shipper shall be allowed an additional 35,000 tons of temporary storage (at no charge) with prior written approval from Terminal, for a period not to exceed 45 days. Additional storage above this limit will be provided as available, for as long as available, at no charge; however, Shipper shall forecast estimated storage volume requirements in advance to provide Terminal with reasonable preparation time to accommodate such excess storage requirements.

B. It is recommended that Shipper inspect the storage area prior to transferring DBF onto the storage pad. Should Shipper fail to inspect the area, the shipment of DBF to be stored on the area will be presumed to have been acceptable to Shipper for such storage

C. Terminal shall provide or place a base material on the designated storage pad prior to receipt of Shipper's product. Such base material shall be a soil cement type material. Terminal shall not place Shipper's DBF on a storage pad normally used for petroleum coke. Terminal agrees to keep the storage area leveled and cleared of all foreign material and to keep the storage area drained so as to prevent water from running into or standing around DFB piles.

D. Terminal shall not have liability or responsibility for contamination or commingling of Shipper's product with the base material or storage pad beyond prudent industry standards unless Terminal has placed DBF on a storage area specifically rejected by Shipper.

E. Upon expiration of this Agreement or termination for any reason, Shipper shall have ninety (90) days to vacate the storage area of all product. If product remains after March 1, 2008, Shipper shall be assessed storage charges of [REDACTED] per short ton per day.

ARTICLE IV: OPERATIONS

A. All shipments and transfers through Terminal shall be made in accordance with the provisions of this Agreement and the rules, terms and conditions set forth in its Terminal Manual, as may change from time to time. The current manual is made a part of this Agreement as Attachment I. Shipper shall be notified of changes/amendments to the Terminal Manual which shall then become effective for Shipper in the following calendar year; provided, however, that Terminal will not make any changes/amendments to the Terminal Manual that are materially adverse to Shipper. Specific items and provisions referenced in this Agreement shall take precedence over the Terminal Manual.

B. Shipper warrants that its DBF will be "free-flowing" and will not contain excessive fines or moisture that will impede handling of Shipper's DBF by Terminal on its high speed conveyors. If, after reasonable effort, cargo cannot transit the continuous barge unloader, Terminal and Shipper shall reach mutual agreement for the disposition of such cargo and associated charges, subject to Terminal's right (under section F, Article IV) to reject such problem cargo. The vessel loading guarantee, as provided for in Attachment 2, will not apply to shipments including such problem DBF.

C. Shipper warrants that its cargo is free of foreign material that could cause damage to terminal equipment. In the event that such material does cause equipment damage, Shipper shall reimburse Terminal for actual costs incurred by Terminal to repair such damage.

D. Terminal shall exercise due diligence to receive, unload, store (when required), and load DBF for Shipper, this constituting Terminal's only warranty hereunder. Performance by Terminal shall be subject to reasonable delays caused by periodic shutdowns for repair, maintenance, adverse weather conditions and events of force majeure. Preventative maintenance will be scheduled so as to minimize interference with transfer operations.

E. Terminal shall not be responsible for any loss of or damage to DBF caused by an act of God, natural occurrences, or phenomena. Terminal shall not be required or expected to provide cover of any kind for Shipper's DBF. Terminal may spray DBF to control dust when deemed necessary by Terminal and with notification to Shipper.

F. Terminal reserves the right to inspect all barges upon arrival and to either reject those containing DBF of excessive temperature, moisture, metal or other contamination, or size in the event it is anticipated that the DBF might damage or slowdown Terminal's equipment or to assess reasonable additional charges for handling and unloading such barges. It is recognized that Shipper bears full responsibility for spontaneous combustion and shall have the opportunity to inspect problem DBF prior to unloading, while in storage, or during vessel loading. Terminal shall promptly notify Shipper in such instances, and Shipper agrees to properly advise and provide instructions to Terminal as to handling of excessive temperature events. Should Shipper fail to promptly respond to Terminal as to instructions, then Terminal, for Shippers account, will take appropriate action to handle such instance, notifying Shipper in writing of final action.

G. Terminal shall provide and maintain metal detectors and magnets sufficient to prevent transfer of metal into Shipper's stockpile and/or to ocean going barges. Terminal shall provide and maintain scales, feeders, and other related equipment to guarantee blending capability to an accuracy of 1% by weight. Terminal shall provide and maintain sampling systems for the purpose of sampling all inbound and outbound DBF. The sampling systems shall adhere to ASTM D-2234 and shall be bias tested on a minimum of an annual basis.

H. Discharge of Barges:

1. Terminal shall have the responsibility to unload barges. In connection with the unloading of the barges, Terminal agrees to exercise reasonable care to avoid damage or other casualty thereto while in Terminal's care, custody, and control. DBF will be delivered in open hopper barges having a maximum width of 35 feet and length of 205 feet.

2. Shipper shall have the responsibility to provide Terminal, in writing, of the loading date of all barges and include in such notification;

- a.) the barge carrier;
- b.) each individual barge number and applicable tonnage;
- c.) the name designation of storage pad or type of DBF;
- d.) the estimated time of arrival (ETA) at Terminal.

3. Terminal will unload DBF from river barges and transfer the DBF into the storage area to subsequently be loaded into sea-going vessels. Alternatively, and at Shipper's instructions, Terminal will directly load DBF from river barges into sea-going vessels.

4. Terminal will guarantee discharge of Shipper's river barges which are destined for storage and invoiced at the storage rate at an average of four (4) days after the first 7:00 AM following barges' constructive placement at Terminal's fleet or upon arrival at fleet of Terminal's choice when Terminal has notified carrier that Terminal's fleet is unavailable. "Clean-up" DBF from direct barges or DBF otherwise left in a direct barge that is later discharged to storage will still be considered a "direct" barge and not guaranteed, but such tons will be billed at the storage rate; Terminal will discharge such clean-up DBF to storage within forty-eight (48) hours of vessel completion. Terminal is not responsible for time lost due to cargo quality, Force Majeure, barge seaworthiness, barge suitability or delay caused by lack of written instructions or a change in such instructions about disposition of the barges, or all time following Terminal notification of Terminal fleet availability until arrival time at Terminal's fleet (including transit time) in cases when barges are fleeted at an alternate fleet.

Should Terminal fail to discharge barges within the average time constraint listed above, barge demurrage will be reimbursed by Terminal subject to a maximum of \$____ per barge day. Barge demurrage calculations are to be reconciled on a quarterly basis (using barge empty-release dates to determine which quarter a barge falls in) within 60 days of the end of each quarter.

5. Terminal further represents it has adequate and safe berth for barges, and each barge shall be adequately moored while in Terminal's custody and all U.S. Coast Guard regulations shall be complied with.

6. Terminal shall provide and operate a fleet and harbor towboat for the shifting of loaded and empty barges to and from the dock and the mooring area, and the pickup and delivery of loaded and empty barges at the mooring area from the barge carrier's tow. Terminal requires barge carriers to use Terminal's fleet and harbor towboat in order to ensure an orderly and safe operation.

7. Terminal agrees to provide normal blade cleaning of barges following unloading for re-delivery to Shipper's barge carrier.

8. River barges and their associated handling, fleetings, and shifting services necessary for the discharge of import vessels and not provided under a Terminal full service package shall be for the account of Shipper. Under a full service package, Terminal will acquire sufficient barges to assure continuous vessel unloading. Terminal will request assistance of Shipper to obtain barges if required.

I. Loading of Vessels

1. Arrival dates at Terminal of sea-going vessels must be nominated by Shipper at least five (5) days in advance of the month. Shipper takes cognizance that all sea-going vessels loading at Terminal will be required to conform and comply with the then current Terminal Manual, as may change from time to time, a copy of which will be furnished to Shipper and agents for each vessel.

2 Terminal shall have absolute discretion to determine the preference of vessels. Without limiting the foregoing, Terminal will use its best efforts to accept vessel's berth in order of nomination arrival subject to (i) timely issuance of Certificate of Readiness/Hold Cleanliness, (ii) availability of DBF to be loaded, (iii) size of vessel, (iv) weather conditions or Terminal activities, (v) timely receipts of ETA as required in Terminal Manual, and (vi) timely arrival in accordance with Terminal window schedule and ETA notifications.

Notwithstanding the forgoing, Shipper may request priority berthing, i.e., going to first available berth ahead of other waiting vessels, from Terminal during the term of this agreement. Such priority shall not be construed to prevent Terminal from completing the loading of another vessel begun prior to the arrival of Shipper's gulf barge

3. Should sampling, draft or temperature surveys of Shipper's DBF be required, Terminal will coordinate with the parties designated by Shipper; however, the costs of such services shall be for Shipper's account. If a temperature survey is deemed necessary by Terminal, it will be arranged, with prior notification to Shipper, for Shipper's account.

4. Shipper recognizes that Terminal is not a shipper of cargo and will not execute bills of lading or other like documents evidencing terms of carriage or condition of cargo.

5. Shipper acknowledges that Terminal may be called on by governmental agencies or by sea-going vessels or their agents or insurers to disclose certain properties and characteristics of the DBF to be loaded on such sea-going vessels. Shipper therefore acknowledges their responsibility and agrees to furnish Terminal with documentation or information pertaining to its DBF as may be required by governmental agencies, sea-going vessels, their agents or insurers. Terminal agrees to forward such requests to Shipper and provide copies of such correspondence.

6. Terminal is not required to compact the DBF loaded in any vessel unless previously arranged with Terminal and shall not be responsible for spontaneous combustion of any DBF loaded onboard a vessel. Shipper agrees to indemnify and hold Terminal, its partners and their agents, officers and employees harmless from and against any and all claims arising out of or in connection with any spontaneous combustion.

ARTICLE V: VESSEL LOAD/DISCHARGE RATE GUARANTEE

Terminal will guarantee demurrage-free ocean vessel loading at _____ in accordance with the terms provided in Attachment 2. Terminal will reimburse Shipper for demurrage in accordance with the rate as provided in Attachment 2, Article III-5.

Terminal will discharge import vessels of DBF under separate letter of understanding as mutually agreed, specifying any demurrage/ despatch terms and river barge requirements for such vessels.

ARTICLE VI: FORCE MAJEURE

Neither party shall be under any liability of any kind or nature whatsoever for any loss, damage, delay or failure in performance, including but not limited to, demurrage, delay, damages, deterioration of quality, shrinkage in quantity and/or loss of DBF, in the event that it should fail or delay to perform its obligations hereunder where such failure or delay is directly or indirectly, wholly or partly, caused by a Force Majeure event.

The term "Force Majeure" includes the following regardless of whether foreseeable or not: war, civil commotion, government order, labor dispute, labor shortage, strike or lockout; equipment breakdown; interruption, delay, or damage to transportation means or facilities; any shortage of material; flood; river freeze up; abnormal weather conditions; inability to obtain fuel or power; fire; act of God; legal intervention; resolution or order of government authority; or any other cause whatsoever beyond the reasonable control of the party affected thereby, whether or not of the same or similar nature, provided such events exceed twelve (12) hours or more in duration.

A Force Majeure event shall not excuse a party from performing unless such party shall give written notice to other party promptly upon learning of such Force Majeure but in no event later than thirty (30) days subsequent to such event. Information as to the cause of inability to perform and probable extent thereof shall be included in such notice and shall be updated periodically during the continuance of the Force Majeure event. Failure to give such notice and furnish such information promptly shall be deemed a waiver of all rights for such period of time during which notice was not given. Upon removal of the cause, shipment shall resume at the specified rate.

Notwithstanding the foregoing, "force majeure" will not excuse Shipper from its obligation to pay sums due under this Agreement for any services performed by Terminal pursuant to the Agreement, during the period of "force majeure".

ARTICLE VII: MISCELLANEOUS

A. Notices - All notices or other written communications pursuant to the Agreement shall be in writing and shall be either delivered in person to the President or a Vice-President or other individual of the party to be notified, as designated, or sent by registered or certified mail, or by electronic mail/fax to said party at the appropriate number shown below, or any subsequent address or number which either party may designate.

Terminal
Attn: Manager - Traffic

Progress Fuels Corporation
Attn: Transportation Manager
Bank of America Tower
One Progress Plaza
St. Petersburg, FL 33701
Fax: (727) 824-6601

B. Liabilities - Shipper acknowledges that the inherent nature of transfer operations and the inherent nature of DBF can result in an adverse effect on quality and quantity of DBF. Shipper agrees that it shall absolve, release and refrain from seeking remedies against and will hold Terminal harmless, its partners and their officers, agents, employees, subcontractors, and insurers, from and against any and all losses, claims, damages, costs, suits, and liabilities for damage, deterioration of quality, shrinkage in quantity, loss of grade, or loss of DBF arising out of or in any way directly or indirectly related to: a) the performance by Terminal of any work covered hereby, or b) strict liability, or c) defects in Terminal property; the only exception to the foregoing being losses of the type described resulting from Terminal's negligence or willful misconduct or resulting from theft.

C. Governing Law - This agreement is being delivered in and shall be governed and construed in accordance with the laws of the State of Florida. This agreement constitutes the entire understanding of the parties and may not be modified without the written consent of the contract signatories and has been executed by the authorized officials of the parties. This agreement, or any portion hereof, may not be assigned by any party without the advance written consent of the other party, except that no such consent will be required if the assignment is to a successor in interest of all or a substantial part of the assets of a party, divestiture pursuant to an order of decree of court, or similar corporate reorganization. This entire contract agreement shall be binding upon any successors or assigns of the parties.

D. No default of either party to this Agreement in the performance of any of its covenants or obligations hereunder, which, except for this provision, would be the legal basis for rescission or termination of this Agreement by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the default within thirty (30) days after written notice of claim of such default is given to such defaulting party by the other party hereto.

Waivers; Default - The failure of either party to insist on any one or more instances upon strict or full performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

E. Terminal Insurance - Terminal agrees to maintain, as applicable, the following insurance: Workman's Compensation Insurance in the required statutory amount with Longshoremen's and Harbor Workers' endorsement; Comprehensive General Liability Coverage in amounts of \$5,000,000/\$10,000,000 for bodily injury and \$500,000/\$1,000,000 for property damage. Terminal shall, upon request, furnish Shipper with a copy of a certificate of insurance with

respect to the foregoing coverage. Terminal reserves the option to self-insure for any claims arising under the Longshoremen's and Harbor Workers' Act.

F. **Entire Agreement** - This Agreement, the attached Terminal Manual (Attachment I) and any future changes to such manual, the attached Vessel Loading Rate Guarantee (Attachment II), and the attached Vessel Fees (Attachment III), constitute the entire agreement between Shipper and Terminal. No representation, warranties, promises, guarantees, or agreements written or oral, expressed or implied, have been made by either party with respect to the Agreement except as referenced in this Agreement. Any change or modification to this Agreement or to the Attachments herein must be in writing and signed by both parties.

G. **Confidentiality** - The parties shall not disclose the terms of this Agreement to a third party except: 1) to government agencies; 2) as required by law or regulation; 3) to the United States bureau of labor statistics; or 4) to an audit firm, so long as the disclosing party is responsible for insuring compliance by that firm and the other party hereto is notified prior to disclosure. If any party violates this paragraph, any adversely affected party may cancel this Agreement without penalty.

H. **Environment, Health, and Safety.**

1. **Compliance and Indemnification.** SELLER shall comply with all applicable EHS laws and shall indemnify PURCHASER against any EHS claims and costs arising from SELLER'S performance under this Agreement.

2. **Audits.** PURCHASER may audit SELLER'S EHS compliance. Within thirty (30) days of PURCHASER'S request, SELLER shall deliver to PURCHASER (1) all records regarding (a) SELLER'S actual or alleged violations of EHS laws and (b) EHS claims asserted against SELLER, in each case in the five year period preceding PURCHASER'S request and (2) any executed consent form(s) necessary for PURCHASER to obtain from regulatory agencies and other third parties information regarding SELLER'S EHS compliance.

3. **Definitions** (as used in this Agreement).

a. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.

b. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.

c. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.

d. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.

e. Manage or management, with respect to any material, means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Agreed to this _____ day of _____, 2004:

WITNESS:

PROGRESS FUELS CORPORATION

BY: _____
Vice President—Coal Procurement

Date Executed: _____

WITNESS:

BY: _____
President

Date Executed: _____

ATTACHMENT 1

TERMINAL MANUAL

{To be provided by bidder}

ATTACHMENT 2

VESSEL LOADING RATE GUARANTEE

ARTICLE I TERMS OF AGREEMENT

The following sets forth the terms and conditions under which _____, hereinafter Terminal, will provide berthing and loading service for shipments of DBF arranged by Progress Fuels Corporation, hereinafter Shipper, that are destined for Florida coal markets.

This Attachment applies only to vessel booking coordination and conditions for loading as they pertain to demurrage and does not negate any other agreements by the contracted parties with respect to transfer rates or throughput minimums.

This Attachment shall remain in full force and effect throughout the term of the agreement unless otherwise mutually agreed upon.

ARTICLE II DELIVERIES AND VESSEL REQUIREMENTS

1. Even Deliveries

Shipper shall make efforts to deliver coal to Terminal and provide for loading outbound vessels fairly evenly spread throughout the term of this Agreement. However, Terminal recognizes that some shipment scheduling is beyond the control of Shipper.

2. Reasonable Stockpile

Shipper shall maintain a reasonable stockpile of coal at Terminal and/or coordinate delivery of direct transfers prior to arrival of vessels which, under normal conditions, will ensure the stability of delivery of DBF hereunder.

3. Ocean Transportation

Shipper assumes the obligation and full responsibility for arranging ocean transportation of DBF and for providing vessels for the transportation of DBF delivered hereunder to Terminal, and shall reasonably arrange for and provide such vessels to meet the requirements set forth in Article III-1.

Vessels shall be the following DFL/ Dixie Carriers units: Louise Howland, Miss Dott O, Amy Thompson, and Mickey Birdsall.

4. Shipping Schedule

At least five (5) days prior to the commencement of each month, Shipper shall submit to Terminal an estimation of vessels to be shipped for the month.

If Terminal cannot accept a proposed load date, both parties shall make their best efforts to settle such differences and arrive at a mutually acceptable solution as soon as practicable.

If at any time the estimated date of arrival materially differs from the confirmed load date, the acceptance of the vessel shall be subject to Terminal's approval under the changed conditions.

Shipper shall promptly inform Terminal of any change in the monthly load schedule.

Shipper shall arrange that the master of the arriving vessel shall advise Terminal of the vessel's estimated time of arrival at Terminal twenty-four (24) hours before the vessel is expected to reach Terminal.

Terminal recognizes that Shipper, from time to time, may divert vessels from Terminal to alternate

Facilities with less than 24 hours advance notice to Terminal without penalty to Shipper.

If a Force Majeure is declared in accordance with this Agreement by Terminal, Shipper shall have the option to cancel any scheduled vessel or divert it to other port(s) under this Agreement. The Shipper and Terminal shall use their best efforts to normalize the shipping schedule as soon as possible after the removal of a Force Majeure.

ARTICLE III LOADING TERMS

1. Loading Port

- a. Vessels will have dimensions and be of a configuration suitable to be received alongside for loading at the _____ facility as set forth in the Terminal Manual (Attachment 1).

2. Notice of Readiness

Notice of Readiness to load shall be tendered by the vessel and accepted by Terminal after arrival at Terminal facility, or the closest available anchorage if Terminal berth is occupied or vessel is otherwise ordered to anchorage by Terminal at any time in or out of office hours, provided the vessel is in free pratique and is in all respects ready to load. Time lost for completion of pratique after berthing shall not count as laytime.

3. Laytime

- a. Laytime for loading shall commence when Notice of Readiness is accepted by Terminal.
- b. Time spent shifting from anchorage to the berth shall not be included in laytime.
- c. In the event of declaration of Force Majeure by Terminal, time lost shall not count as laytime.

- d. In case laytime interruption(s) caused by Force Majeure item(s) occurs, Terminal shall declare Force Majeure to the Shipper by every available communication method of such laytime interruption(s) so that all such period(s) of laytime interruption(s) shall not count as laytime.
- e. Time lost due to routine, non Force Majeure, mechanical breakdowns or slowdowns by Terminal as specified in Statement of Facts/Port Log and verified by Terminal on the vessel shall count as laytime.
- f. If Terminal finds that it cannot complete loading a vessel because of a Force Majeure situation then Terminal and Shipper will immediately confer with a view to finding the best solution to the problem.
- g. Loading stoppage or slowdown due to the Shipper's vessel or Shipper's requirements including, but not limited to, temperature, size, contaminants, or non-free flowing product, shall not count as laytime.
- h. Time lost due to survey time in excess of one hour, cargo availability, or cargo quality shall not count as laytime.
- i. Laytime will cease after completion of loading, trimming, removal of equipment from vessel and release of vessel by Terminal.

4. Loading Rate

- a. Terminal shall load DBF aboard vessels within an average of twelve weather working consecutive hours including Saturdays, Sundays and holidays.
- b. Loading rate guarantees apply to blending ratios that are reasonably achievable at the guaranteed rates. Shipper and Terminal will work together toward a reasonable loading rate compromise prior to vessel arrival for excessively divergent blends that may slow operations.

5. Demurrage

If Terminal fails to meet the specific average loading requirements in Article III-4, calculated on an annual averaging of all Gulf Barge load time, demurrage will be paid by Terminal to Shipper for all time lost after expiration of allowable laytime at the rate of \$____.00 per hour. Vessel demurrage calculations are to be reconciled annually within 60 days past the end of each calendar year. Demurrage calculations shall be reviewed at any time at the request of either Terminal or Shipper.

6. Other Vessel Terms

Any other loading or discharge terms and conditions shall be, on a case-by-case basis, mutually negotiated in good faith. Such subsequent negotiations shall be recorded in Letters of Understanding and shall be affixed to and become part of this Agreement. Such terms will include discharge demurrage terms for import vessels as approved by both parties.

ATTACHMENT 3

VESSEL FEES

ARTICLE 1 TERMS OF AGREEMENT

The following sets forth the vessel fees under which _____, hereinafter "Terminal", will invoice to Progress Fuels Corporation, hereinafter Shipper, for shipments of DBF in Gulf barges. Import vessels will be charged the standard vessel fees and billed to the vessel's account. The fees listed below are in effect November 1, 2004. The dockage rate paid by Shipper is subject to increases in Terminal's standard "tariff" dockage fee during the contract term but shall not be higher than \$0.-- per GRT per 24 hour period during the term of this Agreement; Shipper shall be notified thirty (30) days prior to such dockage rate increases.

ARTICLE II

<u>Dockage</u>	- \$0.____ per GRT per 12 hour period, billed on a 4 hour minimum. Partial time after the first 4 hours will be prorated on a straight time basis. GRT based on the Gulf barge only (not accompanying tug). Terminal will assess dockage charges starting upon tying up at dock and dockage time ends when the Gulf barge departs the dock.
<u>Tug Assistance</u>	\$____.00 per tug (dock/ undock)
<u>Line Handling</u>	\$____.00
<u>Shifting</u>	\$____.00 per hour per tug.
<u>Holding</u>	\$____.00 per hour per tug.
<u>Delays (tug standby)</u>	\$____.00 per hour per tug.
<u>Reporting</u>	\$____.00
<u>Bunkers</u>	\$____.00
<u>Lube</u>	\$____.00
<u>Deslop</u>	\$____.00
<u>Fresh Water</u>	\$____.00

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 050001-EI

**In re: Fuel and Purchased Power Cost Recovery Clause
with Generating Performance Factor**

Progress Energy Florida, Inc.'s Petition for Approval of
Waterborne Transportation Service Contracts

EXHIBIT "E"

DBF Transfer and Storage Agreement Between Progress
Fuels Corporation and International Marine Terminal Partnership

(REDACTED VERSION)

CONFIDENTIAL

DBF TRANSFER & STORAGE AGREEMENT

This DBF Transfer & Storage Agreement, made and entered effective November 1, 2004, by and between International Marine Terminals Partnership, a Louisiana ordinary partnership, having an address at 18559 Highway 23, Port Sulphur, Louisiana 70083, hereinafter referred to as "Terminal" and Progress Fuels Corporation, Bank of America Building, One Progress Plaza, St. Petersburg, FL 33701, hereinafter referred to as "Shipper"; and

Whereas Terminal operates a bulk transloading facility on the Westbank of the Mississippi River near Myrtle Grove, Louisiana at approximately Mile 57 AHP, which is capable of receiving quantities of bulk Dry Bulk Fuel (DBF) by river barges or import vessel for unloading and direct transfer into sea-going vessels and/or for unloading to storage onshore and reloading to sea-going vessel; and whereas, Shipper will deliver DBF by river barges or import vessel to the vicinity of Myrtle Grove, Louisiana, such DBF to be transferred to sea-going vessels for shipment from the Mississippi River; and whereas Shipper desires to contract with Terminal for the transshipment of such DBF through such bulk transloading facility, including unloading of the DBF from river barges or import vessel and transfer either into shore storage and then to sea-going vessel or directly to sea-going vessel; and Terminal represents that it is capable of receiving, transferring, and stockpiling DBF in volume and that it is willing to contract to provide the services herein contemplated.

Now therefore, in consideration of the foregoing and the mutual covenants contained herein, it is agreed by the parties as follows:

ARTICLE I: TERM AND AGREED QUANTITIES

The term of this Agreement will commence November 1, 2004 and will expire on October 31, 2007, subject to the early termination provisions set forth below. The minimum volume per contract year shall be one (1) million tons. The maximum tonnage per contract year shall be three (3) million tons. In accordance with Attachment III, Shipper may elect to tender DBF through Kinder Morgan's Tampaplex Terminal at market rates and terms to be determined at time of shipment. All volume shipped pursuant to this Attachment will be applied to the minimum volume commitment hereunder.

