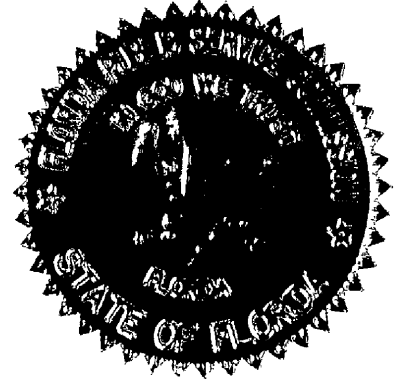


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020898-EQ

In the Matter of

PETITION BY CARGILL FERTILIZER,  
INC. FOR PERMANENT APPROVAL OF  
SELF-SERVICE WHEELING TO, FROM,  
AND BETWEEN POINTS WITHIN TAMPA  
ELECTRIC COMPANY'S SERVICE AREA.



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PROCEEDINGS: HEARING

BEFORE: COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE: Wednesday, October 22, 2003

TIME: Commenced at 9:40 a.m.  
Concluded at 9:55 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE, RPR  
Official FPSC Reporter  
(850) 413-6736

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## 1 APPEARANCES:

2 HARRY W. LONG, JR., ESQUIRE, Assistant General  
3 Counsel, Regulatory Affairs, Tampa Electric Company, P. O. Box  
4 111, Tampa, Florida 33601, appearing on behalf of Tampa  
5 Electric Company.

6 JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter,  
7 Reeves, McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A.,  
8 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350;  
9 VICKI GORDON KAUFMAN, ESQUIRE, McWhirter, Reeves, McGlothlin,  
10 Davidson, Decker, Kaufman & Arnold, P.A., 117 S. Gadsden  
11 Street, Tallahassee, Florida 32301, appearing on behalf of  
12 Cargill Fertilizer, Inc.

13 ROSANNE GERVASI, ESQUIRE and JENNIFER A. RODAN,  
14 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak  
15 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
16 behalf of the Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER BAEZ: We'll call this hearing to order.  
3 Ms. Gervasi, would you read the notice, please.

4 MS. GERVASI: Pursuant to notice, this time and place  
5 has been set for a hearing in Docket Number 020898-EQ, petition  
6 by Cargill Fertilizer, Inc. for permanent approval of  
7 self-service wheeling to, from, and between points within Tampa  
8 Electric Company's service area.

9 COMMISSIONER BAEZ: And we'll take appearances  
10 starting here.

11 MR. LONG: Harry W. Long appearing on behalf of Tampa  
12 Electric Company.

13 MS. KAUFMAN: Vicki Gordon Kaufman and John  
14 McWhirter, and with us is Mr. Roger Fernandez, and we're here  
15 on behalf of Cargill Fertilizer, Inc.

16 COMMISSIONER BAEZ: Thank you.

17 MS. GERVASI: Rosanne Gervasi and Jennifer Rodan  
18 appearing on behalf of the Commission.

19 COMMISSIONER BAEZ: Thank you, Ms. Gervasi. Are  
20 there any preliminary matters?

21 MS. GERVASI: There is. Commissioners, I'm happy to  
22 be able to tell you that after a lot of hard work and effort on  
23 the part of both parties, Cargill and TECO have entered into a  
24 joint settlement agreement, and they are today filing a joint  
25 motion for approval of that settlement agreement. For this

1 reason, and the parties agree, there is no need for a full  
2 evidentiary hearing this morning after all.

3 Staff has reviewed the agreement, and it is our  
4 recommendation that the agreement is fair and reasonable and  
5 that it should be granted. It's a good workable compromise on  
6 behalf of both parties.

7 COMMISSIONER BAEZ: Thank you, Ms. Gervasi.  
8 Commissioners, what's your pleasure on this? We do have --  
9 you've been provided copies of the settlement and of the joint  
10 motion. It is within our discretion to either take this up as  
11 a panel here at the bench today, or we can also -- we also have  
12 the option of setting it for an agenda, and I'm just curious as  
13 to what your thoughts might be.