Should Shipper tender less than the minimum volume in a contract year, Shipper shall pay Terminal liquidated damages in an amount equal to the tonnage deficit (actual tonnage shipped under the contract subtracted from the minimum tonnage) multiplied by [REDACTED] per net ton. In the event Shipper tenders less than the minimum volume, Terminal shall invoice Shipper as soon as practicable after the end of the contract year in which the deficit occurred. Such invoice shall be paid within twenty (20) days thereof. In the event of its failure to fulfill its obligations in regard to the minimum tonnage, Shipper shall have the right to carry forward such deficit tonnage and add it to any other calendar year of the contract or within a contract extension, and such deficit tonnage will be credited when excess tons are shipped. For purposes of calculating the tonnage deficit, force majeure as defined in Article VI hereunder shall occasion a proportional reduction in the minimum tonnage obligation during the contract year in which said force majeure occurs.

For purposes of this Article I, Shipper's DBF shall be considered tendered upon its constructive placement in Terminal's fleet.

ARTICLE II: SERVICES, RATES AND INVOICES

A. For domestic DBF, during each contract year of this Agreement, Terminal agrees to provide transfer services including the unloading of the DBF from river barges and transfer either into shore storage and then to sea-going vessel or directly to sea-going vessel, at Shipper's option; and Terminal represents and warrants that it is capable of receiving, transferring and stockpiling DBF in volume and that it is willing to contract to provide the services herein contemplated. Shipper agrees to pay the following throughput rates per net ton of DBF for the above listed services performed by Terminal which are in effect beginning November 1, 2004:

Storage

Direct

B. For import DBF vessels Shipper agrees to pay the following rates per net ton of DBF (all rates include Terminal operations on stand-by and available to receive and discharge barges, when practical, throughout the vessel discharge):

Gearless Vessel

Terminal crane discharge through storage:

*Rate includes unloading DBF with Terminal's crane into river barges, barge chartering, handling, fleeting, shifting, and lashing to side of vessel; draftsmen and supervision to coordinate swap-out of loads/empties at the vessel in a prompt manner so as not to delay the vessel discharge; blade cleaning of vessel holds (inclusive of labor and equipment); later reclaim of DBF to gulf barge.

Gearless Vessel

Terminal crane discharge through CBU direct to gulf barge

*Rate includes all services above. Barges so designated as "direct" must be transferred to gulf barge no later than 48 hours following import vessel completion.

Grab Vessel

Vessel self discharge through storage:

*Rate includes receiving DBF from vessel in river barges; barge chartering, handling, fleeting, shifting, and lashing to side of vessel; draftsmen and supervision to coordinate swap-out of loads/empties at the vessel in a prompt manner so as not to delay the vessel discharge; blade cleaning of vessel holds (inclusive of labor and equipment); later reclaim of DBF to gulf barge. Rate does not include labor or equipment to operate the shipboard cranes.

Grab Vessel

Self discharge through CBU direct to gulf barge:

*Rate includes all services listed above. Barges so designated as "direct" must be transferred to gulf barge no later than 48 hours following import vessel completion.

Conveyor Vessel

Self discharge through inbound hopper through storage:

*Rate excludes any barging and barge services, hold cleaning, crane operations, and all other services not necessary for a vessel conveyor boom discharge direct to and compatible with Terminal's inbound conveyor belt discharge hopper.

Conveyor Vessel

Self discharge direct to gulf barge:

*A direct transfer must be accommodated by placing gulf barge alongside the vessel and discharging directly into it.

Shipper must declare an above rate option for each import vessel at least 15 days prior to each vessel arrival.

C. 1) Rates are fixed for the entire term of the contract. All rates include ground storage fees. Rates do not include sample collection or analysis.

2) Rates include the Plaquemines Port tonnage tax of [REDACTED] per net ton. Terminal is not responsible for any other taxes assessed against the cargo.

3) Rates include dockage, line handling and tug assist for Shipper's gulf barge tows, but not for Shipper's import DBF vessels. Such fees for import vessels will be billed directly to the vessel owner.

4) Rates do not include fleeting charges for Shipper's river barges. These charges will be billed directly to Shipper's river barge carrier. A productivity penalty of [REDACTED] for stacked barge covers will apply and be invoiced to barge carrier.

5) The direct transfer rate is for DBF discharged by Terminal's handling system and immediately loaded to Shipper's outbound tow, bypassing ground storage, but still utilizing Terminal's mechanical sampler, metal collection devices and including blending DBF from ground storage if required.

6) Rates include all fees, taxes, tolls, duties, or port charges applicable to Terminal as of the effective date of this Agreement, except those additional charges as specifically provided herein. Should any government or governmental agency or authority, after the date of this Agreement impose any additional tax, charge, impost, duty, toll, tariff or port charges on cargo or on the use of waterways or water improvements or facilities (herein called "charge", and such charge is not included in any other cost item stated in this paragraph), the base price shall be increased to become effective upon the effective date of any such charge, by the amount

which such charge changes the cost for Terminal to perform the services for Shipper pursuant to this Agreement. Charges imposed in any other form shall be handled in an equitable manner as may be mutually agreed. Should such additional charges produce unreasonable hardship for Shipper, Shipper may elect to terminate this agreement.

7) Clean-up tons placed in storage from "Direct" barges will be billed at the "Storage" rate. Shipper and Terminal will agree on methods to measure these tons at minimum measurement expense to both parties.

D. Invoices

1. Invoices will be prepared based on barge draft survey weights, provided by Shipper in writing to Terminal at the time cargo is loaded for delivery to Terminal. Invoices will be issued when cargo is discharged from barges by Terminal. Invoices will be addressed to Shipper at:

Progress Fuels Corporation
Attention: Accounts Payable
Post Office Box 1241
Raleigh, North Carolina 27602-1241

2. Invoices will be due within thirty (30) days from date of invoices. Remittance should be made to:

International Marine Terminals
Post Office Box 62644
New Orleans, Louisiana 70162

3. Outstanding invoice balances more than 30 days past the due date of invoice will be assessed at 1½% interest charge per month or the maximum legal rate allowed in the State of Louisiana, whichever is lower. Interest is not to be applied to any accumulated interest charges.

If an invoice is in dispute, the disputing party shall pay to the other party eighty percent (80%) of the invoice amount within the time period specified above, subject to debit or credit when the dispute is resolved without interest or penalty on the balance due. Performance shall continue during and despite any dispute.

If an invoice has gone unpaid by Shipper for more than 90 days, Terminal shall, for the amount of any unpaid invoice (not including the 20% of a disputed invoice mentioned above) have the option to assert a lien against Shippers DBF in compliance with governing laws. Such lien will allow Terminal to take possession of and/or relocate DBF within Terminal property and/or sell the same. Shipper warrants that all DBF delivered to Terminal shall be owned by Shipper or by a third party on whose behalf Shipper has authority to act.

4. Terminal charges incurred by third parties under contract to Shipper, including but not limited to barge carriers, vessel owners, surveyors, agents, etc., will be for account of the

applicable third party. However, Shipper shall remain responsible for prompt payment of such charges if payment is not received within the time frame specified in Article II, 2 above. Terminal will advise Shipper of any problem accounts prior to requesting reimbursement by Shipper for such charges. Terminal will refund to Shipper any charges paid by Shipper which Terminal subsequently collects from such third party.

ARTICLE III: GROUND STORAGE

- A. For each contract year of this Agreement, storage will be provided for up to 350,000 short tons of DBF distributed in four (4) piles. Additional storage above this limit will be provided as available, for as long as available, at no charge; however, Shipper shall forecast estimated storage volume requirements in advance to provide Terminal with reasonable preparation time to accommodate such excess storage requirements.
- B. It is recommended that Shipper inspect the storage area prior to transferring DBF onto the storage pad. Should Shipper fail to inspect the area, the shipment of DBF to be stored on the area will be presumed to have been acceptable to Shipper for such storage
- C. Terminal is not required to provide or place a base material on the designated storage pad prior to receipt of Shipper's product. Terminal will make best efforts to place Shipper's DBF on soil cement storage pads. Terminal shall not place Shipper's DBF on a storage pad normally used for petroleum coke. Terminal agrees to keep the storage area leveled and cleared of all foreign material and to keep the storage area drained so as to prevent water from running into or standing around DFB piles.
- D. Terminal shall not have liability or responsibility for contamination or commingling of Shipper's product with the base material or storage pad beyond prudent industry standards unless Terminal has placed DBF on a storage area specifically rejected by Shipper.
- E. Upon expiration of this Agreement or termination for any reason, Shipper shall have sixty (60) days to vacate the storage area of all product. If product remains after January 1, 2008, Shipper shall be assessed storage charges of [REDACTED] per short ton per day.

ARTICLE IV: OPERATIONS

- A. All shipments and transfers through Terminal shall be made in accordance with the provisions of this Agreement and the rules, terms and conditions set forth in its Terminal Manual, as may change from time to time. The current manual is made a part of this Agreement as Attachment I. Shipper shall be notified of changes/amendments to the Terminal Manual which shall then become effective for Shipper in the following calendar year; provided, however, that Terminal will not make any changes/amendments to the Terminal Manual that are materially adverse to Shipper. Specific items and provisions referenced in this Agreement shall take precedence over the Terminal Manual.

Terminal provides operations twenty-four (24) hours a day, seven (7) days a week, with no exceptions/exemptions for holidays.

B. Shipper warrants that its DBF will be "free-flowing" and will not contain excessive fines or moisture that will impede handling of Shipper's DBF by Terminal on its high speed conveyors. If, after reasonable effort, cargo cannot transit the continuous barge unloader, Terminal and Shipper shall reach mutual agreement for the disposition of such cargo and associated charges, subject to Terminal's right (under section F, Article IV) to reject such problem cargo. The vessel loading guarantee, as provided for in Attachment 2, will not apply to shipments including such problem DBF.

C. Shipper warrants that its cargo is free of foreign material that could cause damage to terminal equipment. In the event that such material does cause equipment damage, Shipper shall reimburse Terminal for actual costs incurred by Terminal to repair such damage.

D. Terminal shall exercise due diligence to receive, unload, store (when required), and load DBF for Shipper, this constituting Terminal's only warranty hereunder. Performance by Terminal shall be subject to reasonable delays caused by periodic shutdowns for repair, maintenance, adverse weather conditions and events of force majeure. Preventative maintenance will be scheduled so as to minimize interference with transfer operations.

E. Terminal shall not be responsible for any loss of or damage to DBF caused by an act of God, natural occurrences, or phenomena. Terminal shall not be required or expected to provide cover of any kind for Shipper's DBF. Terminal may spray DBF to control dust when deemed necessary by Terminal and with notification to Shipper.

F. Terminal reserves the right to inspect all barges upon arrival and to either reject those containing DBF of excessive temperature, moisture, metal or other contamination, or size in the event it is anticipated that the DBF might damage or slowdown Terminal's equipment or to assess reasonable additional charges for handling and unloading such barges. It is recognized that Shipper bears full responsibility for spontaneous combustion and shall have the opportunity to inspect problem DBF prior to unloading, while in storage, or during vessel loading. Terminal shall promptly notify Shipper in such instances, and Shipper agrees to properly advise and provide instructions to Terminal as to handling of excessive temperature events. Should Shipper fail to promptly respond to Terminal as to instructions, then Terminal, for Shippers account, will take appropriate action to handle such instance, notifying Shipper in writing of final action.

G. Terminal shall provide and maintain metal detectors and magnets at Terminal's barge unloader, stacker-reclaimers and outbound loading dock conveyor sufficient to prevent transfer of metal into Shipper's stockpile and/or to ocean going barges. Terminal shall provide and maintain scales, feeders, and other related equipment to guarantee blending capability to an accuracy of 1% by weight. Terminal shall provide and maintain sampling systems for the purpose of sampling all inbound and outbound DBF. The sampling systems shall adhere to ASTM D-2234 and shall be bias tested on a minimum of an annual basis.

H. Discharge of Barges:

1. Terminal shall have the responsibility to unload barges. In connection with the unloading of the barges, Terminal agrees to exercise reasonable care to avoid damage or other casualty thereto while in Terminal's care, custody, and control. DBF will be delivered in open hopper barges having a maximum width of 35 feet and length of 205 feet.

2. Shipper shall have the responsibility to provide Terminal, in writing, of the loading date of all barges and include in such notification;

- a.) the barge carrier;
- b.) each individual barge number and applicable tonnage;
- c.) the name designation of storage pad or type of DBF;
- d.) the estimated time of arrival (ETA) at Terminal.

3. Terminal will unload DBF from river barges and transfer the DBF into the storage area to subsequently be loaded into sea-going vessels. Alternatively, and at Shipper's instructions, Terminal will directly load DBF from river barges into sea-going vessels. Terminal will provide Shipper an on-going stockpile inventory, reconciling tonnage in and loadings out.

4. Terminal will guarantee discharge of Shipper's river barges which are destined for storage and invoiced at the storage rate at an average of four (4) days after the first 7:00 AM following barges' constructive placement at Terminal's fleet or upon arrival at fleet of Terminal's choice when Terminal has notified carrier that Terminal's fleet is unavailable. "Clean-up" DBF from direct barges or DBF otherwise left in a direct barge that is later discharged to storage will still be considered a "direct" barge and not guaranteed, but such tons will be billed at the storage rate; Terminal will discharge such clean-up DBF to storage within forty-eight (48) hours of vessel completion. Terminal is not responsible for time lost due to cargo quality, Force Majeure, barge seaworthiness, barge suitability or delay caused by lack of written instructions or a change in such instructions about disposition of the barges, or all time following Terminal notification of Terminal fleet availability until arrival time at Terminal's fleet (including transit time) in cases when barges are fleeted at an alternate fleet.

Should Terminal fail to discharge barges within the average time constraint listed above, barge demurrage will be reimbursed by Terminal subject to a maximum of [REDACTED] per barge day. Barge demurrage calculations are to be reconciled on a quarterly basis (using barge empty-release dates to determine which quarter a barge falls in) within 60 days of the end of each quarter.

5. Terminal further represents it has adequate and safe berth for barges, and each barge shall be adequately moored while in Terminal's custody and all U.S. Coast Guard regulations shall be complied with.

6. Terminal shall provide and operate a fleet and harbor towboat for the shifting of loaded and empty barges to and from the dock and the mooring area, and the pickup and delivery

of loaded and empty barges at the mooring area from the barge carrier's tow. Terminal requires barge carriers to use Terminal's fleet and harbor towboat in order to ensure an orderly and safe operation.

7. Terminal agrees to provide normal blade cleaning of barges following unloading for re-delivery to Shipper's barge carrier.

8. River barges and their associated handling, fleeting, and shifting services necessary for the discharge of import vessels and not provided under a Terminal full service package shall be for the account of Shipper. Under a full service package, Terminal will acquire sufficient barges to assure continuous vessel unloading. Terminal will request assistance of Shipper to obtain barges if required.

I. Loading of Vessels

1. Arrival dates at Terminal of sea-going vessels must be nominated by Shipper at least five (5) days in advance of the month. Shipper takes cognizance that all sea-going vessels loading at Terminal will be required to conform and comply with the then current Terminal Manual, as may change from time to time, a copy of which will be furnished to Shipper and agents for each vessel.

2. Terminal shall have absolute discretion to determine the preference of vessels. Without limiting the foregoing, Terminal will use its best efforts to accept vessel's berth in order of nomination arrival subject to (i) timely issuance of Certificate of Readiness/Hold Cleanliness, (ii) availability of DBF to be loaded, (iii) size of vessel, (iv) weather conditions or Terminal activities, (v) timely receipts of ETA as required in Terminal Manual, and (vi) timely arrival in accordance with Terminal window schedule and ETA notifications.

Notwithstanding the forgoing, Shipper may request priority berthing, i.e., going to first available berth ahead of other waiting vessels, from Terminal during the term of this agreement. Such priority shall not be construed to prevent Terminal from completing the loading of another vessel begun prior to the arrival of Shipper's gulf barge

With a minimum volume guarantee of three million (3,000,000) tons during the contract period, IMT shall provide a loading berth for the exclusive use of Shipper to ensure no delay time for loading Shipper's gulf vessels. Any shortfall in the three million (3,000,000) tons can be made up with subsequent contract renewals or cargo handled at other Kinder Morgan Terminals.

3. Should sampling, draft or temperature surveys of Shipper's DBF be required, Terminal will coordinate with the parties designated by Shipper; however, the costs of such services shall be for Shipper's account. If a temperature survey is deemed necessary by Terminal, it will be arranged, with prior notification to Shipper, for Shipper's account.

4. Shipper recognizes that Terminal is not a shipper of cargo and will not execute bills of lading or other like documents evidencing terms of carriage or condition of cargo.

5. Shipper acknowledges that Terminal may be called on by governmental agencies or by sea-going vessels or their agents or insurers to disclose certain properties and characteristics of the DBF to be loaded on such sea-going vessels. Shipper therefore acknowledges their responsibility and agrees to furnish Terminal with documentation or information pertaining to its DBF as may be required by governmental agencies, sea-going vessels, their agents or insurers. Terminal agrees to forward such requests to Shipper and provide copies of such correspondence.

6. Terminal is not required to compact the DBF loaded in any vessel unless previously arranged with Terminal and shall not be responsible for spontaneous combustion of any DBF loaded onboard a vessel. Shipper agrees to indemnify and hold Terminal, its partners and their agents, officers and employees harmless from and against any and all claims arising out of or in connection with any spontaneous combustion.

ARTICLE V: VESSEL LOAD/DISCHARGE RATE GUARANTEE

Terminal will guarantee demurrage-free ocean vessel loading at 16,000 short tons SHINC within a fourteen hour weather-working load time from acceptance of NOR in accordance with the terms provided in Attachment II. Terminal will reimburse Shipper for demurrage in accordance with the rate as provided in Attachment II, Article III-5.

Terminal will discharge import vessels of DBF under separate letter of understanding as mutually agreed, specifying any demurrage/ despatch terms and river barge requirements for such vessels.

ARTICLE VI: FORCE MAJEURE

Neither party shall be under any liability of any kind or nature whatsoever for any loss, damage, delay or failure in performance, including but not limited to, demurrage, delay, damages, deterioration of quality, shrinkage in quantity and/or loss of DBF, in the event that it should fail or delay to perform its obligations hereunder where such failure or delay is directly or indirectly, wholly or partly, caused by a Force Majeure event.

The term "Force Majeure" includes the following regardless of whether foreseeable or not: war, civil commotion, government order, labor dispute, labor shortage, strike or lockout; equipment breakdown; interruption, delay, or damage to transportation means or facilities; any shortage of material; flood; river freeze up; abnormal weather conditions; inability to obtain fuel or power; fire; act of God; legal intervention; resolution or order of government authority; or any other cause whatsoever beyond the reasonable control of the party affected thereby, whether or not of the same or similar nature, provided such events exceed twelve (12) hours or more in duration.

A Force Majeure event shall not excuse a party from performing unless such party shall give written notice to other party promptly upon learning of such Force Majeure but in no event later than thirty (30) days subsequent to such event. Information as to the cause of inability to perform and probable extent thereof shall be included in such notice and shall be updated

periodically during the continuance of the Force Majeure event. Failure to give such notice and furnish such information promptly shall be deemed a waiver of all rights for such period of time during which notice was not given. Upon removal of the cause, shipment shall resume at the specified rate.

Notwithstanding the foregoing, "force majeure" will not excuse Shipper from its obligation to pay sums due under this Agreement for any services performed by Terminal pursuant to the Agreement, during the period of "force majeure".

ARTICLE VII: MISCELLANEOUS

A. Notices - All notices or other written communications pursuant to the Agreement shall be in writing and shall be either delivered in person to the President or a Vice-President or other individual of the party to be notified, as designated, or sent by registered or certified mail, or by electronic mail/fax to said party at the appropriate number shown below, or any subsequent address or number which either party may designate.

International Marine Terminals
Attn: Manager - Traffic
18559 Highway 23
Port Sulphur, Louisiana 70083

Progress Fuels Corporation
Attn: Transportation Manager
Bank of America Tower
One Progress Plaza
St. Petersburg, FL 33701
Fax: (727) 824-6601

B. Liabilities - Shipper acknowledges that the inherent nature of transfer operations and the inherent nature of DBF can result in an adverse effect on quality and quantity of DBF. Shipper agrees that it shall absolve, release and refrain from seeking remedies against and will hold Terminal harmless, its partners and their officers, agents, employees, subcontractors, and insurers, from and against any and all losses, claims, damages, costs, suits, and liabilities for damage, deterioration of quality, shrinkage in quantity, loss of grade, or loss of DBF arising out of or in any way directly or indirectly related to: a) the performance by Terminal of any work covered hereby, or b) strict liability, or c) defects in Terminal property; the only exception to the foregoing being losses of the type described resulting from Terminal's negligence or willful misconduct or resulting from theft.

C. Governing Law -This agreement is being delivered in and shall be governed and construed in accordance with the laws of the State of Florida. This agreement constitutes the entire understanding of the parties and may not be modified without the written consent of the contract signatories and has been executed by the authorized officials of the parties. This agreement, or any portion hereof, may not be assigned by any party without the advance written consent of the other party, except that no such consent will be required if the assignment is to a

successor in interest of all or a substantial part of the assets of a party, divestiture pursuant to an order of decree of court, or similar corporate reorganization. This entire contract agreement shall be binding upon any successors or assigns of the parties.

D. No default of either party to this Agreement in the performance of any of its covenants or obligations hereunder, which, except for this provision, would be the legal basis for rescission or termination of this Agreement by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the default within thirty (30) days after written notice of claim of such default is given to such defaulting party by the other party hereto.

Waivers; Default - The failure of either party to insist on any one or more instances upon strict or full performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

E. Terminal Insurance - Terminal agrees to maintain, as applicable, the following insurance: Workman's Compensation Insurance in the required statutory amount with Longshoremen's and Harbor Workers' endorsement; Comprehensive General Liability Coverage in amounts of \$5,000,000/\$10,000,000 for bodily injury and \$500,000/\$1,000,000 for property damage. Terminal shall, upon request, furnish Shipper with a copy of a certificate of insurance with respect to the foregoing coverage. Terminal reserves the option to self-insure for any claims arising under the Longshoremen's and Harbor Workers' Act.

F. Indemnification. Terminal shall indemnify, defend and hold Shipper harmless from and against any claim, demand, loss, damage or injury caused by or resulting from any act or omission, whether negligent or otherwise, of Terminal. Shipper shall indemnify, defend and hold Terminal harmless from and against any claim, demand, loss, damage or injury caused by or resulting from any act or omission, whether negligent or otherwise, of Shipper.

G. Entire Agreement - This Agreement, the attached Terminal Manual (Attachment I) and any future changes to such manual, the attached Vessel Loading Rate Guarantee (Attachment II), and the attached Terminaling Services at Tampaplex (Attachment III), constitute the entire agreement between Shipper and Terminal. No representation, warranties, promises, guarantees, or agreements written or oral, expressed or implied, have been made by either party with respect to the Agreement except as referenced in this Agreement. Any change or modification to this Agreement or to the Attachments herein must be in writing and signed by both parties.

H. Confidentiality - The parties shall not disclose the terms of this Agreement to a third party except: 1) to government agencies; 2) as required by law or regulation; 3) to the United States bureau of labor statistics; or 4) to an audit firm, so long as the disclosing party is responsible for insuring compliance by that firm and the other party hereto is notified prior to disclosure. If any party violates this paragraph, any adversely affected party may cancel this Agreement without penalty.

I. Environment, Health, and Safety.

1. Compliance and Indemnification. Terminal shall comply with all applicable EHS laws and shall indemnify Shipper against any EHS claims and costs arising from Terminal's performance under this Agreement.

2. Audits. Shipper may audit Terminal's EHS compliance. Within thirty (30) days of Shipper's request, Terminal shall deliver to Shipper (1) all records regarding (a) Terminal's actual or alleged violations of EHS laws and (b) EHS claims asserted against Terminal, in each case in the five year period preceding Shipper's request and (2) any executed consent form(s) necessary for Shipper to obtain from regulatory agencies and other third parties information regarding Terminal's EHS compliance.

3. Definitions (as used in this Agreement).

a. Claim means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.

b. EHS means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.

c. Indemnify means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.

d. Law means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.

e. Manage or management, with respect to any material, means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

Agreed to this 1st day of November, 2004:

WITNESS:

Roberta A. Cott

F. Michael Selah

PROGRESS FUELS CORPORATION

BY: [Signature]

Vice President—Coal Procurement

Date Executed: 12/29/04

WITNESS:

[Signature]

Allen Q. Newman

INTERNATIONAL MARINE TERMINALS

BY: [Signature]

President

Date Executed: 1-10-05

ATTACHMENT I

TERMINAL MANUAL

{To be provided by Terminal}



**INTERNATIONAL
MARINE TERMINALS**
Myrtle Grove, Louisiana

TERMINAL MANUAL

18559 Hwy. 23
Port Sulphur, LA 70083
Phone: (504) 656-7341
Fax: (504) 656-2071

TERMINAL MANUAL PREFACE

This Terminal Manual provides information concerning the general conditions, facilities and services associated with International Marine Terminals, hereinafter called IMT. The manual is addressed to all users, shippers, river transportation operators, masters, owners and agents of vessels (hereinafter "all other parties") that call IMT for the purpose of loading or discharging cargo and explains the rules and procedures to follow and which rules and procedures are deemed to be acceptable to and agreed upon by "all other parties" which make use of IMT's facilities and docks.

This manual does not supersede or replace contracts between IMT and Shippers but is intended to supplement said contracts and assist in the performance of such contracts and written or verbal agreements. Requirements of this manual shall and is to be considered binding between IMT and "all other parties" except where a conflict exists with the terms and provisions of an applicable contract between IMT and Shipper and other Agents, Receivers and Brokers. If there is a conflict between this manual and a contract, then the terms and provisions of the contract shall prevail.

It is IMT's intent that information in this manual be as accurate as we could reasonably make it, however, we do not warrant or guarantee its accuracy.

This manual, when given to users of IMT, provides a basis for use and indicates user's full agreement to be bound by the terms and conditions unless otherwise agreed to in writing.

It shall be the obligation of all users, shippers, river transportation operators, masters, owners and agents of vessels utilizing IMT to make known and provide a copy of IMT Manual to each of the operators, masters, owners, and agents of vessels utilizing the services herein and confirm same to IMT before arrival of the ship at IMT's facilities and docks.

INTERNATIONAL MARINE TERMINALS

Revised November 18, 2004

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Section 1 - General Information

A. Location

International Marine Terminals (IMT), Myrtle Grove facility, is located on the right descending bank of the Lower Mississippi River, 57 miles Above Head of Passes (AHP). IMT midstream ship mooring buoys are located on the right descending bank of the Lower Mississippi River, 55 miles AHP.

B. Time Belt

Local Time: Central Standard Time (minus 6 hours Greenwich Mean Time [GMT]).

Note: From 0200 hrs. the first Sunday in April to 0200 hrs. the last Saturday in October, this is modified by use of Daylight Time to minus 5 hours GMT.

ALL COMMUNICATIONS SHOULD REFER TO LOCAL TIME AND ARRIVING VESSELS SHALL TAKE THIS FACTOR INTO CONSIDERATION WHEN ADVISING OF ESTIMATED TIME OF ARRIVAL (ETA).

C. Hours of Operation

IMT operates twenty-four (24) hours a day, seven (7) days a week throughout the year with the exception of the scheduled holidays noted below. With prior written permission from IMT, arrangements may be made to work during these holidays also.

New Year's Day
Mardi Gras
Easter Sunday
Independence Day
Thanksgiving Day
Christmas Day

D. Pollution of the River

All agents, charterers, vessel owners and masters shall be knowledgeable of and accepts responsible for any environmental rules and regulations applying to United States rivers and coastal waters. In compliance with the Federal Water Pollution

Control Act and Annex V of the Protocol of 1978 to the International Convention for the Prevention of Pollution by Ships (MARPOL 73/78), the discharge of certain matters, including but not limited to oil, oily waste, or oily ballast and plastics is prohibited by any vessel moored at our dock or midstream ship buoys. Any vessel found violating this Act while at any IMT facility will relinquish any berthing rights and be escorted away from the dock. The U.S. Coast Guard will be immediately notified of the transgressing vessel.

E. River Stages & Currents

The mean high river stage for the Myrtle Grove facility is approximately 8.4 feet above National Geodetic Vertical Datum, previously called Mean Sea Level. (+4.3 NGVD.) High water periods generally run from mid-March through mid-June. River current during this high water period can reach 3.2 knots. You are free to contact the U.S. Army Corps. of Engineers if you deem it necessary.

F. Winds

Winds of varying strength may come from any quarter. The prevailing wind direction is generally from the Southeast from March through approximately June and December. Generally Northeast winds can be expected in February, September, and October; North winds in January and November; West winds in July; and East winds in August.

Hurricane season begins June 1 and normally ends November 30.

STRONG WINDS AND TORNADO ALERTS OR HURRICANE WARNINGS WILL NECESSITATE THE INTERRUPTION OF TRANSFER OPERATIONS AND MAY REQUIRE MOVING A SHIP FROM THE MOORING TO ANCHOR.

You can contact various U.S. Government Agencies for further or more specific information, if you deem it necessary.

G. Communications

The official language of IMT is English. Therefore, all vessels must have personnel on duty at all times that can communicate in English with IMT personnel.

IMT is equipped with VHF radio. Channel 7 (156.350 MHz) USA is the operating frequency. While at anchor, any vessel wishing to verify berthing information, air draft requirements, etc., should contact IMT Base by using VHF Channel 7. Contacts at IMT's facility are: T-2 Tower, M/V *Tammy T.*, M/V *Darlene M.* and M/V *Laurielynn*.

H. Official Address

INTERNATIONAL MARINE TERMINALS

Mailing: International Marine Terminals
18559 Hwy 23
Port Sulphur, Louisiana 70083-9722

Shipping: International Marine Terminals
18559 Hwy 23
Myrtle Grove, Louisiana 70083

Telephone: (504) 656-7341

Fax Number: (504) 656-2071 (Administration)
(504) 656-2347 (Operations)

Section 2 - Operating Procedures

A. Vessels

(1) Estimated Time of Arrival (ETA) Requirements

- (a) Vessels will be accepted at IMT or midstream locations subject to an approved four (4) day terminal ETA schedule. Registration for ETA schedules is requested at the earliest date known. The customer and/or agent of a vessel bound for our facilities is required to advise IMT of the vessel ETA no later than twenty-eight (28) days and will update such ETA seven (7) days before arrival. Additionally, you are required to notify IMT 72 hours and 24 hours before arrival at anchorage. Your seven (7) day ETA message should include:

1. Estimated time of arrival at pier or anchorage (local time)
 2. Last port of call
 3. Master's estimated lift
 4. Tonnage by hold
 5. Hold loading/unloading sequence geared towards maximum efficiency (maximum of two passes per hold)
 6. Estimated time required to deballast after berthing (loading only)
 7. Previous cargo (loading only)
 8. Fresh water draft (arrival and completion)
 9. Air draft of vessel upon arrival at anchorage or dock
 10. Plans regarding bunkers or stores
 11. Number of tugs required for docking/undocking
 12. Cargo destination
 13. Customs required inbound/outbound
- (b) Vessels arriving and providing a Notice of Readiness without an approved four (4) day ETA schedule, arriving *prior to* the scheduled ETA, or arriving *after* the scheduled ETA, will be worked at the discretion of IMT on a best efforts basis as determined by the Operations Supervisor. Any contractual performance or loading guarantee will not be applicable unless a revised schedule is approved by IMT, in writing, prior to vessel arrival.
- (c) Each approved four (4) day ETA schedule will begin at 07:00 hours on the first day of the ETA and end at 06:59 hours on the last day of the ETA.

(2) Berthing and Mooring

At least twenty-four (24) hours prior to vessel arrival at Southwest Pass, IMT will estimate a berthing time, which shall be confirmed as soon as possible prior to arrival. Changes by IMT will be communicated to the Vessel's Agent.

The vessel's master or pilot is responsible for the docking, undocking, safe trim, stress and stability of vessels delivered to IMT for transfer operations. IMT shall not be responsible for the docking, undocking or shifting of any vessel or delay for same unless such delay is directly caused or requested by IMT or its personnel.

Unless instructed by the Operations Supervisor on duty to proceed directly to the dock, the vessel will be required to prove itself *in all respects ready to load*, obtain a Certificate of Readiness/Hold Cleanliness and perform a draft survey at a suitable available anchorage before docking at IMT's Myrtle Grove facility, or the designated ship mooring buoys.

Berths are assigned according to:

1. Contractual commitments and scheduled ETA.
2. Time of *Notice of Readiness* with the vessel being ready to load or discharge *In All Respects*.
3. Product to be transferred.
4. Size of vessel.
5. Weather conditions.
6. All barges are placed in IMT's fleet (if required by operations)

A *Notice of Readiness* will not be accepted until the vessel is *In All Respects*, ready to load/unload its cargo.

During berthing maneuvers, the vessel's approach speed to the dock must not exceed .35 feet per second (.10 m/sec). Steep angle approaches must be avoided. It is the obligation and responsibility of the master of the vessel to dock in a safe manner. VHF radio communications must be maintained between the vessel's bridge and IMT dock personnel before berthing maneuvers commence.

After being secured alongside the dock and Customs and Immigration has inspected the vessel, the Captain and/or Chief Officer will be required to discuss the Pre-Transfer Conference and sign IMT's *Notice of Readiness* (N.O.R.). This Terminal *Notice of Readiness* states the earliest time the vessel loading/discharge can commence with the following prerequisites being met:

1. Vessel all secure.
2. *Notice of Readiness/Hold Cleanliness* tendered.
3. Completion of Draft Survey.
4. Gas Free Certificate (if applicable).
5. Holds opened.
6. Vessel ready to commence loading *In All Respects*.
7. Written authorization from Shipper instructing IMT to load/unload vessel.
8. All cargo or barges are fleeted at terminal. Any variance will be subject to IMT's discretion with prior written notice.

If the berth is occupied, N.O.R. will be accepted after the above #2, #3, #4, #7 and #8 are completed. Travel time from anchorage will be deducted for laytime calculations.

Should vessel be unable to work cargo due to rain or other inclement weather or any reason beyond control of IMT, IMT may require the vessel to vacate the berth in order that cargo not affected by weather may be worked. All expenses required to vacate the berth, including, but not limited to, pilotage charges, towing charges, and line handling, shall be for the account of the vessel, its owner(s) and/or charterer(s).

IMT may decline the berthing of a vessel or may order it to vacate its berth if, in the judgment of IMT, the cargo to be unloaded or loaded to or from the vessel is unsuitable for grab bucket discharge in bulk or otherwise materially fails to meet the description, characteristics or specifications furnished to IMT in respect to cargo. Failure to vacate berth as required will subject the vessel to a terminal detention charge of [REDACTED] per hour for each hour or fraction thereof. This charge shall not affect the right of IMT to effect the removal of the vessel.

(3) Pre-Transfer Conference

Before the cargo transfer begins, IMT Operations Supervisor will board your vessel. He will discuss with you and your officers the safe transfer of your cargo. He will also expect to receive from the master the following:

1. *Certificate of Readiness or Hold Cleanliness* for all holds, issued by a representative nominated by the vessel's agent.
2. Loading/Discharge plan based on the maximum air draft available at the dock. (IMT reserves the right to modify the loading/discharge plan to insure an efficient and safe operation. Any modification to the original plan will be discussed in detail with the vessel's officers.)
3. If the vessel's previous cargo was a petroleum cargo, a gas-free certificate will be required before loading.

IMT representatives retain the right to be onboard the ship during cargo transfer to ensure that safe working practices are being observed.

(4) Deposit

Before the vessel is docked, the vessel's agent will be required to deposit with IMT an amount sufficient to cover all estimated charges due, including dockage, tug assistance, line handling, crewboat services, facility user fees and any other supplemental fees levied by governmental bodies.

Operations cannot commence until the full deposit is received. Additional deposits may be required during the loading in the event actual charges incurred exceed the existing deposit(s). Cessation of operations will occur if actual charges incurred exceed total deposit(s).

Any delays resulting from inadequate vessel deposit(s) will not be counted against performance guarantees.

(5) 'Tween Deckers

Ocean going vessels to be loaded/discharged at IMT shall be gearless, single deck, self-trimming carriers.

'Tween deckers will not be loaded/discharged without prior approval of the Operations Supervisor. If approval is given, these vessels will be assessed additional charges to properly carry out transfer operations. Prior notice must be given to IMT if a vessel coming to be discharged at one of its facilities is a 'Tween decker. This type of vessel may be subject to additional charges to properly discharge.

(6) Dimensions

Vessels longer than 750 feet (228.60m) LOA and 105.5 feet (32.16m) beam will not be accepted for *unloading* without the prior written consent of the Terminal Manager. Vessels longer than 950 feet (289.56m) LOA and 150 feet (45.72m) beam will not be accepted for *loading* without the prior written approval of the Terminal Manager.

(7) Air Draft

A vessel being *unloaded* must maintain ballast and trim so that the maximum vessel air draft at the hatch being unloaded (normally the hatch coaming) is at or below +72 NGVD (approximately 63 feet (19.2m) at mean high river).

A vessel being *loaded* by way of the shoreside facility must maintain ballast and trim so that the maximum vessel elevation in way of the hatch being loaded (normally the hatch coaming or opened side-rolling hatch cover) is at or below 65 feet (19.81m) at zero river stage. River stage typically can fluctuate from zero to eleven feet.

A vessel being loaded or unloaded by way of floating cranes must maintain ballast and trim so that the maximum vessel elevation in way of the hatch being loaded or discharged (normally the hatch coaming or open side-rolling hatch cover) is at or below 70 feet (21.34m).

All dock surfaces are at +15 NGVD.

(8) Dockage Fees

A dockage fee based on the vessel's gross registered tons shall be assessed for each twenty-four (24) hour period and prorated on twelve (12) hour periods thereafter. Time commences when the vessel arrives the dock and ends when the vessel departs the dock, even if the loading or unloading is complete.

In the case of the buoys at Myrtle Grove, the time commences when the vessel arrives the buoy system and ends when the vessel departs the buoy system.

Any vessel in berth that refuses to work twenty-four (24) hours/day shall vacate the berth on order from IMT. Should the vessel fail to vacate the berth when so ordered or otherwise fails or refuses to follow the instructions of the Operations Supervisor, it shall be assessed a terminal detention charge of [REDACTED] per hour for each hour or fraction thereof. This charge shall not affect the right of IMT to effect the removal of the vessel.

(9) Mooring Lines

IMT will provide linesmen to handle mooring lines during arrival and departure. Arrangements should be made with IMT regarding the charges. A (1) hour waiting period from the call-out time is allowed. Any additional time will be invoiced at the current standby rate. If called out and not used, the current reporting fee will apply.

(10) Tug Service

IMT will provide tugboat(s) to maneuver, dock, and undock vessels berthing and mooring at its facilities. Charges for the services will be assessed against and paid by the vessel. A (1) hour waiting period from the call-out time is allowed. Any additional time will be invoiced at the current standby rate. If called out and not used, the current reporting fee will apply.

(11) Additional Charges to Vessel

The call of last cargo by the Chief Officer will be considered as final. Any cargo loaded after the formal survey has begun will be subject to additional charges. Any time in re-establishing the loading will be counted against the vessel rather than against the loading time for laytime calculations. The vessel will also be assessed additional charges for delays due to, but not limited to, the following:

1. Deballasting
2. Opening, closing, or moving hatch covers
3. Bunkering
4. Taking on water
5. Failure to tend lines
6. Arrival with improper air draft
7. Failure to accept cargo / allow discharge operations
8. Refusal to depart immediately upon request

There will be a fee assessed against the vessel for any delay during one or more of the following:

1. Draft checks
2. Draft surveys
3. Departure
4. Cargo trimming

Vessels discharging do not have permission to remain at berth for cleaning holds beyond the level that IMT has been contracted by its customer. The vessel may request to remain or request a quotation from IMT to perform the necessary cleaning. IMT reserves the right to decline both. A special dockage rate may apply if the vessel is authorized to remain at the dock and exercises that option.

(12) Temperature Surveys

Cargo temperature monitoring can be conducted at the transfer tower (T-10), at the upstream end of the IHI dock. Customarily, the temperatures are taken with a stationary infrared thermometer that reads and records the average surface temperature of a 2.5 feet (.76m) diameter area of coal on the respective conveyor belt. The surface temperature of approximately every 0.30 short ton is measured and continuously recorded on a chart as it leaves T-10 to the ship.

The infrared thermometer is calibrated and operated by an independent laboratory.

If any coal with temperatures elevated above the established maximum are measured, the conveyor belt will automatically stop and the coal will be discharged from the belt by the shiploader to a river barge on the landside of the dock. Cargo rehandled due to excessive temperatures will be subject to rehandling charges, not to exceed the rates as specified in Shipper's individual contract. If a shipper has elected not to use IMT's temperature monitoring equipment and cargo is found above the recommended temperatures, shipper will be required to hire this service for the balance of the loading.

No other temperature monitoring service will be allowed to attend an IMT loading unless it is in conjunction with the use of IMT's equipment and financial arrangements have been made with the independent surveyor.

(13) Sampling

Automatic mechanical sampling service is available at IMT for outbound coal or petroleum coke and the parties recognize that such sampling service is provided by an independent third party contractor and should CUSTOMER elect to obtain said services, they will pay the contractor directly for sampling.

B. Barges

(1) General

Once each barge is properly moored/berthed at IMT's fleet, it will thereafter be fleeted in accordance with all U.S. Coast Guard regulations. IMT shall provide and operate a fleet and harbor towboat for the shifting of loaded and empty barges to and from the dock and the mooring area, and the pickup and delivery of loaded and empty barges at the mooring area from the barge carrier's tow. IMT reserves the right to require barge carriers to use IMT's fleet and harbor towboat in order to ensure an orderly and safe operation.

(2) Scheduling

IMT will accept barges based on customers' monthly forecast which shall be provided to IMT in advance of barge loadings. Customer shall have the responsibility to provide, in writing:

1. That the barge(s) being presented to IMT are seaworthy.
2. The loading date.
3. The carrier.
4. The individual barge number(s) and applicable tonnage(s).
5. Designation of storage pad or type of coal.
6. The ETA of barge(s), updated as necessary until arrival.

(3) Acceptable Equipment / Cargo

IMT reserves the *right of refusal* on any cargo or product judged not suitable for handling at our facility for reasons including, but not limited to, product size, hot cargo, or wet cargo unable to transit the system, or any barge noted to be unseaworthy or questionable for service due to damage, distribution of load, draft or lack of freeboard, excessive listing, etc. The owner and/or operator of barges delivered to IMT will, at all times remain responsible for the seaworthiness of the barges. By delivery, the owner/operator warrants that the barges are seaworthy and there are no latent defects in the barge or the barge equipment, and that it is capable of either being loaded with cargo by IMT, or unloaded by IMT, using the normal stevedoring equipment ordinarily in service. IMT is not responsible for the maintenance or service of barges, which includes the pumping of water from the barge or the cargo, while at the IMT facility.

(4) Handling of Leakers

Should the barge be delivered with or develop any leaks, cracks or other conditions which, in IMT's view, may result in damage to the barge and/or cargo, then IMT will notify the owner and/or operator and/or their agents of the condition of the barge, and said barge owner agrees to take whatever steps are necessary to protect the barge and/or its cargo. *Leakers* may remain in the fleet only by the river carrier's, barge owner and/or cargo owner's prior agreement to tend to the leaking barge full time and providing to IMT an executed release by the barge owner, river carriers and cargo owner, of any liability on the part of IMT operator with a special standby harbor boat for the duration of the barge's stay at IMT. The release shall state that IMT is to be defended, protected and indemnified, even for its sole or concurrent negligence. The sole judge of the seaworthiness and condition of the barge is the Operations Supervisor.

(5) Mooring of Barges

Any vessel delivering barges to IMT will be responsible for safely and adequately mooring barges or tows in accordance with IMT, Plaquemines Parish, and U.S. Coast Guard Regulations.

Plaquemines Port, Harbor and Terminal District's Tariff No. 1 specifies the following regulations for mooring of barges on the Mississippi River between mile 81.2 AHP and the Head of the Passes:

Mooring (Tariff Item 126, Paragraph 15)

Barge-to-Barge, Barge-to-Vessel, Barge-to-Wharf or Pier:

A barge moored to another barge, a mooring or spar barge, a vessel, a wharf, or a pier, will be safely secured, as near as practicable, to each abutting corner of the barge being moored by:

1. Three parts of wire rope of at least 7/8" diameter with an eye at each end of the rope passed around the timberhead, cavel or button.
2. A mooring of natural or synthetic fiber that has at least 75 percent of the breaking strength of three parts of 7/8" diameter wire rope; or
3. Fixed rigging that is at least equivalent to three parts of 7/8" diameter wire rope.
4. Any other mooring ropes, wires or equipment that is necessary for safe mooring.

Any barges arriving at IMT's fleet without the proper lines, wires or stationary rigging will not be accepted in our fleets until proper equipment is furnished. All vessels will be required to contact IMT's harbor boats on arrivals or departures. IMT's Person in Charge (Boat Operator on duty), reserves the right to question if barges are properly secured, should such person in charge notice a factor that would indicate the barge to be improperly secured.

(6) Barge Services

IMT provides the following services in regards to barges: Tow making/breaking, barge cleaning, dry-docking, top side repairs, cover handling and barge pumping. Arrangements can be made with terminal management to satisfy each customers, or bargelines needs.

C. Storage of Product

(1) Ground Storage

IMT will provide ground storage for product as deemed necessary by Terminal or as reflected per individual agreement with Shipper(s). Additional storage is subject to IMT's approval.

IMT reserves the right to move cargo, which in its judgment, is likely to damage other property, to another location, at the risk and expense of the owner.

(2) Base Material and Inspection

IMT shall not be required to provide or place a base material on the ground storage area prior to receipt of Shipper's product. Shipper will have the opportunity, at Shipper's expense, subject to Terminal approval, to place a base material, on the ground storage area prior to receipt of product. The storage area will be inspected by Shipper prior to the receipt of product on the storage area. Should Shipper fail to inspect the area, the shipment of product on the area will be presumed to have been accepted by the Shipper for such storage.

(3) Due Diligence

IMT shall exercise due diligence to receive, unload, store (when required), and load product for Shipper, this constituting IMT's only warranty hereunder. Performance by IMT shall be subject to reasonable delays caused by periodic shut-downs for repair, maintenance and adverse weather conditions. Preventive maintenance will be scheduled so as to minimize interference with transfer operations.

(4) Contamination

IMT shall not have liability or responsibility for contamination or co-mingling of Shipper's product with the base material or storage pad, or for loss or damage to, or destruction of any product through the operations of IMT, unless IMT fails to exercise due diligence.

(5) Difference in Weights

- (a) Shipper takes cognizance that the inherent nature of transfer operations and the inherent nature of products can result in an adverse effect on quality and quantity of the product. IMT and Shipper agree that in the measurement of the quantity of product shipped, normal variances in weight will occur and are recognized and accepted by industry as existing. As a result, IMT shall not be responsible for variances in the weight of

products when such weights are furnished to IMT by Shipper's rail or barge carriers, vessel draft surveyors or other representatives and/or means of weight determination, even though such weights may be used for the basis of invoices to Shipper.

- (b) IMT shall keep a record of the quantity of product shipped through the transfer process and the quantity of such product in storage. Shipper recognizes and agrees that such records are based on weights that are subject to variance due to the diverse methods of determination as referenced in (a) above and agrees that such records of quantities and weights shall be for book inventory only, and IMT shall not be responsible for any differences in weights or quantity, unless IMT fails to use due diligence.

Section 3 - Services Available at Dock

A. Bunkers, Diesel, Lubricating Oils, Potable Water, Provisions and Stores

With prior approval of the Terminal Manager and payment of a facility user fee, bunkers, diesel, lubrication oils, potable water, provisions and stores will be allowed to be taken on board vessels docked at IMT. No personnel, equipment, stores, provisions, baggage, etc... are allowed to transit IMT's dock to gain access to the vessel unless arrangements are made with the Terminal Facility Security Officer.

The vessel agent must schedule the taking of the above with IMT facility to ensure that no conflict exists with other terminal activities.

B. Tractor Leveling, Compacting and Trimming of Vessel Holds

IMT provides leveling, compacting, and trimming of vessel holds after completion of loading for some cargoes. This service is available to the vessel and is to be paid on an hourly basis if it is not provided for in the Shipper's contract.

C. Repairs

Repairs at terminal or midstream buoys are not normally permitted, unless the repairs are absolutely necessary to facilitate moving the vessel. Any repair work that would necessitate *hot work* must have a gas free certificate and prior written approval from the Operations Supervisor on duty. No repairs will be allowed that will delay cargo transfer or lengthen the transfer time.

D. Transportation To Vessels

1. IMT owns and operates a Launch Boat to provide transportation of vessels personnel, agents, pilots, surveyors and/or inspectors. IMT charges each vessel a flat rate per day pro rated to ½ days for transportation of personnel regardless of which launch service is used by vessel personnel. This launch boat is also available for barge surveyors and/or inspectors billed on a per trip basis.

Section 4 - Bulk Material Transfer Wharves

There are three berths that accommodate the transfer of bulk materials. They are the (A) IHI dock, (B) SHI/Coal dock (see the Berth Diagram in the Appendix) and (C) ship mooring buoys at the Myrtle Grove facility.

A. IHI Dock

The overall length of the dock is 1,044 feet (318.21m). It consists of concrete on steel piles and a truss to support the elevated dock conveyor. Deck level is 15 feet (4.57m) above sea level. The overall length incorporates 14 buckling type fenders 72 feet (21.95m) apart.

The traveling shiploader has 794 feet (242.01m) of total travel and it has the capability to boom and slew. It can reach a maximum of 103 feet (31.39m) riverside of the fender ace. Proper positioning during berthing will eliminate delays due to shifting the vessel during loading and the unnecessary expense to the vessel of assist tugs for shifting. Water depth is maintained to accommodate vessel transit at Southwest Pass.

B. SHI Dock

The overall length of the dock is 1,271 feet (387.4m). It consists of concrete on steel piles and a steel truss connected to shore 400 feet (121.92m) away. Deck level is 15 feet (4.57m) above sea level. Water depth is maintained to accommodate vessel transit at Southwest Pass. The overall length incorporates 8 breasting dolphins 16 feet (4.88m) wide and two platforms. The crane is 400 feet (121.92m) downriver of the uppermost dolphin, on a concrete platform. Because the SHI crane is mounted on a fixed platform, the vessel must shift alongside the berth to accommodate an efficient discharge. The Terminal, at its cost, will provide a qualified dockmaster and up to three fleet tugs to assist the vessel in shifting alongside the berth. The vessel has the option to request a pilot and harbor tugs to shift the vessel but the cost for these services will be the responsibility of the vessel.

C. Ship Mooring Buoys

The overall length of the Myrtle Grove ship mooring buoys is 1,400 feet (426.72m). They consist of five buoys. Three buoys are used to hold the head. These buoys are 70 feet (21.34m) apart. There are two buoys used to secure the stern. These buoys are 150 feet (45.72m) apart.