14 COMMISSIONER DAVIDSON: My thought would be, if staff  
15 has reviewed the agreement and is comfortable with its terms  
16 and the parties are comfortable with its terms, that we issue a  
17 decision approving the settlement agreement by a bench decision  
18 this morning.

19 COMMISSIONER BAEZ: Okay. Commissioner Bradley.

20 COMMISSIONER BRADLEY: I would concur with that.

21 COMMISSIONER BAEZ: Very well. Would it be  
22 productive for you to have the parties at least summarize for  
23 the record the terms of the agreement?

24 COMMISSIONER DAVIDSON: It would. And I had one  
25 additional question --

1 COMMISSIONER BAEZ: Okay.

2 COMMISSIONER DAVIDSON: -- which is one that's asked  
3 often by the Commissioners. If there is some allegation of  
4 breach or nonperformance of a term of the settlement agreement,  
5 are there dispute resolution proceedings, or is that going to  
6 come back to the Commission? Thanks.

7 COMMISSIONER BAEZ: Well, you have a question before  
8 you, but, Mr. Long and Ms. Kaufman or Mr. McWhirter, we're  
9 going to give you a chance to give your take on the  
10 negotiations and the agreement, and then you have a question  
11 before you, each of you, from Commissioner Davidson.

12 Mr. Long, you can go ahead and start.

13 MR. LONG: Thank you, Commissioner. Well,  
14 Commissioner Davidson, in response to your question, I presume  
15 that if the parties have any difficulties in performing under  
16 the settlement, that those matters would be brought back to the  
17 Commission for review and resolution, but it's our hope that  
18 there certainly wouldn't be any problems of that kind.

19 Let me start by saying I'd like to thank the staff  
20 very much for their assistance, especially in the last few  
21 days. I think without the persistent and dedicated efforts of  
22 the staff, it's doubtful that we would have been able to reach  
23 an agreement that I think at this point both parties are  
24 comfortable with.

25 As a general matter I'll describe what the essence of

1 the arrangement is and then invite Cargill to supplement that  
2 in any way appropriate. As you know, the docket that is  
3 pending involved a request for self-service wheeling by  
4 Cargill, and essentially Cargill wanted to have the benefit of  
5 its QF generation to use, first, to avoid interruptions, to  
6 avoid the need, when possible, to purchase optional provision  
7 power, and then to support itself during times of planned and  
8 unplanned outages of its QF facility or its sulfuric acid  
9 plant.

10 In essence, what the parties have done is we've come  
11 up with an alternative arrangement that we believe accomplishes  
12 those objectives for Cargill without the necessity for wheeling  
13 of any kind. And in its simplest form what we've agreed is  
14 that, first of all, during those periods when Cargill might  
15 otherwise be subject to interruption or the need to purchase  
16 optional provision power, they can tender to Tampa Electric  
17 power from one of three QF facilities, and simultaneously they  
18 will be eligible to purchase an equivalent amount of power from  
19 Tampa Electric's system supply to be delivered to one of the  
20 three designated loads covered by the agreement. So, in  
21 effect, they would get the benefit of their generation,  
22 although their generation is not being transported. There's a  
23 separate purchase transaction and a separate sale from Tampa  
24 Electric's system supply. Basically the price paid for the  
25 power purchased from Cargill will be the same as the price paid

1 for the power sold by Tampa Electric plus an appropriate adder  
2 that the parties have agreed to.

3 Now, in circumstances where Cargill is not facing the  
4 threat of interruption or the need to purchase optional  
5 provision power, it's been agreed that they can again  
6 simultaneously tender for sale to Tampa Electric from these  
7 same three QF facilities up to 8,000 megawatt hours of power in  
8 any annual period. And, again, Tampa Electric will  
9 simultaneously sell power to be delivered at the one of three  
10 sites designated by Cargill. And, again, the pricing is the  
11 same. The price paid for the power purchased from Cargill will  
12 be the same as the price of the Tampa Electric system power  
13 sold plus an appropriate adder.