Any vessel using the Myrtle Grove buoy system must use the vessel anchors in conjunction with the buoys.

(1) Crane Transfer

IMT has the ability to direct transfer cargo from barge-to-ship or ship-to-barge. Floating crane(s) are the primary pieces equipment used to perform this operation.

IMT has five (5) floating cranes available, to meet required load or discharge rates as prescribed in Shippers' specific contracts. Any vessels being discharged/loaded by floating cranes are required to have midship bollards or other means of safely securing cables for two floating cranes on either side of the vessel.

Section 5 – Safety and Security

A. Principle

When a ship is berthing at the dock or buoy systems, the Master is expected to give top priority to safety and efficiency and to follow all regulations generally followed in the marine transport industry as well as those of IMT. All cargo handling operations on the ship are the Master's responsibility, and the loading or unloading of the cargo shall be under the continuous direction and responsibility of the Master or authorized representative.

B. Minimum Number of Ship's Crew

Any vessel in berth shall at all times maintain appropriate officers and crew aboard the vessel in order to vacate the berth, if necessary, and to permit uninterrupted cargo transfer at any time of the day or night, including Saturdays, Sundays, and holidays. The loading/unloading plan should be such that the vessel is maintained in trim and the engine is in a condition that it could leave the dock on short notice (30 minutes or less).

C. Safety Regulations

1. Vessels shall not "blow out their tubes" in the vicinity of IMT dock.
2. The engineering plant and vessel trim must be maintained in a state of readiness to get underway at the request of IMT.
3. Guards must be installed to deflect deballasted water from the dock, equipment, and personnel.
4. It is understood that IMT does not give, formally, informally, or otherwise, consent to any users, shippers, river transportation operators, masters, owners, charterers, operators or agents of vessels consent to the use of IMT's terminal facilities or docks while any ship is in use of or moored at the IMT facility or dock. It is the responsibility of the ship and its crewmembers as well as all users, shippers, river transportation operators, masters, owners, charterers, operators and agents of vessels and all of the ship's crewmembers to assist in the prevention of damage to any property or to any personnel. Therefore, other than required United States Governmental agencies, any ship moored at or in use of IMT's facilities or docks must obtain prior written approval from the Terminal Representative for any ship's representative, agent, or any third party to board, make a delivery or gain access to the ship by use of IMT's docks or facilities.
5. In accordance with IMT's facility and dock rules and procedures, including those set out in section 4 above, terminal safety rules require that all personnel wear life jackets, hard hats and all generally accepted safety equipment or gear on docks at all times. Vessel crew members shall adhere to this requirement when on the dock and when transiting the conveyor walkway system to and from the docks.
6. Hazardous materials, substances or wastes, and cargoes which are of a highly inflammable, radioactive, explosive, noxious or dangerous nature, or reactive to personnel, will not be provided with any service of any kind except under advance arrangement with IMT accompanied by full disclosure of the hazardous characteristics, risks and special handling requirements of such cargo and in such case negotiated rates and charges shall be applied. It is the responsibility of the shipper or other person tendering cargo to the Terminal (1) to fully disclose in writing and in advance all of the cargo's characteristics, risks and special requirements applicable to its safe loading, unloading, handling and storage in bulk and (2) to obtain all necessary special permits or permissions required by the Captain of the Port, U.S.C.G., and/or

other state or federal authorities in connection with the loading, unloading, handling and/or storage at IMT.

In the event of non-compliance, IMT may, without liability to any party, refuse service and/or access to its facilities; may order vessels or other conveyances containing such cargo to immediately vacate IMT and/or berth; may arrange for removal and storage of the cargo off IMT premises; and, may take any other action reasonably necessary for the safety of persons and property and/or to comply with lawful orders of any governmental authority. All such action shall be at the risk and expense of the cargo, its owner and the shipper or any party who tendered the cargo.

7. Users of Terminal facilities are required to provide IMT with Material Safety Data Sheets on all commodities handled for their account.
8. IMT operates a closed fleet. All outside boats are required to obtain prior approval from IMT before entering IMT's fleet or having access to IMT's berth/docks. Such approval requires 24 hours advance notice given to IMT's Traffic Manager. If such approval is granted, all outside boats, personnel, and passengers are required to comply with IMT's prescribed safety rules and personal protective equipment requirements and follow IMT's Facility Security Plan. IMT reserves the right to levy a user fee and/or a signed liability indemnification agreement for such access, which fee and/or indemnification agreement must be given before entering IMT's fleet or berth/docks.

D. Security

In compliance with United States Coast Guard, Department of Homeland Security directives, 33 CFR 105, International Marine Terminals has developed a Facility Security Plan (FSP). According to IMT's FSP, certain areas of the Terminal's landside facilities and all of IMT's berths and fleets are considered restricted areas. Any unauthorized entry into restricted areas is considered "Breaches of Security" and the proper authorities will be notified. Anyone or anything entering into the Terminal is subject to screening, inspection and/or search according to the Terminal's FSP. Failure to consent will result in denial or revocation of authorization to enter.

Section 6 - Force Majeure

Neither party shall be under any liability of any kind or nature whatsoever (other than obligations of such party to pay or expend money) for any loss, damage, delay or failure in performance, including, but not limited to, demurrage, delay, damages, deterioration of quality, shrinkage in quantity and/or loss of product, in the event that

it should fail or delay to perform its obligations hereunder where such failure is directly or indirectly, wholly or partly, caused by *Force Majeure* event.

The term *Force Majeure* includes the following regardless of whether foreseeable or not: war, civil commotion, government order, labor trouble, labor shortage, strike or lockout; flood, river freeze up, inability to obtain fuel or power; fire; act of God; resolution or order of government authority; or any other cause whatsoever beyond the reasonable control of the party affected thereby, whether or not of the same or similar nature.

A *Force Majeure* event shall not excuse a party from performing unless such party shall give written notice to the other party promptly upon learning of such *Force Majeure*, but in no event later than thirty (30) days subsequent to such event. Information as to the cause of inability to perform, and probable extent thereof, shall be included in such notice and shall be updated periodically during the continuance of the *Force Majeure* event. Failure to give such notice and furnish such information promptly shall be deemed a waiver of all rights for such period of time during which notice was not given. Upon removal of the cause, shipment shall resume at the specified rate.

Section 7 - Invoices

IMT shall issue invoices for services rendered, subject to any applicable operating contract, to all users, shippers, river transportation operators, masters, owners and agents of vessels. Invoices will be due within thirty (30) days from the date of invoices. Outstanding invoice balances more than 30 days past the date of invoice will be assessed at [REDACTED] interest charge per month or the maximum legal rate allowed in the State of Louisiana. Interest is not to be applied to any accumulated interest charges.

If an invoice is in dispute, the disputing party shall pay to the other party eighty percent (80%) of the invoice amount within the time period specified above, subject to debit or credit when the dispute is resolved without interest or penalty on the balance due. Performance shall continue during and despite any dispute.

IMT shall, for the amount of any unpaid invoice (not including the 20% of a disputed invoice mentioned above) as well as attorney fees and costs, have the option to assert a lien against Shipper's product in compliance with governing laws. Such lien will allow IMT to take possession of and/or relocate product within Terminal property. Shipper warrants that all product delivered to IMT shall be owned by Shipper or by a third party on whose behalf Shipper has authority to act.

Section 7(a) - Attorney Fees and Costs

IMT is entitled to recover any reasonable attorney fees and costs incurred to collect and any invoice or to avail itself of any of its rights under the agreement, whether or not any other party is considered in breach of this agreement.

Section 8 - Rights of Terminal

IMT will endeavor to handle barges, vessels and product on a first come first serve basis subject to IMT Manual and specific agreements, contracted heretofore. IMT reserves its right to interpret the rules and regulations stated herein as they would apply to operating procedures and the interpretation of same, for the benefit of all users of the facility.

IMT will assume no responsibility for damage to vessel parts or cargo arising by reason of concealed or inadequately protected fastening, attachments, covers, and parts of the vessel projecting into bulk cargo, and no liability will be assumed by IMT for damages incurred as a result of vessel configuration.

Additionally, IMT assumes no liability for damage to vessels gear, equipment or structures due to the commodity being discharged, other than what might be proximately caused by the negligent operations on the part of IMT.

Notes

Notes

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ATTACHMENT II

VESSEL LOADING RATE GUARANTEE

ARTICLE I TERMS OF AGREEMENT

The following sets forth the terms and conditions under which International Marine Terminals, hereinafter Terminal, will provide berthing and loading service for shipments of DBF arranged by Progress Fuels Corporation, hereinafter Shipper, that are destined for Florida coal markets.

This Attachment applies only to vessel booking coordination and conditions for loading as they pertain to demurrage and does not negate any other agreements by the contracted parties with respect to transfer rates or throughput minimums.

This Attachment shall remain in full force and effect throughout the term of the agreement unless otherwise mutually agreed upon.

ARTICLE II DELIVERIES AND VESSEL REQUIREMENTS

1. Even Deliveries

Shipper shall make efforts to deliver coal to Terminal and provide for loading outbound vessels fairly evenly spread throughout the term of this Agreement. However, Terminal recognizes that some shipment scheduling is beyond the control of Shipper.

2. Reasonable Stockpile

Shipper shall maintain a reasonable stockpile of coal at Terminal and/or coordinate delivery of direct transfers prior to arrival of vessels which, under normal conditions, will ensure the stability of delivery of DBF hereunder.

3. Ocean Transportation

Shipper assumes the obligation and full responsibility for arranging ocean transportation of DBF and for providing vessels for the transportation of DBF delivered hereunder to Terminal, and shall reasonably arrange for and provide such vessels to meet the requirements set forth in Article III-1.

Vessels shall be the following DFL/ Dixie Carriers units: Louise Howland, Miss Dott O, Amy Thompson, and Mickey Birdsall or other such units as may be provided by Shipper.

4. Shipping Schedule

At least five (5) days prior to the commencement of each month, Shipper shall submit to Terminal an estimation of vessels to be shipped for the month.

If Terminal cannot accept a proposed load date, both parties shall make their best efforts to settle such differences and arrive at a mutually acceptable solution as soon as practicable.

If at any time the estimated date of arrival materially differs from the confirmed load date, the acceptance of the vessel shall be subject to Terminal's approval under the changed conditions.

Shipper shall promptly inform Terminal of any change in the monthly load schedule.

Shipper shall arrange that the master of the arriving vessel shall advise Terminal of the vessel's estimated time of arrival at Terminal twenty-four (24) hours before the vessel is expected to reach Terminal.

Terminal recognizes that Shipper, from time to time, may divert vessels from Terminal to alternate Facilities with no less than 24 hours advance notice to Terminal without penalty to Shipper.

If a Force Majeure is declared in accordance with this Agreement by Terminal, Shipper shall have the option to cancel any scheduled vessel or divert it to other port(s) under this Agreement. The Shipper and Terminal shall use their best efforts to normalize the shipping schedule as soon as possible after the removal of a Force Majeure.

ARTICLE III LOADING TERMS

1. Loading Port

- a. Vessels will have dimensions and be of a configuration suitable to be received alongside for loading at the Myrtle Grove facility as set forth in the Terminal Manual (Attachment I).

2. Notice of Readiness

Notice of Readiness to load shall be tendered by the vessel and accepted by Terminal after arrival at Terminal facility, or the closest available anchorage if Terminal berth is occupied or vessel is otherwise ordered to anchorage by Terminal at any time in or out of office hours, provided the vessel is in free pratique and is in all respects ready to load. Time lost for completion of pratique after berthing shall not count as laytime.

3. Laytime

- a. Laytime for loading shall commence when Notice of Readiness is accepted by Terminal.
- b. Time spent shifting from anchorage to the berth shall not be included in laytime.
- c. In the event of declaration of Force Majeure by Terminal, time lost shall not count as laytime.

- d. In case laytime interruption(s) caused by Force Majeure item(s) occurs, Terminal shall declare Force Majeure to the Shipper by every available communication method of such laytime interruption(s) so that all such period(s) of laytime interruption(s) shall not count as laytime.
- e. Time lost due to routine, non Force Majeure, mechanical breakdowns or slowdowns by Terminal as specified in Statement of Facts/Port Log and verified by Terminal on the vessel shall count as laytime.
- f. If Terminal finds that it cannot complete loading a vessel because of a Force Majeure situation then Terminal and Shipper will immediately confer with a view to finding the best solution to the problem.
- g. Loading stoppage or slowdown due to the Shipper's vessel or Shipper's requirements including, but not limited to, temperature, size, contaminants, or non-free flowing product, shall not count as laytime.
- h. Time lost due to survey time in excess of one hour, cargo availability, or cargo quality shall not count as laytime.
- i. Laytime will cease after completion of loading, trimming, removal of equipment from vessel and release of vessel by Terminal.

4. Loading Rate

- a. Terminal shall load DBF aboard vessels within an average of fourteen weather working consecutive hours including Saturdays, Sundays and holidays.
- b. Loading rate guarantees apply to blending ratios that are reasonably achievable at the guaranteed rates. Shipper and Terminal will work together toward a reasonable loading rate compromise prior to vessel arrival for excessively divergent blends that may slow operations.

5. Demurrage

If Terminal fails to meet the specific average loading requirements in Article III-4, calculated on an annual averaging of all Gulf Barge load time, demurrage will be paid by Terminal to Shipper for all time lost after expiration of allowable laytime at the rate of [REDACTED] per hour. Vessel demurrage calculations are to be reconciled annually within 60 days past the end of each calendar year. Demurrage calculations shall be reviewed at any time at the request of either Terminal or Shipper.

6. Other Vessel Terms

Any other loading or discharge terms and conditions shall be, on a case-by-case basis, mutually negotiated in good faith. Such subsequent negotiations shall be recorded in Letters of Understanding and shall be affixed to and become part of this Agreement. Such terms will include discharge demurrage terms for import vessels as approved by both parties.

ATTACHMENT III

TERMINALING SERVICES AT TAMPAPLEX, FLORIDA

ARTICLE I TERMS OF AGREEMENT

The following sets forth the general terms and conditions under which International Marine Terminals, hereinafter Terminal, will provide vessel discharge services through Kinder Morgan's Tampaplex Terminal in Sutton, Florida, for shipments arranged by Progress Fuels Corporation, hereinafter Shipper, that are destined for Crystal River, Florida.

Actual shipments will be governed by agreements issued by Kinder Morgan Terminals using the guidelines listed below and subject to conditions at the time of vessel arrival, all subject to Tampaplex's Terminal Manual regarding vessel/berth dimension requirements and capabilities.

This Attachment shall remain in full force and effect throughout the term of the DBF Transfer & Storage Agreement unless otherwise mutually agreed upon.

ARTICLE II DELIVERIES AND VESSEL REQUIREMENTS

1. Shipper must provide thirty days advance notice of its intent to tender a vessel to Tampaplex. Such vessel must be of dimensions and draft acceptable for delivery to Tampaplex.
2. Tampaplex does not guarantee to have sufficient ground storage reserved for Shipper at the time of vessel nomination. Vessel acceptance is conditional on such storage availability. In the event Tampaplex does not have sufficient storage capacity, Tampaplex will confer with Shipper as to an alternative date that can be accommodated.
3. Shipper is not obligated to tender any cargo to Tampaplex during the term of this Agreement. However, any volume tendered by Shipper through Tampaplex shall apply to the minimum volume guaranteed to Terminal as listed in Article I of the DBF Transfer & Storage Agreement.
4. The terms of this Attachment apply to DBF Transfer & Storage Agreement.
5. The intent is for this Attachment to apply to product consumed by Shipper and its related entities and is not to govern product shipped or sold to non-related entities.

6. Vessel discharge is currently by use of Tampaplex grab cranes or self-discharge conveyor belt vessels. Future development may allow for alternative discharge capabilities.
7. All vessels will be subject to Tampaplex dockage, line handling, tug assist, and other related charges in effect at the time of vessel arrival. An updated facility tariff will be provided upon each vessel notification.

ARTICLE III RATES AND SERVICES

1. The rate for transferring Shipper product subject to the requirements listed above using Tampaplex grab cranes to storage and later reload to truck or railcar is [REDACTED] per short ton during the first year of the DBF Transfer & Storage Agreement. The rate for transferring Shipper product subject to the requirements listed above using conveyor boom self discharge vessels to storage and later reload to truck or railcar is [REDACTED] per short ton during the first year of the DBF Transfer & Storage Agreement. Subsequent years will reflect the lowest charge in effect for similar services at the time of vessel nomination. 1
2. Available storage will be assessed a fee of [REDACTED] per month per acre or part thereof during the term of this Agreement. 2
3. Tampaplex transfer rates may be subject to certain volume discounts when tendering more than 120,000 tons in a twelve month period. 3
4. Tampaplex makes no guarantees as to speed of vessel discharge or truck/railcar loading, and production is subject to berth congestion, mechanical breakdowns, weather, and other such conditions affecting operational productivity.
5. The above transfer rate includes dozer-blade cleaning of vessel holds.

ARTICLE IV OTHER TERMS AND CONDITIONS

1. Force Majeure: See Article VI of the DBF Transfer and Storage Agreement.
2. Miscellaneous: See Article VII of the DBF Transfer and Storage Agreement.

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 050001-EI

**In re: Fuel and Purchased Power Cost Recovery Clause
with Generating Performance Factor**

Progress Energy Florida, Inc.'s Petition for Approval of
Waterborne Transportation Service Contracts

EXHIBIT "F"

Progress Fuels Corporation
Gulf Transportation Bid Solicitation
(REDACTED VERSION)

PROGRESS FUELS CORPORATION
GULF TRANSPORTATION BID SOLICITATION

GENERAL

Progress Fuels Corporation (PFC) has purchased and will continue to purchase Dry Bulk Fuel (DBF) for use in electric generating stations owned and operated by Progress Energy Florida (PEF) located near Crystal River, Citrus County, Florida. PFC is in need of marine transportation services from various origins in the New Orleans area, located at approximately milepost 57 AHP on the Mississippi river, as well as McDuffie Island Coal Terminal in Mobile, Alabama, to PEF's unloading dock on the west coast of Florida. The specifics of this request and the bidding procedures to be followed are outlined below.

QUANTITY AND TERM

The term of this solicitation shall be for three (3) years starting April 1, 2005 and ending March 31, 2008. PFC anticipates the quantity of DBF requiring transportation services across the Gulf of Mexico to be between 2,300,000 and 2,500,000 short tons in generally ratable amounts per contract year. The actual tonnage to be shipped in a given year will be determined by power plant fuel burn forecasts supplied by PEF and overall transportation, purchasing and inventory level requirements. PFC is agreeable to setting a minimum volume of DBF tonnage to be transported each year. Should PFC fail, for reasons other than Force Majeure, to tender minimum DBF tonnage in any contract year carrier shall be entitled to payment, as liquidated damages and not as a penalty, a dead freight charge for each ton of DBF not tendered for such service. Please provide a rate for dead freight in your proposal. Alternately, PFC will consider a provision for adding shortfall tons to the next contract year's minimum requirements.

PFC will provide a contract year tonnage declaration no later than October 30 of the preceding contract year. During a contract period, PFC reserves the right to reasonably alter monthly ratable schedules in order to satisfy inventory or operating conditions as required.

CURRENT LOAD ORIGINS

New Orleans, Louisiana: *International Marine Terminals*, mp 57 AHP on the right descending bank of the Mississippi River.

Mobile, Alabama: *McDuffie Island Coal Terminal*

PFC may from time to time purchase DBF at origin docks other than those listed herein. In that event, additional freight rates shall be provided to PFC that reasonably relate to the origin rates contemplated in this solicitation taking into consideration distances, operating conditions, loading conditions and any other relevant issues.

DISCHARGE PORT

PEF's Crystal River discharge port, located on the west coast of Florida, consists of an approximately 15 mile long channel leading to the inland dock. The entrance to the channel is approximately 300 feet wide and narrows to 150 feet just at the entrance to the inland area. The channel initially uses part of the Florida Cross Barge canal then has a dog leg to align with harbor area. The channel is marked with beacons and radar reflectors. Depth of the channel is 20 feet at Mean Low Tide. Please note the channel and inland area have a hard limestone profile. The channel is subject to cross currents and wind.

The inland area consists of a turning basin, coal discharge dock and a limestone load out dock. The two docks and turning basin are capable of accommodating vessels up to 552 feet overall length and approximately 85 feet beam. Unloading is accomplished by a Dravo traveling clamshell crane with 25 cubic yard bucket capable of discharging at a rate of 650 tons per hour on average, including cleaning. Vessels will be blade cleaned using PEF personnel and equipment. Maximum air draft of unloader is approximately 58 feet. Bidders are strongly encouraged to arrange for a tour of the unloader, harbor area and channel to validate that the equipment and crews contemplated for service herein will be suitable and safe. Potential finalists for this business will be required to make a trial or multiple trial voyage(s) to demonstrate to PFC's and PEF's complete satisfaction that equipment and personnel are qualified for the service contemplated.

Please note, that in addition to the four coal plants, there is a nuclear power plant at PEF's complex. Accordingly, your organization must be in compliance with the Marine Transportation Security Act of 2001, as amended and updated. Your vessel(s) may be subject to US Coast Guard inspection prior to entrance to PEF's channel. All crewmembers may be subject to security background checks. Additionally, your firm must be in compliance with all other marine rules and regulations as well as environment, health and safety regulations, as applicable.

Furthermore, the channel used for marine transit also supplies cooling water for three of the power plants on site. Consequently, your firm must demonstrate the capability to safely navigate the channel in all weather (fog and severe weather excepted) 24 hours per day, keeping the vessel afloat at all times and having complete control of the vessel at all times in all weather and wind conditions. Again, due to the forgoing and the hard limestone profile of the channel, tug/barge units must be capable of transiting with the tug in a notch for complete control of the barge under all current and wind conditions. There must be at least two feet of clearance between the keel and the channel bottom at all times during transit.

Please note that occasionally sea grass enters the channel and harbor area. At that time, marine traffic is stopped to clear the channel before the cooling inlets of the power plants plug. The channel and harbor area are manatee zones and care must be taken when transiting the channel. Also note PEF will not allow the harbor area, under any circumstance, to be used as a safe berth during threatening or actual tropical storm or hurricane conditions.

PEF requires, for purposes of minimizing power plant cooling inlet screen pluggage, that vessels land starboard side to for discharge. When empty, vessels back into the turning basin, turn, and

depart for sea. Additionally, PEF requires the tug's engines not run if the wind is blowing from the west while men are in the holds payloading or in the crane cab discharging the barge.

Your proposal should include a full time assist tug stationed at PEF's facility to provide control of your vessels during docking, undocking and turning maneuvers. In your proposal please indicate if your crews are union or non-union.

PRICING

Freight rates shall be composed of a fixed component and a fuel component. The fixed component charge must represent all charges other than fuel. This component shall remain fixed for the duration of the contract. Such charges shall include, but not be limited to, all port charges, line handling charges, wharfage, dockage, existing taxes, and any other charges associated with the transportation of DBF. The fuel component shall be subject to a quarterly adjustment with the quarter prior to the effective date of the contract serving as the base period. Proposals should include bidder's preferred fuel escalation methodology. In your proposal please state any volume incentive discounts that would apply in a contract.

Payment terms are thirty (30) days net from receipt of proper invoice. Services shall only be billed upon discharge of DBF at PEF's terminal. Cargo weights shall be based on destination draft survey conducted by an independent surveyor consistent with the coal supply agreement held by PFC.

Pricing should include fourteen weather working hours freetime to load and twenty-five weather working hours freetime to discharge each vessel. Vessel demurrage shall be calculated and paid annually on a cumulative credit/debit system. No dispatch will be paid by PFC. Please state your demurrage rate per hour in your proposal.

CONTRACT PROVISIONS

PFC will consider awarding this business to more than one transportation provider. The winning bidder(s) will be expected to enter into a contract that will, among other things, include the following provisions:

Carrier will, at its cost, be insured by responsible insurance carriers, or have established a program of self-insurance, satisfactory to PFC, for risks assumed hereunder. Such policies shall be endorsed to provide a waiver of subrogation against PFC and a thirty day notice of material changes or cancellation to be forwarded to PFC, except ten day notice shall be given for non-payment of premium.

Carrier shall be required to report shipment information such as ETA's on a daily, weekly, and monthly basis by telephone, fax or other mutually agreeable methods. Carrier shall be responsible for meeting all regulatory requirements; e.g., Coast Guard, environmental, and others.

PFC generally requires ratable delivery of barges at its load origins. However, PFC will reserve the right to reasonably modify monthly shipping schedules in order to meet inventory requirements at PEF or load terminals. Barges must be delivered to load terminals free of extraneous material and water.

The contract will contain other commercially reasonable terms and conditions customarily found in contracts for similar services, including but not limited to, provisions dealing with standards of performance, risk allocation, insurance levels, force majeure, events of default, remedies, and others.

BID PROCEDURES

To insure proposals are responsive to PFC's needs and provide a uniform basis for evaluation, bidders must provide the information on the attached Gulf Transportation Bid Form and complete the rate quotes on Attachment A. To provide you additional information regarding our business, we are enclosing a "DRAFT ONLY" of our proposed contract for this business. Please do not mark up or sign this draft. As part of your bid response, you must specify any exceptions your firm may have regarding the terms and conditions in our "draft only" contract. Send bid response in a sealed package to:

Gulf Bid Proposal
Progress Fuels Corporation
200 Central Avenue
St. Petersburg, FL 33701

Failure to properly mark bid "Gulf Bid Proposal" on the exterior of the sealed envelope could result in non-consideration of the bid. Bids sent by electronic means (e-mail or fax) will not be accepted.

Bid packages must be received no later than 5:00 PM EDST on October 19, 2004. Bids received after this date and time will not be evaluated or considered and returned to the bidder. The bidder shall be responsible for the completeness and accuracy of all information contained in and used in preparation of its proposal and for having supplied all necessary information. Bid packages that are incomplete may not be evaluated. Revised proposals, if any, must be received before the closing deadline for evaluation. After the initial evaluation of bids, a short list of potential viable bidders may be developed. In the event of a short list, those suppliers will be invited to participate in additional negotiations.

Any award will be based on PFC's overall evaluation process and not on price alone. The evaluation will include price, ability to supply sufficient vessel capacity, average age of the vessels, vessel design and hull breach stability, financial stability, credit worthiness, successful reference checks, and other pertinent factors. Field inspections by PFC personnel or PFC's designated representative(s) may be required to verify the accuracy of information provided in proposals. PFC will employ an independent marine consultant to assist in evaluating vessel design. PFC reserves the right to reject any and all proposals which in PFC's sole judgment are determined to not be in its best interest:

Bid proposals shall remain open for a period of 60 days after the closing date of this solicitation. Proposals represent a firm offer to supply marine transportation services at the prices and under the terms provided in your proposal, subject to the execution and delivery of a contract, the first draft of which will be provided by PFC. Should you have questions or desire to schedule a presentation, please call Mike Lelak at 727-824-6680.

GULF TRANSPORTATION

Ship or Ocean Barge Equipment Description (Include design, configuration, type, size, cargo capacity, name, age, rated horsepower, and other pertinent information):

- Provide vessel drawings for each class of vessel proposed for this business, if not already provided to PFC.
- Specify notch depth (shallow or deep) and number and location of ballast and void tanks (provide drawings).
- Specify tonnage loaded at 21 foot draft assuming DBF stowing approximately 40 cubic feet per short ton.
- Provide estimated loaded barge transit time from Mile Post 57 Mississippi River to Crystal River sea buoy.
- Provide details of holds, hatch, and coaming configuration (provide drawings).
- State whether or not PEF's payload can move freely from hold to hold or if it needs to be lifted by crane from hold to hold.

Insurance Coverage Description (Types of coverage, coverage limits, carrier, policy numbers and expiration dates, etc.):

Major Customer Listing (Include company name, tonnage lifted during the past two years, Contact Person and phone number):

GULF TRANSPORTATION CONTINUED

Subcontractors (Include company name, contact person and phone number, and description of services rendered):

Financial Information (provide last five years of audited financial statements and other relevant information):

ATTACHMENT A

GULF TRANSPORTATION CHARGES

	<u>Fixed</u>	<u>Fuel</u>	<u>Total</u>
<u>New Orleans</u>			
International Marine Terminals	_____	_____	_____
<u>Mobile</u>			
McDuffie Island Coal Terminal	_____	_____	_____
<u>Demurrage Rate</u>	_____	_____	_____
<u>Dead Freight Rate</u>	_____	_____	_____

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AFFREIGHTMENT CONTRACT BETWEEN PROGRESS FUELS CORPORATION AND _____

THIS AFFREIGHTMENT CONTRACT ("Contract") is entered into by and between PROGRESS FUELS CORPORATION, a Florida corporation ("Shipper") and _____, a _____ corporation ("Operator") on this _____ day of _____ 2005.

WHEREAS, Shipper has purchased and will continue to purchase dry bulk fuel ("DBF") for use in an electric generating plant owned and operated by PROGRESS ENERGY FLORIDA, INC. near Red Level, Citrus County, Florida, known as the Crystal River Plant, and Shipper is in need of transportation services to move that DBF from a bulk cargo terminal(s) designated by Shipper in the New Orleans, Louisiana and Mobile, Alabama areas to the Crystal River Plant; and

WHEREAS, Operator owns _____ seagoing barges along with adequate tugs to move such barges, empty or laden, and is willing to move DBF from the designated terminals to the Crystal River Plant:

WITNESSETH:

For and in consideration of mutual covenants, provisions and benefits and agreements hereinafter made and contained and other good and valuable consideration flowing between the parties hereto, Shipper and Operator hereby agree as follows:

1. **Transportation Services:** Operator will provide marine transportation services to the Shipper for DBF from the Terminals, as hereinafter defined, in the quantities described herein to the Crystal River Plant on an annual, generally ratable basis.
2. **Equipment:** The equipment to be employed by Operator hereunder will be ABS-classed, seagoing, covered hopper barges and tugs of suitable horsepower (hereinafter referred to together as the "Tow" or "Tows"). Operator shall operate and maintain the seagoing equipment in such condition as will entitle it to the highest classification and rating by the ABS for seagoing equipment of the same age, type and use. Operator shall operate seagoing equipment in a manner considered safe by prudent operators of seagoing equipment. Subcontracting of outside equipment subject to mutual agreement.
3. **Term:** The term of this Contract shall be for three (3) years, commencing on April 1, 2005, and ending March 31, 2008.

Notwithstanding the foregoing, either party may terminate this Contract as provided below, upon the happening of any of the following events:

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- a. A material breach of this Contract, in which event the complaining party may terminate this Contract after giving the breaching party thirty (30) days advance written notice specifying the reason for such termination becoming effective at the end of such thirty (30) day period (unless the breach has been rectified by that time); provided that in the event any material breach is unrectifiable, the complaining party may terminate this Contract forthwith by giving written notice to the breaching party specifying the reason for termination in which case the termination shall become effective upon receipt by the breaching party.
 - b. The filing by a party for bankruptcy, liquidation, reorganization, or suspension of payment proceeding, in which event this Contract may be terminated forthwith by the non-filing party by giving written notice to the filing party.
4. **Load Ports:** Unless otherwise hereafter directed by Shipper as provided in this Section, the load ports for all cargoes of DBF transported under this Contract shall be the International Marine Terminals dry bulk handling terminal located at about Mile 57 Above Head of Passes on the Right Descending Bank of the Lower Mississippi River and the McDuffie Island Coal Terminal (MIT) dry bulk handling terminal located at Alabama State Docks, Mobile, Alabama (each hereinafter the "Terminal"). Shipper shall designate to Operator in writing its representative ("Shipper's Representative") for the purpose of receiving NORs by the Operator's Tows at the Terminal. Any load port other than the Terminal which Shipper may designate must be located on the U.S. Gulf or East coast and the Tow must be able to safely navigate, as determined in the sole discretion of the Operator, to, within and from such load port.
 5. **Discharge Port:** The discharge port for all cargoes of DBF transported under this Contract shall be the Crystal River Plant dock at Progress Energy Florida's generating station in Crystal River, Florida (hereinafter the "Crystal River Plant"). Shipper shall designate to Operator in writing its representative ("Shipper's Representative") for the purpose of receiving NORs by Operator's Tows at the Crystal River Plant.
 6. **Cargo and Shipping Terms:** This Contract provides for the transportation of DBF, stowing at not more than approximately 40 cubic feet per ST, in annual and individual voyage quantities further defined herein. In the event that Shipper desires that Operator transport DBF stowing at greater than the cubic feet per ST limits set forth in this Section or other cargoes, such transportation shall be on such terms and conditions and at such rates as the parties may hereafter agree.

All DBF cargoes transported hereunder shall be loaded and discharged by Shipper on a Free In and Free Out, Stowed and Trimmed basis, working continuously, Saturdays, Sundays and all holidays included, basis at both the load and discharge ports.

7. **Cargo Quantity:** The parties acknowledge and agree that the rates set forth herein are predicted on the tendering for shipment by Shipper of minimum quantities of DBF cargo, both with respect to quantity, in ST, shipped on each individual voyage and with respect to cumulative quantity shipped during each contract year during the term hereof.

At least ninety (90) days prior to the beginning of each contract year, Shipper shall declare in writing to Operator the quantity of DBF cargo, in ST, to be tendered during that contract year. Each such declared quantity of cargo shall be scheduled and transported on a

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generally ratable basis, i.e., evenly distributed, over the applicable contract year in single voyage increments of not less than ____ ST unless a specific voyage quantity of less than ____ ST is designated by Operator, in its sole discretion, due to Crystal River Channel navigation constraints. In the event Shipper fails to make available not less than ____ ST for any single voyage, Shipper shall pay Operator dead freight for each such voyage.

8. Freetime and Stacking:

- a. Shipper shall have freetime of fourteen (14) weather working hours within which to load each barge and twenty-five (25) weather working hours within which to discharge each barge. Freetime will commence (i) if berth is open, upon tying up, or (ii) if berth is not open, when NOR has been tendered by Operator while within reasonable proximity to such berth. Shifting from anchorage to berth not to count as laytime. For demurrage calculation purposes, completion of loading or discharge is deemed to be when the barge finishes loading and trimming and when the barge is discharged and finishes blade cleaning. Loading and Unloading Logs shall be maintained by Shipper at the Crystal River Power Plant and at the Terminal.
- b. If one of Operator's Tows is at the berth of the Terminal or Crystal River Plant and a second of Operator's Tows arrives, provides NOR in accordance with the terms hereof and is required to wait, freetime shall commence for the second Tow when NOR is provided. If a third Tow arrives at the berth, provides NOR and is required to wait, freetime shall commence ten (10) hours after the freetime expires on the second Tow if at the Crystal River Plant or six (6) hours after the freetime expires on the second Tow if at the Terminal, and if a fourth Tow arrives at the berth, provides NOR and is required to wait, freetime on the fourth Tow shall commence upon expiration of freetime on the third Tow. All such delays in the commencement of freetime at the Terminal or Crystal River Plant shall be hereinafter referred to as "Stacking Delays".

9. Base Freight Rates and Freight Rate Adjustments: Freight rates shall be composed of a fixed component and a fuel component. The fixed component charge must represent all charges other than fuel. This component shall remain fixed for the duration of the contract. Such charges shall include, but not be limited to, all port charges, line handling charges, wharfage, dockage, existing taxes, and any other charges associated with the transportation of DBF.

The Base Freight Rate is \$_____ per ST or pro rata portion thereof. Freight rates for load ports other than the Terminal will be calculated on an equivalent revenue per day basis net of fuel, port and voyage related expenses.

All such rates shall be adjusted for fuel as specified in Section 10 hereof.

Base freight rate includes an assist tug permanently stationed at the Crystal River Plant to provide docking, undocking and turning assistance to the Tows as they enter and leave Crystal River plant turning basin and dock. Such tug shall be of sufficient horsepower and size to safely maneuver Tows without exception.

Shipper shall pay Operator freight for the affreightment services provided hereunder at the rates set forth herein: Operator shall prepare and transmit to Shipper by telefax, on the 15th and last day of each month, an invoice for freight for all cargo delivered in the preceding half month and for any dead freight due pursuant to Section 8 hereof. Shipper shall pay such

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invoice within thirty (30) days of receipt of proper invoice. Cargo weights shall be based on destination draft survey conducted by an independent surveyor consistent with the coal supply agreement held by Shipper.

10. **Fuel Price Adjustment:** For each 1 percent increase or decrease in the weighted average price for all marine diesel fuel purchased by Operator for Tows in Shipper's service, based on copies of actual invoices and taking into account all discounts or surcharges actually paid ("Fuel Price"), rates shall be adjusted by _____ percent. Rates shall be so adjusted on the first day of each calendar quarter, based on the Fuel Price calculated for the calendar quarter preceding the adjustment date as compared to the Base Fuel Price, with the first such adjustment occurring on April 1, 2005. For purposes of this Contract, the Base Fuel Price is \$_____.

11. **Transportation Services; Declaring Tonnage; Payment for Quality Declared:**

- a. **Transportation Services.** The parties contemplate that Shipper will need to transport approximately 2,300,000 to 2,500,000 million ST of DBF per year from the Terminal to Crystal River Plant under this Contract, although actual needs and tonnage will vary, depending on operating and market conditions or other factors. During the term hereof, Shipper shall tender to Operator, on a generally ratable basis, all of its requirements for marine transportation of DBF cargo from the Terminal to Crystal River Plant, and Operator shall transport such cargo.
- b. **Declaring Tonnage.** Shipper will declare its planned tonnage requirements at least 90 days prior to the start of a contract year in accordance with Section 7 hereof.
- c. **Payment for Quantity Declared.** Shipper will pay freight at the applicable rate on the greater of (i) eighty percent (80%) of all DBF cargo declared for each Contract Year whether said DBF cargo is tendered to Operator for transportation hereunder or not (but subject to Sections 7 and 15 hereof), or (ii) all DBF cargo actually tendered in such Shipping Period. Any amounts owed by Shipper for cargoes declared but not tendered for shipment in any contract year will be paid not later than the 20th day following the end of each such contract year.

12. **Demurrage and Despatch:** In the event that loading and/or discharging the Tow is not completed within the freetime allowed herein through no fault of Operator or the Tow, demurrage shall accrue for all time used in excess of allowed freetime, and Shipper shall pay Operator for the Tow at the Demurrage Rate of \$_____ per hour or portion thereof or, in the case of demurrage accrued during a Shipper declared Twelve Hour Force Majeure Event, as defined in Section 31 hereof, one-half the Demurrage Rate. In the event that loading and/or discharging the Tow is completed within the freetime allowed herein, dispatch shall accrue for all allowed freetime not used, and Operator shall provide Shipper with a credit against demurrage accrued hereunder for such dispatch at the Demurrage Rate.

Demurrage and despatch shall be calculated on a contract year basis. Within thirty (30) days after the end of each contract year, Operator shall review the voyages completed during such contract year, determine the demurrage and dispatch accrued, and prepare and transmit to Shipper by telefax or electronic mail a cumulative demurrage invoice for such voyages reflecting the demurrage or dispatch accrued on each such voyage and charging Shipper for any demurrage not offset by dispatch at the Demurrage Rate. Shipper shall pay

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such invoice to the account specified herein for payments within thirty (30) days of receipt of proper invoice.

The Demurrage Rate shall be fixed during the term of this contract,

13. **Payments.** Payments required by Shipper hereunder shall be made to the account as styled below:

14. **Notice of Readiness:** The master of the Tow shall provide Notice of Readiness (NOR) to Shipper's Representative upon (i) tying up, or if berth is unavailable, (ii) anchoring, as close thereto as the Tow can safely approach, at the Terminal for loading or at the Crystal River Plant for discharging, as applicable, in writing, by telefax, by radio or by telephone. NOR may be provided from a designated anchorage or other safe navigating or waiting location as determined in the sole discretion of the master of the Tow.
15. **Cleaning:** Unless hereafter otherwise agreed by the parties, Operator shall present the cargo holds of its barge blade cleaned of its last cargo prior to loading of cargo hereunder. In the event the barges tendered by Operator shall have last contained cargoes other than DBF, operator agrees to undertake such cleaning as may be necessary to ensure the removal of any residual material which would contaminate Shipper's cargoes. Shipper shall, at its time and expense, blade clean the cargo holds of Operator's barge after the completion of cargo discharge operations.
16. **Vessel Position and ETA Reports:** Operator shall provide Shipper, via telephone, telefax or other mutually agreed method, with the daily location of Tows in service under this Contract, and, as a Tow enters the Lower Mississippi River or Mobile Channel, Operator shall notify Shipper's Representative at the Terminal of the expected time of arrival (ETA) of the Tow alongside the Terminal dock. In addition, the master of the Tow shall notify Shipper's Representative at the Terminal, by telephone, telefax, or radio, twenty-four (24) hours and six (6) hours prior to the ETA of the Tow at the Terminal and shall notify Shipper's Representative at the Plant, by telephone, telefax, or radio, twenty-four (24) hours and three (3) hours prior to the ETA of the Tow at the Crystal River Plant on each voyage.
17. **Safe Berth:** Shipper will provide a safe berth at the load port and discharge port and will provide cargo loading and discharging services day or night, Saturdays, Sundays and holidays not excepted. Cargoes to be transported hereunder will be loaded by Shipper or its subcontractors into Operator's barges at New Orleans or Mobile at no expense to Operator, subject, however, to Operator's instructions on trim and draft of the barges.
18. **Loading/Unloading Damages:** The parties acknowledge that loading at the Terminal, or such other load port as the parties may hereafter agree, and discharging at the Crystal River Plant will be performed by Shipper utilizing clamshell bucket or similar equipment. It is understood and agreed that Operator will have no responsibility or liability for any damages arising from Shipper's (or its subcontractor's) operation of the clamshell bucket or the dockside operations of Shipper (or its subcontractors) except to the extent that any such damage is caused or contributed to by Operator's negligence or willful misconduct in

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connection with the operations of the Tow. It is agreed that any damage which, in Operator's judgment, impairs the watertight integrity or seaworthiness of the Tow will be immediately repaired by Shipper or by Operator for the account of Shipper. Repairs to damage which, in Operator's judgment, do not affect the watertight integrity or seaworthiness of the vessel will be for the account Shipper, but will be deferred until such time as convenient to Operator. Notwithstanding the foregoing, Operator shall give Shipper notice of any loading or unloading damage prior to the barge's departure from the Terminal, such other load port as the parties may hereafter agree, or the Crystal River Plant, as applicable, and in the case of damage which in the Operator's judgment affects the watertight integrity or seaworthiness of the Tow, Shipper shall have the right and be given the opportunity to retain a qualified marine surveyor to examine and prepare a report on the noted damage, particularly the extent and nature thereof. All claims for unloading damage not brought to Shipper's attention prior to the barge's departure from the Terminal, such other load port as the parties may hereafter agree, or the Crystal River Plant, as applicable, will be conclusively deemed to have been waived.

19. **Channel Depth:** The navigation channel and its approaches, including the Tow turning basin, is at least twenty (20) feet at mean low water. In the event that the depth of the channel or its approaches in any specific location is reduced to less than twenty (20) feet at mean low water, as determined by periodic surveys which Shipper shall conduct at least once in every 24 months during the term hereof, dredging will occur to restore the entire channel and approaches or location so affected to a depth of at least twenty (20) feet. Similarly, all channel markers and navigation aids, whether required by cognizant regulatory authority or previously installed for the convenience of Shipper and its subcontractors, including operator.
20. **New Regulations:** It is recognized by Shipper that during the term of this Contract that government regulations may be imposed which could result in material increases in the operating costs of the tugs and barges which were not contemplated by either Operator or Shipper at the time this Contract was executed. Should such a situation arise, Operator shall notify Shipper in writing and thereafter Operator and Shipper shall negotiate in good faith a reasonable adjustment in the freight rate or other means of reimbursing Operator for a reasonable share of such unexpected costs. In the event Operator and Shipper do not reach agreement within sixty (60) days of Operator's notice, Operator shall have the option to terminate this Contract as provided in Section 3 hereof.
21. **Audit:** Operator agrees to maintain books, records, documents and other evidences pertaining to the cost of this Contract (herein collectively called the "Records") to the extent and in such detail as will properly reflect all cost and expenses of whatever nature for which reimbursement is claimed under this Contract. Upon request of Shipper, Operator shall make available at Operator's office any and all such Records, along with related correspondence, receipts, vouchers, memoranda pertaining to the Contract, for inspection audit or reproduction by any authorized representative of Shipper. Operator shall preserve all such Records for a period of five (5) years after final payment hereunder during which period Shipper may complete an audit thereof. Should discrepancies or questions arise, the records shall be preserved until agreement is reached.
22. **Default:** No default of either party to this Contract in the performance of any of its covenants or obligations hereunder, which, except for this provision, would be the legal basis for rescissions or termination of this Contract by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct

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the default within thirty (30) days after written notice of claim of such default is given to such defaulting party by other party hereto.

23. **General Average:** In the event of accident, danger, damage, or disaster before or after commencement of a voyage hereunder resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Operator is not responsible to Shipper or cargo owners by statute or contract or otherwise, the cargo, Shipper, consignee and other parties having an interest in the cargo shall, jointly and severally, contribute in general average to the payment of any sacrifices, losses or expense of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. General average, if any, shall be settled according to York-Antwerp Rules, 1994, and as to matters not therein provided for, according to the usages and customs of the Port of New York.
24. **Both to Blame Collision:** If the Tow comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of Operator or the master or the crew of the Tow, for which or for the consequence of which, Operator is not responsible to Shipper or cargo owners by statute or contract or otherwise, Shipper and other parties having an interest in the cargo shall, jointly and severally, indemnify Operator against all liability to the other vessel or her owners or the owners of the cargo of the other vessel with respect to any payment which Shipper or such other parties have received or may be entitled to receive from the other vessel or her owners, or the owners of the cargo of the other vessel.
25. **Force Majeure:** The term "force majeure" means any event, whether foreseeable or not, which is beyond the control of and occurs without fault or negligence of the party asserting the force majeure and which wholly or partly prevents the performance of any of the duties and responsibilities of the party asserting the force majeure (other than obligations of such duties and responsibilities under this Contract, including, but not limited to, an act of God or an act of the public enemy; fire, flood, explosion or other serious casualty; unusually severe weather; war (whether declared or not); warlike circumstances; mobilization; revolution; riot or civil commotion; legal intervention; regulations or orders of governmental authority; strike, lockout or other labor disputes (all of which shall be settled solely at the discretion of the party having the difficulty; and the following events ("Twelve Hour Force Majeure Events"), provided such events exceed twelve (12) hours in duration: inability to obtain fuel or power; breakdowns of or damage to plant, equipment or facilities; or outs, outages and downtime.

Failure as a result of force majeure, of any supplier or Shipper to deliver coal to it pursuant to contracts or commitments between the supplier and Shipper shall constitute an event of force majeure assertable by Shipper against Operator. The failure, as a result of force majeure, of Progress Energy Florida to use or accept coal to be supplied by Shipper and delivered by Operator under this Contract shall constitute an event of force majeure asserted by Shipper against Operator.

In the event of a breach of contract by a subcontractor of any party hereunder, that party shall not declare such a breach a force majeure circumstance hereunder, and such party shall take all due means to enforce its contract including the commencement and diligent prosecution of legal proceedings, including any necessary appeals, to establish liability and to enforce any judgment which may be obtained. Such litigation shall not be settled nor shall the dispute be submitted to arbitration without the other party's written consent, which shall not be unreasonably withheld. Should the litigation result in an adverse determination to the

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party bringing such litigation or should any judgment or award not be collectible in whole or in part, it shall be released from any liability to the other party hereto by reason of the failure of the subcontractor to fully perform the contract referred to above.

If because of force majeure either Shipper or Operator is unable to carry out its obligations to each other under this Contract (other than obligations of such party to pay or expend monies for or in connection with the performance of such party's duties and responsibilities under this Contract), and if such party promptly gives written notice of such force majeure to the other party, then the obligations of both parties under this Contract shall be totally excused to the extent, but only to the extent, made necessary by such force majeure provided that the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. The party asserting force majeure shall promptly take all lawful steps at any reasonable cost to eliminate the force majeure.

26. **Insurance:** Operator shall carry at its expense hull and P&I insurance (but not tower's liability covering cargo) to the full value of the tow used in fulfillment of this Contract. Shipper hereby acknowledges that the freight rate specified herein does not contemplate or include liability for loss of or damage to the cargo or an allowance for liability insurance covering the cargo. As additional consideration supporting Operator's undertakings, except as provided in Section 30, Shipper shall and it does hereby agree to hold Operator, its tows, masters, crews, agents and employees, harmless from claims for cargo loss, damage or contamination, whether arising or resulting from an act of neglect or default in the navigation or management of the tow and/or care and custody of the cargo, including, but not limited to, explosion, fire, collision, stranding, salvage operations, equipment defects, or other peril, danger or accident of navigable waters or from any other cause of whatsoever kind arising. Without limiting the generality of the above, Operator, although not a common carrier, shall be entitled to the same limitation of liability as common carriers receive under the Carriage of Goods by Sea Act, 1936, (46 U.S.C.A. 1300, et seq.). Nothing in this Contract shall be construed to deprive Operator of, or limit Operator's rights to, any statutory protection or limitation of liability, which would otherwise be applicable.
27. **Indemnity:** Subject to the provisions of Section 30 with respect to cargo loss, damage or contamination each party hereto expressly agrees to indemnify, hold harmless and defend the other against all claims, demands, cost or expense resulting from loss, damage or injury to persons or property which is caused by any act or omission of the indemnifying party or subcontractor of the indemnifying party done in performance of the obligations imposed upon it by this Contract; provided, however, that neither party hereby assumes responsibility for damage or injury to employees of the other party. In addition, each party agrees to indemnify, defend and hold the other party harmless from and against and in all suits, actions, causes of action and/or claims of whatever character which may be brought or made against the other party as a result of or on account of any deviation or breach by the indemnifying party of its obligations, responsibilities and/or warranties or guarantees as provided herein.
28. **Arbitration:** Any and all differences and disputes of whatsoever nature arising out of this Contract shall be put to arbitration in the City of Tampa, Florida, pursuant to the Maritime Law of the United States, The Federal Arbitration Act, and the Rules of the Society of Maritime Arbitrators, Inc., before a panel of three (3) persons, consisting of one arbitrator to be appointed by each of the parties hereto and third by the two so chosen. The decision or that of any two of the three on any point or points shall be final. Until such time as the arbitrators formally close the hearings, either party shall have the right by written notice

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served on the arbitrators and on the other party to specify further disputes or differences under this Contract for hearing and determination. The arbitrators may grant any relief, which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards made pursuant to this Clause may include costs and shall include a reasonable allowance for the prevailing party's attorneys fees. Judgment may be entered upon any award made hereunder in any court having jurisdiction in the premises.

For disputes in which the total amount claimed by both parties does not exceed U.S. [REDACTED] the arbitration shall be conducted in accordance with the Shortened Procedures of the Society of Marine Arbitrators, Inc.

29. **Applicable Law:** This Contract shall be interpreted and enforced in accordance with the General Maritime Law of the United States, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply, and, to the extent that such General Maritime Law is inapplicable, the laws of the State of Florida, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply.
30. **No Waiver of Performance:** The failure of any party to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Contract shall be not construed as a waiver or relinquishment of such performance of any such term, covenant or condition, but each party's obligation with respect to future performance shall remain in full force and effect.
31. **Assignment:** Neither party may assign this contract without the written approval of the other party. Notwithstanding the foregoing, either party may assign this Contract to a subsidiary, affiliate or related entity; provided, however, that the assigning party shall not thereby be relieved of its responsibilities or obligations hereunder.
32. **Severability:** If any provision of this Contract shall finally be determined to be unlawful or otherwise unenforceable, then such provision shall be deemed to be severed from this Contract and every other provision of this Contract shall remain in full force and effect.
33. **Corporate Authority:** Each party represents to the other that it has full corporate authority and the necessary approval to enter into and perform this Contract in accordance with its terms.
34. **Entire Agreement:** This instrument embodies the entire agreement and understanding between Shipper and Operator, and there are no agreements, understandings, conditions, warranties or representation, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein or superseded hereby. This Contract may be modified only in writing signed by both parties.
35. **Alternative Acceptance:** Whether or not Shipper actually executes this Contract, the commencement of loading of Shipper's cargo into Operator's barge shall constitute an acceptance of all its terms and conditions by Shipper.
36. **Notices:** All notices given under this Contract shall be made in writing, and if to Shipper shall be properly given if delivered in person to its Vice President or sent by certified mail addressed as follows:

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Vice President
Fuel Transportation
Progress Fuels Corporation
200 Central Avenue
St. Petersburg, Florida 33701

Notices, if to Operator, shall be properly given if delivered in person to its President or sent by certified mail addressed as follows:

Either party may designate in writing to the other a different address for the delivery of notices hereunder.

37. **Environment, Health, and Safety:**

- a. **Compliance and Indemnification.** SELLER shall comply with all applicable EHS laws and shall indemnify PURCHASER against any EHS claims and costs arising from SELLER'S performance under this Agreement.
- b. **Audits.** PURCHASER may audit SELLER'S EHS compliance. Within thirty (30) days of PURCHASER'S request, SELLER shall deliver to PURCHASER (1) all records regarding (a) SELLER'S actual or alleged violations of EHS laws and (b) EHS claims asserted against SELLER, in each case in the five year period preceding PURCHASER'S request and (2) any executed consent form(s) necessary for PURCHASER to obtain from regulatory agencies and other third parties information regarding SELLER'S EHS compliance.
- c. **Definitions** (as used in this Agreement).
 - i. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
 - ii. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
 - iii. **Indemnify** means to indemnify, defend, and reimburse the indemnitee and its successors and assigns on an after-tax basis.
 - iv. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.
 - v. **Manage or management**, with respect to any material, means the manufacture, disturbance, generation, use, transportation, emission, discharge, treatment, storage, disposal, release, or threatened release thereof.

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IN WITNESS WHEREOF, the parties have executed this Affreightment Contract on the date first written above.

WITNESS:

WITNESS:

PROGRESS FUELS CORPORATION

BY: _____

Vice President—Coal Procurement

Date Executed: _____

BY: _____

(Title)

Date Executed: _____

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 050001-EI

**In re: Fuel and Purchased Power Cost Recovery Clause
with Generating Performance Factor**

Progress Energy Florida, Inc.'s Petition for Approval of
Waterborne Transportation Service Contracts

EXHIBIT "H"

Affreightment Contract Between Progress
Fuels Corporation and Dixie Fuels Limited

(REDACTED VERSION)

CONFIDENTIAL

XC: AWP
RFP
FHL
CAL
THH
VHH
DHD
ABF
S. HICKS
V. HICKS
FT-CF

ORIG. TO EXEC
DHS

**AFFREIGHTMENT CONTRACT
BETWEEN
PROGRESS FUELS CORPORATION
AND
DIXIE FUELS LIMITED**

THIS AFFREIGHTMENT CONTRACT ("Contract") is entered into by and between PROGRESS FUELS CORPORATION, a Florida corporation, ("Shipper") and DIXIE FUELS LIMITED, a Texas general partnership, ("Operator") on this 1st day of April, 2005.

WHEREAS, Shipper has purchased and will continue to purchase dry bulk fuel ("DBF") for use in an electric generating plant owned and operated by PROGRESS ENERGY FLORIDA, INC. near Red Level, Citrus County, Florida, known as the Crystal River Plant, and Shipper is in need of transportation services to move that DBF from a bulk cargo terminal(s) designated by Shipper in the New Orleans, Louisiana and Mobile, Alabama areas to the Crystal River Plant; and

WHEREAS, Operator owns four (4) seagoing barges along with adequate tugs to move such barges, empty or laden, and is willing to move DBF from the designated terminals to the Crystal River Plant:

WITNESSETH:

For and in consideration of mutual covenants, provisions and benefits and agreements hereinafter made and contained and other good and valuable consideration flowing between the parties hereto, Shipper and Operator hereby agree as follows:

1. **Transportation Services:** Operator will provide marine transportation services to the Shipper for DBF from the Terminals, as hereinafter defined, in the quantities described herein to the Crystal River Plant on an annual, generally ratable basis.
2. **Equipment:** The equipment to be employed by Operator hereunder will be ABS-classed, seagoing, covered hopper barges and tugs of suitable horsepower (hereinafter referred to together as the "Tow" or "Tows"). Operator shall operate and maintain the seagoing equipment in such condition as will entitle it to the highest classification and rating by the ABS for seagoing equipment of the same age, type and use. Operator shall operate seagoing equipment in a manner considered safe by prudent operators of seagoing equipment.
3. **Term:** The term of this Contract shall commence on April 1, 2005, and end May 31, 2008.

Notwithstanding the foregoing, either party may terminate this Contract as provided below, upon the happening of any of the following events:

- a. A material breach of this Contract, in which event the complaining party may terminate this Contract after giving the breaching party thirty (30) days advance written notice specifying the reason for such termination becoming effective at the end of such thirty (30) day period (unless the breach has been rectified by that time).
 - b. The filing by a party for bankruptcy, liquidation, reorganization, or suspension of payment proceeding, in which event this Contract may be terminated forthwith by the non-filing party by giving written notice to the filing party.
4. **Load Ports:** Unless otherwise hereafter directed by Shipper as provided in this Section, the load ports for all cargoes of DBF transported under this Contract shall be the International Marine Terminals dry bulk handling terminal located at about Mile 57 Above Head of Passes on the Right Descending Bank of the Lower Mississippi River and the McDuffie Island Coal Terminal and Bulk Material Handling Plant dry bulk handling terminals located at Alabama State Docks, Mobile, Alabama (each hereinafter the "Terminal"). Shipper shall designate to Operator in writing its representative ("Shipper's Representative") for the purpose of receiving Notices of Readiness ("NORs") by the Operator's Tows at the Terminal. Any load port other than the Terminal which Shipper may designate must be located on the U.S. Gulf or East coast and the Tow must be able to safely navigate, as determined in the sole discretion of the Operator, to, within and from such load port.
5. **Discharge Port:** The discharge port for all cargoes of DBF transported under this Contract shall be the Crystal River Plant dock at Progress Energy Florida's generating station in Crystal River, Florida (hereinafter the "Crystal River Plant"). Shipper shall designate to Operator in writing its representative ("Shipper's Representative") for the purpose of receiving NORs by Operator's Tows at the Crystal River Plant.
6. **Cargo and Shipping Terms:** This Contract provides for the transportation of DBF, stowing at not more than approximately 40 cubic feet per ST, in annual and individual voyage quantities further defined herein. In the event that Shipper desires that Operator transport DBF stowing at greater than the cubic feet per ST limits set forth in this Section or other cargoes, such transportation shall be on such terms and conditions and at such rates as the parties may hereafter agree.

All DBF cargoes transported hereunder shall be loaded and discharged by Shipper on a Free In and Free Out, Stowed and Trimmed basis, working continuously, Saturdays, Sundays and all holidays included, basis at both the load and discharge ports.

7. **Cargo Quantity:** The parties acknowledge and agree that the rates set forth herein are predicated on the tendering for shipment by Shipper of minimum quantities of DBF cargo, both with respect to quantity, in ST, shipped on each individual voyage and with respect to cumulative quantity shipped during each contract year during the term hereof. At least ninety (90) days prior to the beginning of each contract year (with the exception of the first contract year which is addressed in Section 11(b)), Shipper shall declare in writing to Operator the quantity of DBF cargo, in ST, to be tendered during that contract year. Each such declared quantity of cargo shall be scheduled and transported on a generally ratable basis, i.e., evenly distributed, over the applicable contract year in single voyage increments of not less than 15,500 ST unless a specific voyage quantity of less than 15,500ST is designated by Operator, in its sole discretion, due to Crystal River Channel navigation constraints. In the event Shipper fails to make available not less than 15,500 ST for any single voyage, Shipper shall pay Operator dead freight for each such voyage.

8. **Freetime:** Shipper shall have freetime of fourteen (14) weather working hours within which to load each barge and twenty-five (25) weather working hours within which to discharge each barge. Freetime will commence (i) if berth is open, upon tying up, or (ii) if berth is not open, when NOR has been tendered by Operator while within reasonable proximity to such berth. Shifting from anchorage to berth shall not count as used freetime. For demurrage calculation purposes, completion of loading is deemed to be when the barge finishes loading and trimming, or if not released by the dock within fifteen (15) minutes thereafter, when the barge is released by the dock, and completion of discharging is deemed to be when the barge is discharged, finishes blade cleaning, or if not released by the dock within fifteen (15) minutes thereafter, when the barge is released by the dock. Loading and Unloading Logs shall be maintained by Shipper at the Crystal River Power Plant and at the Terminal.

9. **Base Freight Rates and Freight Rate Adjustments:** Freight rates shall be composed of a fixed component and a fuel component. The fixed component must include all charges other than fuel. This component shall remain fixed for the duration of the contract (except as such component may be adjusted pursuant to Section 20). Such charges shall include, but not be limited to, all port charges, line handling charges, wharfage, dockage, existing taxes, and any other charges associated with the transportation of DBF.

The Base Freight Rate, per ST or pro rata portion thereof, is set forth in Schedule A hereto. Freight rates for load ports other than the Terminal will be calculated on an equivalent revenue per day basis net of fuel, port and voyage related expenses.

The fuel component of the Base Freight Rate shall be adjusted as specified in Section 10 hereof.

The Base Freight Rate includes the services of an assist tug permanently stationed at the Crystal River Plant to provide docking, undocking and turning assistance to the Tows as they enter and leave the Crystal River Plant turning basin and dock. Such tug shall be of sufficient horsepower and size to safely maneuver Tows without exception.

Shipper shall pay Operator freight for the affreightment services provided hereunder at the rates set forth herein. Operator shall prepare and transmit to Shipper by telefax, on the 15th and last day of each month, an invoice for freight for all cargo delivered in the preceding half month and for any dead freight due pursuant to Section 7 hereof. Shipper shall pay such invoice within thirty (30) days of receipt. Cargo weights shall be based on destination draft survey conducted by an independent surveyor consistent with the coal supply agreement held by Shipper.

10. **Fuel Price Adjustment:** For each one (1) percent increase or decrease in the weighted average price for all marine diesel fuel purchased by Operator for Tows in Shipper's service, during the term of this Contract, based on copies of actual invoices and taking into account all discounts or surcharges actually paid ("Fuel Price"), the fuel component of the Base Freight Rate shall be adjusted by an identical percent increase or decrease. The fuel component of the rates shall be so adjusted on the first day of each calendar quarter, based on the Fuel Price calculated for the calendar quarter preceding the applicable adjustment date as compared to the Base Fuel Price, with the first such adjustment occurring on April 1, 2005. For purposes of this Contract, the Base Fuel Price is [REDACTED]

11. Transportation Services; Declaring Tonnage; Payment for Quality Declared:

- a. Transportation Services. The parties contemplate that Shipper will need to transport approximately 2,300,000 to 2,500,000 ST of DBF per year from the Terminal to Crystal River Plant under this Contract, although actual needs and tonnage will vary, depending on operating and market conditions or other factors and that such DBF cargo tonnage will fully utilize the available capacity of Operator's Tows. During the term hereof, Shipper shall tender to Operator, on a generally ratable basis, requirements for marine transportation of DBF cargo from the Terminal to Crystal River Plant, and Operator shall transport such cargo, subject to productivity limitations beyond the control of Operator, including, but not limited to, loading or discharging time and weather.
 - b. Declaring Tonnage. Shipper will declare its planned tonnage requirements for the initial contract year upon execution of this Contract and thereafter at least 90 days prior to the start of a contract year in accordance with Section 7 hereof.
 - c. Payment for Quantity Declared. Shipper will pay freight at the applicable rate on the greater of (i) one hundred percent (100%) of all DBF cargo declared for each contract year whether said DBF cargo is tendered to Operator for transportation hereunder or not (but subject to Section 7 hereof), or (ii) all DBF cargo actually tendered in such contract year. Any amounts owed by Shipper for cargoes declared but not tendered for shipment in any contract year will be paid not later than the 20th day following the end of each such contract year.
 - d. Underutilization: In the event the amount of DBF cargo tonnage actually tendered by Shipper in any contract year results in underutilization of Operator's Tows, Shipper will pay Operator [REDACTED] per 24 hours, or pro rata portion thereof, per Tow for such time as Tows are underutilized due to lack of DBF cargo tonnage, less i) actual TCE (as defined below) earned by Operator's Tows during such period of underutilization and, ii) dead freight, if any, paid pursuant to Section 7 hereof. Time Charter Equivalent ("TCE") as used herein shall mean gross revenue earned by Operator's Tows in other employment, less fuel and lube and voyage costs incurred by Operator's Tows in such other employment, divided by the number of days that Operator's Tows are employed in such other employment. In the event that actual TCE earned by Operator's Tows during such period of underutilization, together with dead freight paid pursuant to Section 7 hereof during such period, exceeds [REDACTED] per 24 hours per Tow for such period, Operator shall have no obligation to make any payment to Shipper with respect to such excess. Payment for underutilization shall be calculated on a quarterly basis. Within thirty (30) days after the end of each calendar quarter, Operator shall review the voyages completed during such quarter, determine the payment for underutilization due from Shipper hereunder, if any, and prepare and transmit to Shipper by telefax or electronic mail an invoice for such quarter reflecting the time that Tows are underutilized due to lack of DBF cargo tonnage and charging Shipper for any such time not offset by TCE and dead freight, as provided in this Section. Shipper shall pay such invoice to the account specified herein for payments within thirty (30) days of receipt of proper invoice.
12. Demurrage and Despatch: In the event that loading and/or discharging the Tow is not completed within the freetime allowed herein through no fault of Operator or the Tow, demurrage shall accrue for all time used in excess of allowed freetime, and Shipper shall pay Operator for the Tow at the Demurrage Rate, per hour or portion thereof, as set forth in Schedule A. In the event that loading and/or discharging the Tow is completed within the

freetime allowed herein, despatch shall accrue for all allowed freetime not used, and Operator shall provide Shipper with a credit against demurrage accrued hereunder for such despatch at the Demurrage Rate.

Demurrage and despatch shall be calculated on a quarterly basis. Within thirty (30) days after the end of each calendar quarter, Operator shall review the voyages completed during such quarter, determine the demurrage and despatch accrued, and prepare and transmit to Shipper by telefax or electronic mail a cumulative demurrage invoice for such voyages reflecting the demurrage or despatch accrued on each such voyage and charging Shipper for any demurrage not offset by despatch at the Demurrage Rate. Shipper shall pay such invoice to the account specified herein for payments within thirty (30) days of receipt of proper invoice.

The Demurrage Rate shall be fixed during the term of this Contract,

13. **Payments.** Payments required by Shipper hereunder shall be made by wire transfer to the account as styled below:

JPMorgan Chase Bank, Houston, Texas

[REDACTED]

[REDACTED]

For further credit to Dixie Fuels Limited

14. **Notice of Readiness:** The master of the Tow shall provide Notice of Readiness (NOR) to Shipper's Representative upon (i) tying up, or if berth is unavailable, (ii) anchoring, as close thereto as the Tow can safely approach, at the Terminal for loading or at the Crystal River Plant for discharging, as applicable, in writing, by telefax, by radio or by telephone. NOR may be provided from a designated anchorage or other safe navigating or waiting location as determined in the sole discretion of the master of the Tow.
15. **Cleaning:** Unless hereafter otherwise agreed by the parties, Operator shall present the cargo holds of its barge blade cleaned of its last cargo prior to loading of cargo hereunder. In the event the barges tendered by Operator shall have last contained cargoes other than DBF or rock, Operator agrees to undertake such cleaning as may be necessary to ensure the removal of any residual material which would contaminate Shipper's cargoes. Shipper shall, at its time and expense, blade clean the cargo holds of Operator's barge after the completion of cargo discharge operations.
16. **Vessel Position and ETA Reports:** Operator shall provide Shipper, via telephone, telefax or other mutually agreed method, with the daily location of Tows in service under this Contract, and, as a Tow enters the Lower Mississippi River or Mobile Channel, Operator shall notify Shipper's Representative at the Terminal of the expected time of arrival (ETA) of the Tow alongside the Terminal dock. In addition, the master of the Tow shall notify Shipper's Representative at the Terminal, by telephone, telefax, or radio, twenty-four (24) hours and six (6) hours prior to the ETA of the Tow at the Terminal and shall notify Shipper's Representative at the Crystal River Plant, by telephone, telefax, or radio, twenty-four (24) hours and three (3) hours prior to the ETA of the Tow at the Crystal River Plant on each voyage.
17. **Safe Berth:** Shipper will provide a safe berth at the load port and discharge port and will provide cargo loading and discharging services day or night, Saturdays, Sundays and

holidays not excepted. Cargoes to be transported hereunder will be loaded by Shipper or its subcontractors into Operator's barges at New Orleans or Mobile at no expense to Operator, subject, however, to Operator's instructions on trim and draft of the barges.

18. **Loading/Unloading Damages:** The parties acknowledge that loading at the Terminal, or such other load port as the parties may hereafter agree, and discharging at the Crystal River Plant will be performed by Shipper utilizing clamshell bucket or similar equipment. It is understood and agreed that Operator will have no responsibility or liability for any damages arising from Shipper's (or its subcontractor's) operation of the clamshell bucket or the dockside operations of Shipper (or its subcontractors) except to the extent that any such damage is caused or contributed to by Operator's negligence or willful misconduct in connection with the operations of the damaged Tow. It is agreed that any damage which, in Operator's judgment, impairs the watertight integrity or seaworthiness of the Tow will be immediately repaired by Shipper or by Operator for the account of Shipper, and time spent in effecting repairs, including deviation time to and from the repair berth or facility, will count as used freetime or, if on demurrage, as time on demurrage. Repairs to damage which, in Operator's judgment, do not affect the watertight integrity or seaworthiness of the vessel will be for the account Shipper, but will be deferred until such time as convenient to Operator (or its subcontractor), and time spent effecting such repairs will not count as used freetime or, if on demurrage, as time on demurrage. Notwithstanding the foregoing, Operator shall give Shipper notice of any loading or unloading damage prior to the barge's departure from the Terminal, such other load port as the parties may hereafter agree, or the Crystal River Plant, as applicable, and in the case of damage which in the Operator's judgment affects the watertight integrity or seaworthiness of the Tow, Shipper shall have the right and be given the opportunity to retain a qualified marine surveyor to examine and prepare a report on the noted damage, particularly the extent and nature thereof, with time spent in waiting on and conducting such survey to count as used freetime or, if on demurrage, as time on demurrage. All claims for unloading damage not brought to Shipper's attention prior to the barge's departure from the Terminal, such other load port as the parties may hereafter agree, or the Crystal River Plant, as applicable, will be conclusively deemed to have been waived.
19. **Channel Depth:** Shipper warrants the Crystal River Plant navigation channel, beginning at navigation channel marker 2 and 3, including the Tow turning basin and the coal dock, (collectively the "Channel") is at least twenty (20) feet at mean low water. In the event that the depth of the Channel in any specific location is reduced to less than twenty (20) feet at mean low water, as determined by periodic surveys which Shipper shall conduct at least once in every twenty-four (24) months during the term hereof, dredging will occur (either by Shipper or at Shipper's direction and, in either case, at Shipper's expense) to restore the entire Channel or location so affected to a depth of at least twenty (20) feet at mean low water, time being of the essence, but in any case within four (4) months after detection by such survey or after written notification by Operator of a deficiency in Channel depth. Similarly, all Channel markers and navigation aids, whether required by cognizant regulatory authority or which have been previously installed for the convenience of Shipper and its subcontractors, including Operator shall be maintained by Shipper at Shipper's expense throughout the term of this Contract.
20. **New Regulations:** It is recognized by Shipper that during the term of this Contract that government regulations may be imposed which could result in material increases in the operating costs of the tugs and barges which were not contemplated by either Operator or Shipper at the time this Contract was executed. Should such a situation arise, Operator shall

notify Shipper in writing, and thereafter Operator and Shipper shall negotiate in good faith a reasonable adjustment in the freight rate or other means of reimbursing Operator for a reasonable share of such unexpected costs. In the event Operator and Shipper do not reach agreement within sixty (60) days of Operator's notice, Operator shall have the option to terminate this Contract by written notice to Shipper.

21. **Audit:** Operator agrees to maintain books, records, documents and other evidences pertaining to the cost of this Contract (herein collectively called the "Records") to the extent and in such detail as will properly reflect all cost and expenses of whatever nature for which reimbursement is claimed under this Contract. Upon request of Shipper, Operator shall make available at Operator's office any and all such Records, along with related correspondence, receipts, vouchers, memoranda pertaining to the Contract, for inspection audit or reproduction by any authorized representative of Shipper. Operator shall preserve all such Records for a period of five (5) years after final payment hereunder during which period Shipper may complete an audit thereof. Should discrepancies or questions arise, the records shall be preserved until agreement is reached.
22. **Default:** No default of either party to this Contract in the performance of any of its covenants or obligations hereunder, which, except for this provision, would be the legal basis for rescissions or termination of this Contract by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the default within thirty (30) days after written notice of claim of such default is given to such defaulting party by other party hereto.
23. **General Average:** In the event of accident, danger, damage, or disaster before or after commencement of a voyage hereunder resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Operator is not responsible to Shipper or cargo owners by statute or contract or otherwise, the cargo, Shipper, consignee and other parties having an interest in the cargo shall, jointly and severally, contribute in general average to the payment of any sacrifices, losses or expense of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. General average, if any, shall be settled according to York-Antwerp Rules, 1994, and as to matters not therein provided for, according to the usages and customs of the Port of New York.
24. **Both to Blame Collision:** If the Tow comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of Operator or the master or the crew of the Tow, for which, or for the consequence of which, Operator is not responsible to Shipper or cargo owners by statute or contract or otherwise, Shipper and other parties having an interest in the cargo shall, jointly and severally, indemnify Operator against all liability to the other vessel or her owners or the owners of the cargo of the other vessel with respect to any payment which Shipper or such other parties have received or may be entitled to receive from the other vessel or her owners, or the owners of the cargo of the other vessel.
25. **Force Majeure:** The term "force majeure" means any event, whether foreseeable or not, which is beyond the control of and occurs without fault or negligence of the party asserting the force majeure and which wholly or partly prevents the performance of any of the duties and responsibilities of the party asserting the force majeure (other than obligations of such party to pay or expend monies for or in connection with the performance of such party's duties and responsibilities under this Contract), including, but not limited to, an act of God or

an act of the public enemy; fire, flood, explosion or other serious casualty; unusually severe weather; war (whether declared or not); warlike circumstances; mobilization; revolution; riot or civil commotion; legal intervention; regulations or orders of governmental authority; strike, lockout or other labor disputes (all of which shall be settled solely at the discretion of the party having the difficulty).

Failure as a result of force majeure, of any supplier of Shipper to deliver coal to it pursuant to contracts or commitments between the supplier and Shipper shall constitute an event of force majeure assertable by Shipper against Operator. The failure, as a result of force majeure, of Progress Energy Florida to use or accept coal to be supplied by Shipper and delivered by Operator under this Contract shall constitute an event of force majeure asserted by Shipper against Operator.

In the event of a breach of contract by a subcontractor of any party hereunder, that party shall not declare such a breach a force majeure event hereunder, and such party shall make all reasonable efforts to enforce its contract, including the commencement and diligent prosecution of legal proceedings, including any necessary appeals, to establish liability and to enforce any judgment which may be obtained.

If, because of force majeure, either Shipper or Operator is unable to carry out its obligations to each other under this Contract (other than obligations of such party to pay or expend monies for or in connection with the performance of such party's duties and responsibilities under this Contract), and if such party promptly gives written notice of such force majeure to the other party, then the obligations of both parties under this Contract shall be totally excused to the extent, but only to the extent, made necessary by such force majeure provided that the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. The party asserting force majeure shall promptly take all lawful steps at any reasonable cost to eliminate the force majeure.

26. **Insurance:** Operator shall carry at its expense P&I insurance (but not tower's liability covering cargo) with a minimum limit of \$50,000,000. Shipper hereby acknowledges that the freight rate specified herein does not contemplate or include liability for loss of or damage to the cargo or an allowance for liability insurance covering the cargo. Shipper shall carry at its expense all risk cargo insurance covering DBF transported pursuant to this Contract. As additional consideration supporting Operator's undertakings, except as provided in Section 23, Shipper shall and it does hereby agree to hold Operator, its Tows, masters, crews, agents and employees, harmless from claims for cargo loss, damage or contamination, whether arising or resulting from an act of neglect or default in the navigation or management of the Tow and/or care and custody of the cargo, including, but not limited to, explosion, fire, collision, stranding, salvage operations, equipment defects, or other peril, danger or accident of navigable waters or from any other cause of whatsoever kind arising. Without limiting the generality of the above, Operator, although not a common carrier, shall be entitled to the same limitation of liability as common carriers receive under the Carriage of Goods by Sea Act, 1936, (46 U.S.C.A. 1300, et seq.). Nothing in this Contract shall be construed to deprive Operator of, or limit Operator's rights to, any statutory protection or limitation of liability, which would otherwise be applicable.

27. **Indemnity:** Definitions: For the purposes of this Section 27, the following terms shall have the following meanings:

"Environment" means soil, surface waters, ground waters, land, stream sediments, surface or subsurface strata, ambient air and any and all other environmental media.

"Environmental Condition" means any condition involving or resulting from the presence of DBF in the Environment which is reasonably likely to or does result in any damage, loss, claim, demand, order or liability to or against Shipper or Operator (including, without limitation, claims by any third party or any Governmental Authority).

"Environmental Law" means any law, regulation, rule, ordinance, guideline, criterion, mandate, order or by-law at the federal, state or local level, relating to pollution or protection of the Environment.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or jurisdictional power; and any court or governmental tribunal.

"Person" means any individual, corporation, limited liability company, partnership, limited partnership, joint venture, trust, unincorporated organization, association, Governmental Authority or other entity.

- a. General. Subject to the provisions of Section 26 with respect to DBF loss, damage or contamination, each party ("Indemnifying Party") shall indemnify, hold harmless and defend the other party and such other party's affiliates, directors, officers, agents, employees, contractors, subcontractors, successors and assigns (collectively, "Indemnified Party") from and against any and all claims by any party for loss, liability, damage, cost or expense, including damage and liability for bodily injury to or death of Persons or damage to property of Persons (collectively "Liability") to the extent caused by the Indemnifying Party's violation of applicable law, breach of any of the Indemnifying Party's representations or warranties made herein, or the Indemnifying Party's failure to perform any of its obligations under this Contract or because of any negligence or wrongful acts or omissions, regardless whether arising under applicable law, rule or regulation or otherwise; provided, however, that neither party shall have any indemnification obligations under this Section 27 in respect of any Liability to the extent caused by the negligence, bad faith or willful misconduct of the other party or such other party's affiliates, directors, officers, agents, employees, contractors, subcontractors, successors, assigns or Persons under such other party's control.
- b. Environmental Indemnity. The Indemnifying Party shall protect, defend, indemnify and hold harmless the Indemnified Party from and against any and all claims by any third party (including without limitation a Governmental Authority) for any loss, liability, damage, cost or expense (including reasonable expenses for consulting and professional expenses incurred in investigation, cleanup, response, removal or other remedial costs) (collectively "Environmental Liability") imposed upon, incurred by or asserted against the Indemnified Party i) caused by the Indemnifying Party's violation of any Environmental Law, or ii) any Environmental Condition caused by the Indemnifying Party's wrongful acts or omissions (including breach of any contractual duty), provided, however, that neither party shall have any indemnification obligations under this Section 27 in respect of any Environmental Liability to the extent caused by the negligence, bad faith or willful misconduct of the other party or such other party's affiliates, directors,

officers, agents, employees, contractors, subcontractors, successors, assigns or Persons under such other party's control.

c. Procedure.

- i) Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any legal proceeding or investigation as to which it is or may be entitled to indemnification under this Section 27, such party shall notify the Indemnifying Party of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Indemnified Party; provided, further, if the claim is one that cannot by its nature be defended solely by the Indemnifying Party, the Indemnified Party shall make available all information and assistance as the Indemnifying Party may reasonably request at the expense of the Indemnifying Party. The Indemnified Party shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. The Indemnified Party shall be prohibited from settling a claim without the Indemnifying Party's consent as long as the Indemnifying Party is defending the claim without any reservation of rights, unless the Indemnified Party releases the Indemnifying Party from its obligations under this Section 27 with respect to the claim being settled. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party or a conflict of interest between the Indemnified Party and the Indemnifying Party, and in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party in such defense.
- ii) Should any Indemnified Party be entitled to indemnification under this Section 27 and should the Indemnifying Party fail to assume the defense of such claim, such Indemnified Party may, at the expense of the Indemnifying Party, contest, settle or pay such claim as it may reasonable and in good faith determine to be appropriate.
- iii) In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Section 27, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Liability or Environmental Liability.

28. **Arbitration:** Any and all differences and disputes of whatsoever nature arising out of this Contract shall be put to arbitration in the City of Tampa, Florida, pursuant to the Maritime Law of the United States, The Federal Arbitration Act, and the Rules of the Society of Maritime Arbitrators, Inc., before a panel of three (3) persons, consisting of one arbitrator to be appointed by each of the parties hereto and third by the two so chosen. The decision or that of any two of the three on any point or points shall be final. Until such time as the arbitrators formally close the hearings, either party shall have the right by written notice

served on the arbitrators and on the other party to specify further disputes or differences under this Contract for hearing and determination. The arbitrators may grant any relief, which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards made pursuant to this Section may include costs and shall include a reasonable allowance for the prevailing party's attorneys fees. Judgment may be entered upon any award made hereunder in any court having jurisdiction in the premises.

For disputes in which the total amount claimed by both parties does not exceed U.S. [REDACTED] the arbitration shall be conducted in accordance with the Shortened Procedures of the Society of Maritime Arbitrators, Inc.

29. **Applicable Law:** This Contract shall be interpreted and enforced in accordance with the General Maritime Law of the United States, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply, and, to the extent that such General Maritime Law is inapplicable, the laws of the State of Florida, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply.
30. **No Waiver of Performance:** The failure of any party to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Contract shall be not construed as a waiver or relinquishment of such performance of any such term, covenant or condition, but each party's obligation with respect to future performance shall remain in full force and effect.
31. **Assignment:** Neither party shall assign this Contract or its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, either party may without the consent of the other party, i) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, ii) transfer or assign this Contract to an affiliate of such party which affiliate's creditworthiness is equal to or higher than that of such party, or iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of such party or pursuant to any consolidation or amalgamation with, merger with or into another entity or the reorganization, incorporation, reincorporation or reconstitution into or as another entity; provided, however, that in each such case, any such assignee shall have a creditworthiness equal to or higher than that of such party and any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring party delivers such tax and enforceability assurance as the non-transferring party may reasonably request. Any transfer or assignment of this Contract made in compliance with Clause ii) or iii) of this Section 31 shall constitute an acceptance and assumption of such obligations by the transferee, a novation of the transferee in place of the transferor with respect to such obligations (and any related interests so transferred), and a release and discharge by the non-transferring party of the transferor from, and an agreement by the non-transferring party not to make any claim for payment, liability, or otherwise against the transferor with respect to such obligations from and after the effective date of the transfer or assignment.
32. **Severability:** If any provision of this Contract shall finally be determined to be unlawful or otherwise unenforceable, then such provision shall be deemed to be severed from this Contract and every other provision of this Contract shall remain in full force and effect.

33. **Corporate Authority:** Each party represents to the other that it has full corporate authority and the necessary approval to enter into and perform this Contract in accordance with its terms.

34. **Entire Agreement:** This instrument embodies the entire agreement and understanding between Shipper and Operator, and there are no agreements, understandings, conditions, warranties or representation, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein or superseded hereby. This Contract may be modified only in writing signed by both parties.

35. **Notices:** All notices given under this Contract shall be made in writing, and if to Shipper shall be properly given if delivered in person to its Vice President or sent by certified mail addressed as follows:

Vice President
Fuel Transportation
Progress Fuels Corporation
200 Central Avenue
St. Petersburg, Florida 33701

Notices, if to Operator, shall be properly given if delivered in person to its President or sent by certified mail addressed as follows:

Dixie Fuels Limited
55 Waugh Drive, Suite 1000
Houston, Texas 77007

Either party may designate in writing to the other a different address for the delivery of notices hereunder.

36. **Environment, Health, and Safety:**

a. **Definitions** (as used in this Section).

- i. **Claim** means administrative, regulatory or judicial action, suite, dispute, liability, judgment, penalty, damages, directive, order or claim.
- ii. **EHS** means relating to the management of any material or the protection of human health, public safety, occupational/mine safety and health, the environment or natural resources.
- iii. **Law** means any binding authority, demand, or permitting requirement issued by a legislative, judicial, or executive governmental body.

b. **Compliance.** Operator shall comply with all applicable EHS Laws.

c. **Audits.** Shipper may audit Operator's EHS compliance. Within thirty (30) days of Shipper's request, Operator shall deliver to Shipper (1) all records regarding (a) Operator's actual or alleged violations of EHS laws and (b) EHS claims asserted against

Operator, in each case in the five year period preceding Shipper's request and (2) any executed consent form(s) necessary for Shipper to obtain from regulatory agencies and other third parties information regarding Operator's EHS compliance.

IN WITNESS WHEREOF, the parties have executed this Affreightment Contract on the date first written above.

WITNESS:

Roberta A. O'H
F. Michael Lebl

PROGRESS FUELS CORPORATION

BY: [Signature]
Vice President—Coal Procurement

Date Executed: 5/24/05

WITNESS:

[Signature]
Denise Welch

DIXIE FUELS LIMITED, a Partnership
by Dixie Bulk Transport, Inc., its General Partner

BY: [Signature]
J.H. Pyne, President

Date Executed: 5-19-05

Schedule A
Rates

Base Freight Rates (\$/ST)

New Orleans

International Marine Terminals

≤ 2.5mm tons per contract year
> 2.5mm tons per contract year

Mobile

≤ 2.5mm tons per contract year
> 2.5mm tons per contract year

Demurrage Rate (\$/hour)

Dead Freight Rates (\$/ST)

≤ 2.5mm tons per contract year
> 2.5mm tons per contract year

A

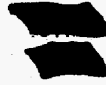
Fixed

B

Fuel

C

Total



1
2



3
4



5



6
1

CONFIDENTIAL

XC: AWP
RFP
FML
CAL
THM
VHM
JMI
ABF
S. HASKINS
V. HICKS
FT-CF
ORIG. TO EXEC. DDC

**ASSIST TUG AGREEMENT
BETWEEN
PROGRESS FUELS CORPORATION
AND
DIXIE FUELS LIMITED**

This Assist Tug Agreement ("Agreement") is entered into by and between Progress Fuels Corporation, a Florida Corporation, ("PFC") and Dixie Fuels Limited, a Texas general partnership, ("DFL") on this 16th day of May, 2005.

WHEREAS, DFL is the owner of the M/V DIXIE REBEL, Official Number 299033 (the "Vessel"). The Vessel is utilized by DFL at DFL's own cost and expense in providing assist tug service to other DFL owned vessels calling at the Progress Energy Florida Crystal River, Florida Plant, including the Plant channel and approaches ("Crystal River") pursuant to that certain Affreightment Contract dated April 1, 2005 between PFC and DFL ("DFL Affreightment Contract"); and

WHEREAS, subsequent to the DFL Affreightment Contract, PFC has entered into an Affreightment Contract with Express Marine, Inc. ("EMI") ("EMI Affreightment Contract") similar to the DFL Affreightment Contract, except such EMI Affreightment Contract obligates PFC to provide Crystal River assist tug services to EMI at no cost and expense to EMI; and

WHEREAS, PFC desires DFL to provide Crystal River assist tug service to EMI and DFL is willing to provide such Crystal River assist tug service to EMI for PFC pursuant to the terms and conditions hereof.

WITNESSETH

For and in consideration of the mutual covenants, provisions and benefits and agreements hereinafter made and contained and other good and valuable consideration flowing between the parties hereto, PFC and DFL hereby agree as follows:

1. **Assist Tug Service:** PFC requests that DFL employ the Vessel to provide assist tug service at Crystal River to vessels owned and operated by EMI performing transportation service to PFC pursuant to the EMI Affreightment Contract ("EMI Vessels") (the "Service") and DFL agrees to provide the Service, upon reasonable notice from PFC.
2. **Term:** The term of this Agreement shall commence on June 1, 2005 and end on May 31, 2008.

3. **Indemnification:** In consideration of DFL's agreement to provide the Service and subject to the other terms of this letter, PFC hereby agrees to defend, indemnify and hold harmless, DFL, its partners, their respective parent, subsidiary and affiliate companies and each of their respective employees, directors, officers, servants, agents, invitees and vessels, including the Vessel (the "indemnities"), from and against any and all claims, demands, liabilities or causes of action of every kind and character as may arise out of provision of the Service, in favor of any person or party, including without limitation EMI and its parent, subsidiary and affiliate companies and each of their respective employees, directors, officers, servants, agents, invitees and third parties, for injury to, illness or death of any person; for damage to or loss of property, including EMI Vessels and their cargo; for wreck removal; for pollution damages, including but not limited to costs associated with spill response, removal, and remediation, and damages to the environment; for violation of any requirement of law or regulation; or for consequential damages of any type other than consequential damages suffered by DFL, including loss of use of the Vessel. PFC further expressly agrees that, EXCEPT TO THE EXTENT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNITEES, THE FOREGOING INDEMNITY OBLIGATION IS WITHOUT REGARD TO ANY NEGLIGENCE, INCLUDING SOLE NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNITIES AND WITHOUT REGARD TO ANY UNSEAWORTHINESS OF, CONDITION OF, OR DEFECT IN THE VESSEL.
4. **Compensation:** In further consideration of DFL's agreement to provide the Service, PFC shall compensate DFL for the costs incurred by DFL in performing the Service. For the purposes of this Agreement, such costs are agreed by the parties hereto as being [REDACTED] per assist, with each assist on-dock and off-dock being considered a separate assist.
5. **Arbitration:** Any and all differences and disputes of whatsoever nature arising out of this Agreement shall be put to arbitration in the City of Tampa, Florida, pursuant to the Maritime Law of the United States, The Federal Arbitration Act, and the Rules of the Society of Maritime Arbitrators, Inc., before a panel of three (3) persons, consisting of one arbitrator to be appointed by each of the parties hereto and third by the two so chosen. The decision or that of any two of the three on any point or points shall be final. Until such time as the arbitrators formally close the hearings, either party shall have the right by written notice served on the arbitrators and on the other party to specify further disputes or differences under this Agreement for hearing and determination. The arbitrators may grant any relief, which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards made pursuant to this Section may include costs and shall include a reasonable allowance for the prevailing party's attorneys fees. Judgment may be entered upon any award made hereunder in any court having jurisdiction in the premises.

For disputes in which the total amount claimed by both parties does not exceed U.S. [REDACTED], the arbitration shall be conducted in accordance with the Shortened Procedures of the Society of Maritime Arbitrators, Inc.

6. **Applicable Law:** This Agreement shall be interpreted and enforced in accordance with the General Maritime Law of the United States, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply, and, to the extent that such General Maritime Law is inapplicable, the laws of the State of Florida, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply.
7. **Assignment:** Neither party shall assign this Contract or its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, either party may without the consent of the other party, i) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, ii) transfer or assign this Contract to an affiliate of such party which affiliate's creditworthiness is equal to or higher than that of such party, or iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of such party or pursuant to any consolidation or amalgamation with, merger with or into another entity or the reorganization, incorporation, reincorporation or reconstitution into or as another entity; provided, however, that in each such case, any such assignee shall have a creditworthiness equal to or higher than that of such party and any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring party delivers such tax and enforceability assurance as the non-transferring party may reasonably request. Any transfer or assignment of this Contract made in compliance with Clause ii) or iii) of this Section 31 shall constitute an acceptance and assumption of such obligations by the transferee, a novation of the transferee in place of the transferor with respect to such obligations (and any related interests so transferred), and a release and discharge by the non-transferring party of the transferor from, and an agreement by the non-transferring party not to make any claim for payment, liability, or otherwise against the transferor with respect to such obligations from and after the effective date of the transfer or assignment.
8. **Severability:** If any provision of this Agreement shall finally be determined to be unlawful or otherwise unenforceable, then such provision shall be deemed to be severed from this Agreement and every other provision of this Agreement shall remain in full force and effect.
9. **Corporate Authority:** Each party represents to the other that it has full corporate authority and the necessary approval to enter into and perform this Agreement in accordance with its terms.
10. **Entire Agreement:** This instrument embodies the entire agreement and understanding between PFC and DFL, and there are no agreements, understandings,

conditions, warranties or representation, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein or superseded hereby. This Agreement may be modified only in writing signed by both parties.

11. Notices: All notices given under this Agreement shall be made in writing, and if to PFC shall be properly given if delivered in person to its Vice President or sent by certified mail addressed as follows:

Vice President
Coal Procurement
Progress Fuels Corporation
200 Central Avenue
St. Petersburg, Florida 33701


Notices, if to DFL, shall be properly given if delivered in person to its President or sent by certified mail addressed as follows:

Dixie Fuels Limited
55 Waugh Drive, Suite 1000
Houston, Texas 77007
Attn: Mark R. Buese

Either party may designate in writing to the other a different address for the delivery of notices hereunder.


IN WITNESS WHEREOF, the parties have executed this Assist Tug Agreement on the date first written above.

PROGRESS FUELS CORPORATION



Vice President—Coal Procurement

DIXIE FUELS LIMITED, a Partnership
by Dixie Bulk Transport, Inc., its General Partner



J.H. Pyne, President

BEFORE THE PUBLIC SERVICE COMMISSION

Docket No. 050001-EI

**In re: Fuel and Purchased Power Cost Recovery Clause
with Generating Performance Factor**

Progress Energy Florida, Inc.'s Petition for Approval of
Waterborne Transportation Service Contracts

EXHIBIT "I"

Affreightment Contract Between
Progress Fuels Corporation and EMI-PA, Inc.

(REDACTED VERSION)

CONFIDENTIAL

**AFFREIGHTMENT CONTRACT
BETWEEN
PROGRESS FUELS CORPORATION
AND
EMI-PA, INC.**

THIS AFFREIGHTMENT CONTRACT ("Contract") is entered into by and between PROGRESS FUELS CORPORATION, a Florida corporation, ("Shipper") and EMI-PA, INC., a Pennsylvania corporation, ("Operator") on this 1st day of April, 2005.

WHEREAS, Shipper has purchased and will continue to purchase dry bulk fuel ("DBF") for use in an electric generating plant owned and operated by PROGRESS ENERGY FLORIDA, INC. near Red Level, Citrus County, Florida, known as the Crystal River Plant, and Shipper is in need of transportation services to move that DBF from a bulk cargo terminal(s) designated by Shipper in the New Orleans, Louisiana and Mobile, Alabama areas to the Crystal River Plant; and

WHEREAS, Operator owns one seagoing barge along with an adequate tug to move such barge, empty or laden, and is willing to move DBF from the designated terminals to the Crystal River Plant:

WITNESSETH:

For and in consideration of mutual covenants, provisions and benefits and agreements hereinafter made and contained and other good and valuable consideration flowing between the parties hereto, Shipper and Operator hereby agree as follows:

1. **Transportation Services:** Operator will provide marine transportation services to the Shipper for DBF from the Terminals, as hereinafter defined, in the quantities described herein to the Crystal River Plant on an annual, ratable basis.
2. **Equipment:** The equipment to be employed by Operator hereunder will be an ABS-classed, seagoing, covered hopper barge and tug of suitable horsepower (hereinafter referred to together as the "Tow"). Operator shall operate and maintain the seagoing equipment at an ABS +1 Rating. Operator shall operate seagoing equipment in a manner considered safe by prudent operators of seagoing equipment. Further, Operator agrees that its equipment will have cutouts between holds to facilitate cleaning. Subcontracting of outside equipment shall be done only upon mutual agreement.
3. **Term:** The term of this Contract shall be for three (3) years, commencing on the date of the first loading and ending 36 months later.

No later than Eighteen (18) months prior to the expiration of the contract term, Operator and Shipper will have the obligation to inform the other party whether they desire a contract extension of up to two (2) consecutive years following the expiration of the original contract

term. The parties will then meet to mutually resolve the terms and conditions of such an extension. However, neither party is obligated to agree to such contract extension.

Notwithstanding the foregoing, either party may terminate this Contract as provided below, upon the happening of any of the following events:

- a. A material breach of this Contract, in which event the complaining party may terminate this Contract after giving the breaching party thirty (30) days advance written notice, or fifteen (15) days in the case of default for failure to pay invoices or other amounts due hereunder, specifying the reason for such termination becoming effective at the end of such fifteen (15) or thirty (30) day period (unless the breach has been rectified by that time).
 - b. The filing by a party for bankruptcy, liquidation, reorganization, or suspension of payment proceeding, in which event this Contract may be terminated forthwith by the non-filing party by giving written notice to the filing party.
4. **Load Ports:** Unless otherwise hereafter directed by Shipper as provided in this Section, the load ports for all cargoes of DBF transported under this Contract shall be the International Marine Terminals dry bulk handling terminal located at about Mile 57 Above Head of Passes on the Right Descending Bank of the Lower Mississippi River and the McDuffie Island Coal Terminal and the Three Mile Creek Bulk Handling Facility dry bulk handling terminals located at Alabama State Docks, Mobile, Alabama (each hereinafter the "Terminal"). Shipper shall designate to Operator in writing its representative ("Shipper's Representative") for the purpose of receiving Notices of Readiness ("NORs") by the Operator's Tow at the Terminal. Any load port other than the Terminal which Shipper may designate must be located on the U.S. Gulf or East coast and the Tow must be able to safely navigate, as determined in the sole discretion of the Operator, to, within and from such load port.
5. **Discharge Port:** The discharge port for all cargoes of DBF transported under this Contract shall be the Crystal River Plant dock at Progress Energy Florida's generating station in Crystal River, Florida (hereinafter the "Crystal River Plant"). Shipper shall designate to Operator in writing its representative ("Shipper's Representative") for the purpose of receiving NORs by Operator's Tow at the Crystal River Plant.
6. **Cargo and Shipping Terms:** This Contract provides for the transportation of DBF, stowing at not more than approximately 40 cubic feet per short ton (ST), in annual and individual voyage quantities further defined herein. In the event that Shipper desires that Operator transport DBF stowing at greater than the cubic feet per ST limits set forth in this Section or other cargoes, such transportation shall be on such terms and conditions and at such rates as the parties may hereafter agree.

All DBF cargoes transported hereunder shall be loaded and discharged by Shipper on a Free In and Free Out, Stowed and Trimmed basis, working continuously, Saturdays, Sundays and all holidays included, basis at both the load and discharge ports.

7. **Cargo Quantity:** The parties acknowledge and agree that the rates set forth herein are predicated on the tendering for shipment by Shipper of minimum quantities of DBF cargo which will employ and utilize Operator's Tow on a full time and continuous basis throughout the term of the contract, both with respect to quantity, in ST, shipped on each individual voyage and with respect to cumulative quantity shipped during each contract year during the

term hereof. Cargo shall be scheduled and transported on a ratable basis, i.e., evenly distributed, over the applicable contract year in single voyage increments of not less than 15,000 ST unless a specific voyage quantity of less than 15,000 ST is designated by Operator due to Crystal River Channel navigation constraints. In the event Shipper fails, whether or not as a result of a Force Majeure, to make available not less than 15,000 ST for any single voyage, or if a quantity of less than 15,000 ST must be carried on any specific voyage due to water depth constraints of less than 20 feet mean low water in the Crystal River Channel, Shipper shall pay Operator dead freight for each such voyage at the rate specified in Schedule A attached hereto. The fuel component of the Deadfreight Rates specified in Schedule A shall be adjusted during the contract in accordance with Section 10 of this contract.

8. **Freetime:** Shipper shall have freetime of fourteen (14) weather running hours within which to load each barge and twenty-five (25) weather running hours within which to discharge each barge. Freetime at the Terminal or other load port will commence (i) if berth is open, upon tying up, or (ii) if berth is not open, when NOR has been tendered by Operator while within reasonable proximity to such berth. Freetime at Crystal River will commence (i) if berth and navigation channel are open, upon tying up, or (ii) if berth is not open or the navigation channel is unavailable due to vessel traffic, when NOR has been tendered by Operator while within reasonable proximity to the channel entrance. Shifting from anchorage to berth shall not count as used freetime. For Freetime, demurrage and dispatch calculation purposes, completion of loading is deemed to be when the barge finishes loading and trimming and completion of discharging is deemed to be when the barge is discharged and finishes blade cleaning. Loading and Unloading Logs shall be maintained by Shipper at the Terminal and at the Crystal River Power Plant.
9. **Base Freight Rates and Freight Rate Adjustments:** Freight rates shall be composed of a fixed component and a fuel component. The fixed component must include all charges other than fuel. This component shall remain fixed for the duration of the contract (except as such component may be adjusted pursuant to Section 20). Such charges shall include, but not be limited to, all port charges, line handling charges, wharfage, dockage, taxes, and any other charges associated with the transportation of DBF existing and assessed at the time of entering this contract. Shipper warrants that it does not and shall not assess any such charges at the Discharge Port.

The Base Freight Rate per ST or pro rata portion thereof is set forth in Schedule A hereto. Freight rates for load ports other than the Terminal will be calculated on an equivalent revenue per day basis net of fuel, port and voyage related expenses.

The fuel component of the Base Freight Rate shall be adjusted as specified in Section 10 hereof.

Shipper shall provide at its cost the services of an assist tug permanently stationed at the Crystal River Plant to provide docking, undocking and turning assistance to the Tow as it enters and leaves the Crystal River Plant turning basin and dock. Such tug shall be of sufficient horsepower and size to safely maneuver Tows without exception.

Shipper shall pay Operator freight for the affreightment services provided hereunder at the rates set forth herein. Operator shall prepare and transmit to Shipper by telefax, on the 15th and last day of each month, an invoice for freight for all cargo delivered in the preceding half month and for any dead freight due pursuant to Sections 7 hereof. Shipper shall pay such

invoice within thirty (30) days of receipt of proper invoice. Interest shall accrue and be payable by Shipper on the amount of any freight payment not paid within thirty (30) days at a rate of 1.5% per month until such payment is received by Operator. Cargo weights shall be based on destination draft survey conducted by an independent surveyor consistent with the coal supply agreement held by Shipper.

10. **Fuel Price Adjustment:** For each one (1) percent increase or decrease in the weighted average price for all marine diesel fuel purchased by Operator for Tow in Shipper's service, during the term of this Contract, based on copies of actual invoices and taking into account all discounts or surcharges actually paid ("Fuel Price"), the fuel component of the Base Freight Rate as set forth in Schedule A attached hereto shall be adjusted by an identical percent increase or decrease. The fuel component of the rates shall be so adjusted on the first day of each calendar quarter, based on the Fuel Price calculated for the calendar quarter preceding the applicable adjustment date as compared to the Base Fuel Price, with the first such adjustment occurring upon tendering of Notice of Readiness for loading of cargo for the first voyage to Crystal River under this contract. The "Fuel Price" for purposes of the first adjustment shall be the actual price paid by the Operator for fuel used for the first voyage to Crystal River. The Operator shall accumulate fuel invoices for the remainder of the initial quarter of operations for purposes of calculating the adjustment of the fuel component to be effective July 1, 2005. For purposes of this Contract, the Base Fuel Price is [REDACTED]

11. **Transportation Services and Utilization:**

- a. **Transportation Services.** Shipper will employ and utilize Operator's tow on a full time and continuous basis throughout the term of this contract for the purpose of transporting 850,000 ST to 1,000,000 ST of DBF per year from the Terminal to Crystal River Plant. Shipper shall make the DBF cargo available and Operator shall transport such cargo on a ratable basis in single voyage increments of not less than 15,000 ST., subject to the provisions of Paragraph 7 herein. In the event that the quantity of DBF actually made available for loading by the Shipper fails to fully and continuously employ Operator's Tow at any time during the term of the contract, Operator's Tow shall be deemed underutilized and Operator shall be entitled to receive additional compensation in accordance with subparagraph 11(c).
- b. **Other Employment.** If Shipper notifies Operator in advance that the quantity of DBF to be actually made available for loading by the Shipper in any contract year, or any portion thereof, will fail to fully and continuously employ Operator's Tow in accordance with the Shipper's obligations under subparagraph (a) during the period, Operator shall have the right, but not the obligation, to seek alternative employment for its Tow in its sole discretion. In the event that Operator elects to engage in alternative employment, revenue earned by Operator in connection therewith shall be considered as revenue earned in other employment for the purposes of calculating Time Charter Equivalent within the meaning of subparagraph (c) below.
- c. **Underutilization.** In the event the amount of DBF cargo tonnage actually loaded by Shipper results in underutilization of Operator's Tow, as set forth in subparagraph (a), Shipper will pay Operator [REDACTED] per 24 hours, or pro rata portion thereof, for such time as Tow is underutilized due to lack of DBF cargo tonnage, less i) actual TCE (as defined below) earned by Operator's Tow during such period of underutilization and, ii) dead freight, if any, paid pursuant to Section 7 hereof. Time Charter Equivalent ("TCE") as

used herein shall mean gross revenue earned by Operator's Tow in other employment, less fuel and lube and voyage costs incurred by Operator's Tow in such other employment, divided by the number of days that Operator's Tow is employed in such other employment. In the event that actual TCE earned by Operator's Tow during such period of underutilization, together with dead freight paid pursuant to Section 7 hereof during such period, exceeds [REDACTED] per 24 hours for such period, Operator shall have no obligation to make any payment to Shipper with respect to such excess. Payment for underutilization shall be calculated on a quarterly basis. Within thirty (30) days after the end of each calendar quarter, Operator shall review the voyages completed during such quarter, determine the payment for underutilization due from Shipper hereunder, if any, and prepare and transmit to Shipper by telefax or electronic mail an invoice for such quarter reflecting the time that Tow was underutilized due to lack of DBF cargo tonnage and charging Shipper for any such time not offset by TCE and dead freight, as provided in this Section. Shipper shall pay such invoice to the account specified herein for payments within thirty (30) days of receipt of proper invoice.

- 12. Demurrage and Dispatch:** In the event that loading and/or discharging the Tow is not completed within the freetime allowed herein through no fault of Operator or the Tow, demurrage shall accrue for all time used in excess of allowed freetime, and Shipper shall pay Operator for the Tow at the Demurrage Rate, per hour or portion thereof, as set forth in Schedule A. In the event that loading and/or discharging the Tow is completed within the freetime allowed herein, dispatch shall accrue for all allowed freetime not used, and Operator shall provide Shipper with a credit against demurrage accrued hereunder for such dispatch at the Demurrage Rate.

Demurrage and dispatch shall be calculated on a quarterly basis. Within thirty (30) days after the end of each contract quarter, Operator shall review the voyages completed during such contract quarter, determine the demurrage and dispatch accrued, and prepare and transmit to Shipper by telefax or electronic mail a cumulative demurrage invoice for such voyages reflecting the demurrage or dispatch accrued on each such voyage and charging Shipper for any demurrage not offset by dispatch at the Demurrage Rate. Shipper shall pay such invoice to the account specified herein for payments within thirty (30) days of receipt of proper invoice.

The Demurrage Rate set forth in Schedule A attached hereto shall remain fixed during the term of this Contract.

- 13. Payments.** Payments required by Shipper hereunder shall be made by wire transfer to the account as styled below:

Sun National Bank
1701 Market St. Philadelphia, Pa. 19103

[REDACTED]
[REDACTED]

EMI-PA, Inc.

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- 14. Notice of Readiness:** The master of the Tow shall provide Notice of Readiness (NOR) to Shipper's Representative upon (i) tying up, or if berth is unavailable, (ii) anchoring, as close thereto as the Tow can safely approach, at the Terminal for loading or at the Crystal River Plant for discharging, as applicable, in writing, by telefax, by radio or by telephone. NOR

may be provided from a designated anchorage or other safe navigating or waiting location as determined in the sole discretion of the master of the Tow.

- 15. Cleaning:** Unless hereafter otherwise agreed by the parties, Operator shall present the cargo holds of its barge blade cleaned of its last cargo prior to loading of cargo hereunder. In the event the barge tendered by Operator shall have last contained cargoes other than DBF, Operator agrees to undertake such cleaning as may be necessary to ensure the removal of any residual material which would contaminate Shipper's cargoes. Operator shall, at its expense, blade clean the cargo holds of Operator's barge after the completion of cargo discharge operations.

Operator will provide, at its cost, a front-end loader ("machine"), with a maximum weight of 30,000 pounds, for use within the holds during cargo discharge operations. The machine will be transported aboard the barge at Operator's risk. The machine will be operated only by Operator's designated employees who will be compensated by Operator for their services. Shipper will lower the machine into the cargo hold at Operator's request and lift the machine from the hold after completion of cleaning.

- 16. Vessel Position and ETA Reports:** Operator shall provide Shipper, via telephone, telefax or other mutually agreed method, with the daily location of the Tow in service under this Contract, and, as the Tow enters the Lower Mississippi River or Mobile Channel, Operator shall notify Shipper's Representative at the Terminal of the expected time of arrival (ETA) of the Tow alongside the Terminal dock. In addition, the master of the Tow shall notify Shipper's Representative at the Terminal, by telephone, telefax, or radio, twenty-four (24) hours and six (6) hours prior to the ETA of the Tow at the Terminal and shall notify Shipper's Representative at the Crystal River Plant, by telephone, telefax, or radio, twenty-four (24) hours and three (3) hours prior to the ETA of the Tow at the Crystal River Plant on each voyage.

- 17. Safe Berth:** Shipper will provide a safe berth at the load port and discharge port and will provide cargo loading and discharging services day or night, Saturdays, Sundays and holidays not excepted. Cargoes to be transported hereunder will be loaded by Shipper or its subcontractors into Operator's barges at New Orleans or Mobile at no expense to Operator, subject, however, to Operator's instructions on trim and draft of the barges.

18. Loading/Unloading Damages:

- a. Loading/Unloading Operations. The parties acknowledge that loading at the Terminal, or such other load port as the parties may hereafter agree, and discharging at the Crystal River Plant will be performed by Shipper utilizing clamshell bucket or similar equipment. It is understood and agreed that Operator will have no responsibility or liability for any damages to persons or property arising from Shipper's (or its subcontractor's) operation of the clamshell bucket or the dockside operations of Shipper (or its subcontractors) except to the extent that any such damage is caused or contributed to by Operator's negligence or willful misconduct in connection with the operations of the Tow. Operator will provide Shipper with instructions which will set forth specific procedures to be followed in connection with the use of clam shell buckets by the Shipper's employees, agents or subcontractors at the loading and discharge berths. If the Shipper's employees, agents or subcontractors fail to comply with the procedures in the Operator's instructions during loading or discharge, Operator or its representatives shall have the right to notify the Shipper's supervisory personnel. The supervisory personnel shall

observe the bucket operator and counsel the operator regarding compliance with the procedures. If the bucket operator thereafter fails to comply with the procedures, Shipper's supervisory personnel shall replace the operator. The giving of such instructions or notice by Operator shall not in any way limit, waive or constitute a substitution of any obligations of the Shipper under this contract, nor shall such instructions impose any obligation on Operator.

- b. Pre-Contract Survey. Prior to the commencement of the contract, a detailed joint condition survey ("Pre-contract Survey") of the barge and its equipment will be performed for the purpose of documenting the condition of the barge at the time of the commencement of the contract. Shipper and Operator shall jointly appoint a mutually agreeable surveyor to conduct a Pre-contract Survey. The Pre-contract Survey will fully document the physical condition of the barge, including internals, by written report and photographs. The cost of the Pre-contract Survey will be divided equally between Shipper and Operator.
- c. Damage to Barge – Rights and Obligations. Shipper shall be liable to reimburse Operator for the costs of repair of damage to Operator's barge resulting from loading or discharge operations during the term of the contract as set forth herein.
 - 1. Damage Requiring Immediate Repairs. If at any time during the term of the contract the Tow sustains damage during loading or discharge operations which in Operator's judgment impairs the watertight integrity or seaworthiness of the tug and/or the barge, Operator may remove the tug and/or barge from service and arrange for immediate repairs, in which case Shipper shall be obligated to reimburse Operator for the full cost of said repairs and time spent in effecting repairs, including deviation time to and from the repair berth or facility, will count as time on demurrage commencing immediately upon expiration of remaining unused freetime, if any, at the load port or discharge port where the damage and removal from service occurs. In the event that such immediate repairs are required, no allowance for wear and tear is to be applied in determining the amount of damage or calculating Shipper's obligation to reimburse Operator for repairs. If and in the event that damage during loading or unloading affects the watertight integrity or seaworthiness of the tug or barge in Operator's judgment, Operator shall give Shipper notice of such damage prior to the barge's departure from the Terminal, such other load port as the parties may hereafter agree, or the Crystal River Plant, as applicable, and Shipper shall have the right and be given the opportunity to retain a qualified marine surveyor to examine and prepare a report on the noted damage, particularly the extent and nature thereof, with time spent in waiting on and conducting such survey to count as used freetime or, if on demurrage, as time on demurrage.
 - 2. Deferred Repairs. In addition to the foregoing, Shipper shall also be liable to Operator for the cost of repairing all damage to the barge caused by or during loading or discharge operations during the term of the contract which in Operator's judgment does not affect or impair the watertight integrity or seaworthiness of the barge, but repair of such damage shall be deferred until a convenient time determined by Operator or until the expiration or termination of the contract, in accordance with the provisions set forth below.
- A. Intermediate Surveys and Repairs. Within 30 days of the expiration of the first and second contract years, an intermediate joint condition survey ("Intermediate

Survey") of the barge and its equipment will be performed for the purpose of documenting the condition of the barge and any damage which has occurred during the prior contract year. Shipper and Operator shall jointly appoint a mutually agreeable surveyor to conduct the Intermediate Survey and the surveyor shall be provided with a copy of the Pre-contract Survey. The Intermediate Survey will fully document any damage to the barge by written report and photographs. The cost of the Intermediate Survey will be divided equally between Shipper and Operator. If an Intermediate Survey reveals damage to the barge caused by or during loading or discharge operations, Operator shall have the right, but not the obligation, to remove the barge from service and arrange for repairs of such damage ("Intermediate Repairs"), and Shipper shall be obligated to reimburse Operator for the cost of such Intermediate Repairs. Time spent in effecting Intermediate Repairs, including deviation time to and from the repair berth or facility, will count as time on demurrage.

- B. Post-Contract Survey and Repairs. Following the expiration of the contractual term, or if the contract is sooner terminated prior to expiration, a detailed joint condition survey ("Post-contract Survey") of the barge and its equipment will be performed for the purpose of documenting the condition of the barge at the time of expiration or termination of the contract. Shipper and Operator shall jointly appoint a mutually agreeable surveyor to perform the Post-contract Survey. The Post-contract Survey will fully document the physical condition of the barge by written report and photographs. The cost of the Post-contract Survey will be equally shared by Shipper and Operator. At the expiration of the contractual term, or if the contract is sooner terminated prior to expiration, Shipper shall be obligated to reimburse Operator for the cost of repairing all damage to the barge caused by or during loading or discharge operations during the term of the contract and to restore all effected areas to the same condition as documented by the Pre-contract Survey ("Final Repairs").
- C. Wear and Tear. For the purpose of determining Shipper's obligations to reimburse Operator for the costs of Intermediate or Final Repairs under this subparagraph, it is understood and agreed that Shipper shall be liable for the full costs of repairing any and all damage to the barge or its components or appurtenances caused by clam shell buckets used for loading or discharge and Shipper agrees that it may not claim or attempt to claim any allowance for wear and tear with respect to such damage. Damage caused by clam shell buckets shall include, but is not limited to, deformation or gouging of hopper side slope or tank top plating or supporting members, deterioration of coatings and/or corrosion within adjoining ballast tanks due to reverse impact damage, deformation or gouging of hatch coaming plating or supporting members, deformation or gouging of hatch covers, deformation or gouging of transverse bulkhead plating or supporting members and crushing, lifting or breakage of the wooden tank top gratings.
3. Survival of Obligations. In the event of default by Shipper and defined in Paragraph 3, Operator shall be entitled to unilaterally conduct a survey and perform all repairs for which Shipper is responsible under this paragraph and Shipper shall be liable to Operator in full for all such costs incurred by Operator in connection therewith.

notwithstanding such default. Shipper's obligations under this Paragraph shall survive the expiration or termination of the contract.

4. Shipper's Right to Conduct Surveys. In the event that Operator's Tow is employed in other employment under subparagraph 11(b) during the term of the contract, Operator shall provide Shipper with notice of all loadings and discharges and Shipper shall have the right to have a qualified marine surveyor attend to monitor and document any damage to the barge. If Shipper elects not to have a surveyor attend, Shipper shall be deemed to have conclusively waived any claim that damage to the barge occurred in such other employment.

19. Channel Depth: Shipper warrants that the Crystal River Plant navigation channel, beginning at navigation channel marker 2 and 3, and its approaches, including the Tow turning basin and the coal dock, (collectively the "Channel") is at least twenty (20) feet at mean low water. In the event that the Shipper or Operator learns that the depth of the channel or its approaches in any specific location is reduced to less than twenty (20) feet at mean low water, each undertakes to immediately notify the other of the depth limitation and its location. In the event that the depth of the Channel in any specific location is reduced to less than twenty (20) feet at mean low water, as determined by periodic surveys which shipper shall conduct at least once in every twenty-four (24) months during the term hereof, dredging will occur (either by Shipper or at Shipper's direction and, in either case, at Shipper's expense) to restore the entire Channel or location so affected to a depth of at least twenty (20) feet at mean low water, time being of the essence, but in any case within four (4) months after detection by such survey or after written notification by Operator of a deficiency in Channel depth. Similarly, all Channel markers and navigation aids, whether required by cognizant regulatory authority or which have been previously installed for the convenience of Shipper and its subcontractors, including Operator, shall be maintained by Shipper at Shipper's expense throughout the term of this Contract.

20. New Regulations: It is recognized by Shipper that during the term of this Contract that government regulations may be imposed which could result in material increases in the operating costs of the tugs and barges which were not contemplated by either Operator or Shipper at the time this Contract was executed. Should such a situation arise, Operator shall notify Shipper in writing, and thereafter Operator and Shipper shall negotiate in good faith a reasonable adjustment in the freight rate or other means of reimbursing Operator for a reasonable share of such unexpected costs. In the event Operator and Shipper do not reach agreement within sixty (60) days of Operator's notice, Operator shall have the option to terminate this Contract as provided in Section 3 by written notice to Shipper.

21. Audit: The Base Freight Rate in this contract contains a fixed component and a fuel component. Only the fuel component is subject to escalation. Therefore, Operator agrees to maintain books, records, documents and other evidences pertaining to the cost of this Contract (herein collectively called the "Records") to the extent and in such detail as will properly reflect all cost and expenses for which fuel escalation reimbursement is claimed under this Contract. Additionally, books and records will be maintained in sufficient detail to allow Shipper to verify any claims in accordance with Section 11 (c). The verification of claims in accordance with Section 11 (c) will be performed by an independent certified public accountant. Upon request of Shipper, Operator shall make available at Operator's office any and all such Records, pertaining to the fuel escalation, along with related correspondence, receipts, vouchers, memoranda pertaining to the Contract, for inspection, audit or reproduction by an authorized representative of Shipper.

Operator shall preserve all such Records for a period of two (2) years after final payment hereunder during which period Shipper may complete an audit thereof. Should discrepancies or questions arise, the records shall be preserved until agreement is reached.

- 22. General Average:** In the event of accident, danger, damage, or disaster before or after commencement of a voyage hereunder resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Operator is not responsible to Shipper or cargo owners by statute or contract or otherwise, the cargo, Shipper, consignee and other parties having an interest in the cargo shall, jointly and severally, contribute in general average to the payment of any sacrifices, losses or expense of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. General average, if any, shall be settled according to York-Antwerp Rules, 1994, and as to matters not therein provided for, according to the usages and customs of the Port of New York.
- 23. Both to Blame Collision:** If the Tow comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of Operator or the master or the crew of the Tow, for which, or for the consequence of which, Operator is not responsible to Shipper or cargo owners by statute or contract or otherwise, Shipper and other parties having an interest in the cargo shall, jointly and severally, indemnify Operator against all liability to the other vessel or her owners or the owners of the cargo of the other vessel with respect to any payment which Shipper or such other parties have received or may be entitled to receive from the other vessel or her owners, or the owners of the cargo of the other vessel.
- 24. Force Majeure:** The term "force majeure" means any event, whether foreseeable or not, which is beyond the control of and occurs without fault or negligence of the party asserting the force majeure and which wholly or partly prevents the performance of any of the duties and responsibilities of the party asserting the force majeure (other than obligations of such party to pay or expend monies for or in connection with the performance of such party's duties and responsibilities under this Contract), including, but not limited to, an act of God or an act of the public enemy; fire, flood, explosion or other serious casualty; unusually severe weather; war (whether declared or not); warlike circumstances; mobilization; revolution; riot or civil commotion; legal intervention; regulations or orders of governmental authority; strike, lockout or other labor disputes (all of which shall be settled solely at the discretion of the party having the difficulty); inability to obtain fuel (other than DBF) or power; breakdowns of or damage to plant, equipment or facilities.

In the event of a breach of contract by a subcontractor of any party hereunder, that party shall not declare such a breach a force majeure event hereunder, and such party shall make all reasonable efforts to enforce its contract, including the commencement and diligent prosecution of legal proceedings, including any necessary appeals, to establish liability and to enforce any judgment which may be obtained.

If, because of force majeure, either Shipper or Operator is unable to carry out its obligations to each other under this Contract (other than obligations of such party to pay or expend monies for or in connection with the performance of such party's duties and responsibilities under this Contract); and if such party promptly gives written notice of such force majeure to the other party, then the obligations of both parties under this Contract shall be totally

excused to the extent, but only to the extent, made necessary by such force majeure provided that the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. The party asserting force majeure shall promptly take all lawful steps at any reasonable cost to eliminate the force majeure.

25. **Insurance:** Operator shall carry at its expense hull insurance, limit to be for Operator's account, and P&I insurance in the amount of \$50,000,000 (but not tower's liability covering cargo). Shipper hereby acknowledges that the freight rate specified herein does not contemplate or include liability for loss of or damage to the cargo or an allowance for liability insurance covering the cargo. As additional consideration supporting Operator's undertakings, except as provided in Section 22, Shipper shall and it does hereby agree to hold Operator, its Tow, masters, crews, agents and employees, harmless from claims for cargo loss, damage or contamination, whether arising or resulting from an act of neglect or default in the navigation or management of the Tow and/or care and custody of the cargo, including, but not limited to, explosion, fire, collision, stranding, salvage operations, equipment defects, or other peril, danger or accident of navigable waters or from any other cause of whatsoever kind arising. Without limiting the generality of the above, Operator, although not a common carrier, shall be entitled to the same limitation of liability as common carriers receive under the Carriage of Goods by Sea Act, 1936, (46 U.S.C.A. 1300, et seq.). Nothing in this Contract shall be construed to deprive Operator of, or limit Operator's rights to, any statutory protection or limitation of liability, which would otherwise be applicable.
26. **Indemnity:** Each party hereto expressly agrees to indemnify, hold harmless and defend the other against all claims, demands, cost or expense resulting from loss, damage or injury to third persons or third-party property which is caused by any act or omission of the indemnifying party or subcontractor of the indemnifying party done in performance of the obligations imposed upon it by this Contract; provided, however, that neither party hereby assumes responsibility for damage or injury to employees of the other party. In addition, each party agrees to indemnify, defend and hold the other party harmless from and against any and all suits, actions, causes of action and/or claims of whatever character which may be brought or made against the other party by third parties as a result of or on account of any deviation or breach by the indemnifying party of its obligations, responsibilities and/or warranties or guarantees as provided herein.
27. **Applicable Law:** This Contract shall be interpreted and enforced in accordance with the General Maritime Law of the United States, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply, and, to the extent that such General Maritime Law is inapplicable, the laws of the State of Florida, excluding any conflicts of laws principles that would direct the substantive law of another jurisdiction to apply.
28. **No Waiver of Performance:** The failure of any party to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Contract shall be not construed as a waiver or relinquishment of such performance of any such term, covenant or condition, but each party's obligation with respect to future performance shall remain in full force and effect.
29. **Assignment:** Neither party shall assign this Contract or its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, either party may, without the consent of the other party, (i) transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii)

transfer or assign this Contract to an affiliate of such party which affiliate's creditworthiness is equal to or higher than that of such party, or (iii) transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of such party or pursuant to any consolidation or amalgamation with, or merger with or into another entity or the reorganization, incorporation, reincorporation or reconstitution into or as another entity; In the case of an assignment or transfer of this Contract made in compliance with Clause (ii) or (iii) of this Section, any such assignee or transferee shall agree in writing to be bound by the terms and conditions hereof, the transferring party shall deliver such tax and enforceability assurance as the non-transferring party may reasonably request and such transfer or assignment shall constitute an acceptance and assumption of such obligations by the transferee, a novation of the transferee in place of the transferor with respect to such obligations (and any related interests so transferred), and a release and discharge by the non-transferring party of the assignor or transferor from any claim against the assignor or transferor with respect to obligations hereunder from and after the effective date of the transfer or assignment.

- 30. Severability:** If any provision of this Contract shall finally be determined to be unlawful or otherwise unenforceable, then such provision shall be deemed to be severed from this Contract and every other provision of this Contract shall remain in full force and effect.
- 31. Corporate Authority:** Each party represents to the other that it has full corporate authority and the necessary approval to enter into and perform this Contract in accordance with its terms.
- 32. Entire Agreement:** This instrument embodies the entire agreement and understanding between Shipper and Operator, and there are no agreements, understandings, conditions, warranties or representation, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein or superseded hereby. This Contract may be modified only in writing signed by both parties.
- 33. Notices:** All notices given under this Contract shall be made in writing, and if to Shipper shall be properly given if delivered in person to its Vice President or sent by certified mail addressed as follows:

Vice President
Coal Procurement
Progress Fuels Corporation
200 Central Avenue
St. Petersburg, Florida 33701

Notices, if to Operator, shall be properly given if delivered in person or sent by certified mail addressed as follows:

EMI-PA, Inc.
2081 Stewart Ave.,
Hatfield, PA 19440
Attention: President

Palmer Biezup & Henderson, LLP
Suite 956, Independence Mall West
620 Chestnut Street
Philadelphia, PA 19106
Attention: Mr. Frank P. DeGiulio

Either party may designate in writing to the other a different address for the delivery of notices hereunder.

34. Environment, Health, and Safety: During the term of this contract Operator will comply with applicable environmental, health and safety statutes and regulations.

IN WITNESS WHEREOF, the parties have executed this Affreightment Contract on the date first written above.

WITNESS:

E. Muneef Selah
Roberta Q. O'H

PROGRESS FUELS CORPORATION

BY: [Signature]
Title: Vice President—Coal Procurement
Date Executed: 5/2/05














WITNESS:

[Signature]

EMI-PA, INC.

BY: [Signature]
Title: VPCK PRESIDENT
Date Executed: 5/4/05

Schedule A
Rates

	<u>A</u>	<u>B</u>	<u>C</u>	
Base Freight Rates (\$/ST)	<u>Fixed</u>	<u>Fuel</u>	<u>Total</u>	
New Orleans International Marine Terminals				1
Mobile				2
Demurrage Rate (\$/Hour)				3
Dead Freight Rates (\$/ST)				
New Orleans				4
Mobile				5