14 In the case of the transaction that takes place when  
15 there is no threat of interruption or the need to purchase  
16 optional provision power, the adder that we've agreed to is  
17 somewhat larger than the adder that would apply in the case of  
18 interruption or they need to purchase optional provision power,  
19 but in principle, the transaction works the same way. And we  
20 believe that since the sale to Cargill is a bundled sale from  
21 Tampa Electric's system resources in effect, that this is a  
22 transaction that is solely within the jurisdiction of the  
23 Florida Public Service Commission and does not involve  
24 unbundled wheeling, which, as we had discussed before, would  
25 otherwise be subject to service under a FERC-approved tariff.

1           If the Commission adopts the settlement as proposed,  
2 it's the intention of the parties to make the appropriate  
3 filings with the Federal Energy Regulatory Commission to  
4 terminate the transmission service agreement under the FERC  
5 tariff that governs -- currently governs self-service wheeling  
6 for Cargill.

7           So, Commissioners, that is, in essence, the deal. If  
8 you have questions, we'd certainly like to try to answer them.  
9 And if Cargill has anything they'd like to add, I'd invite them  
10 to do so.

11           COMMISSIONER BAEZ: Ms. Kaufman.

12           MS. KAUFMAN: Thank you, Commissioners. First of  
13 all, we want to echo Mr. Long's initial comments, and we want  
14 to really thank the staff for helping the parties reach this  
15 agreement. We've all spent two long nights, Monday and  
16 Tuesday, and your staff was with us all the way. So sometimes  
17 it just takes that extra nudge, you know, late in the day, but  
18 nonetheless, as Mr. Long said, we think we have an agreement  
19 that's very workable.

20           Cargill is very pleased because, as you know, QF  
21 generation is very efficient, and it's encouraged by the  
22 Legislature and by your own rules, and Cargill is very pleased  
23 that it will be able to utilize this sort of generation in its  
24 operations and its processes.

25           I want to respond to Commissioner Davidson. I agree



1 with Mr. Long. I'm very hopeful there will be no disputes. If  
2 a dispute were to arise, I'm also hopeful that in the first  
3 instance we would discuss it with our colleagues at Tampa  
4 Electric and try to reach an accommodation. Barring that, of  
5 course, I think we would come back to you, and you would have  
6 jurisdiction to make a decision in regard to the settlement  
7 agreement.

8 Mr. Fernandez, with your indulgence, has a comment or  
9 two that he would like to make.

10 MR. FERNANDEZ: Well, the first one is absolutely  
11 certain that I don't believe we'll be here sitting on the same  
12 side of the table without the encouragement of the staff and  
13 their active participation and using their brains and their  
14 knowledge to try and help us bring together. So I thank them  
15 very much. And certainly I think that it takes two to tango,  
16 so the colleagues, the representatives from Tampa Electric and  
17 the counsel that have supported our company have a lot to do  
18 with the fact that we're here today with a proposal that I  
19 think -- while not doing everything that we would have liked  
20 and probably not what TECO would have liked, it's -- it allows  
21 us to conduct our business of making phosphate fertilizer in  
22 the state of Florida. We appreciate it very much.

23 COMMISSIONER BAEZ: Thank you, Mr. Fernandez.

24 Commissioners, do you have any other questions?

25 COMMISSIONER DAVIDSON: No.

1 COMMISSIONER BAEZ: All right. We can entertain a  
2 motion.

3 COMMISSIONER BRADLEY: I think that we probably have  
4 a motion on the table, but maybe Commissioner --

5 COMMISSIONER BAEZ: Oh, I'm sorry.

6 COMMISSIONER BRADLEY: -- Davidson might like to  
7 formalize it.

8 COMMISSIONER DAVIDSON: It wasn't a motion, but --

9 COMMISSIONER BRADLEY: Well, I will make the motion.  
10 I move that we accept the agreement between the two parties,  
11 and that's it.

12 COMMISSIONER BAEZ: And grant the joint motion --

13 COMMISSIONER BRADLEY: And grant the joint motion,  
14 yes.

15 COMMISSIONER BAEZ: -- just to be clear. Very well.  
16 There's a motion.

17 COMMISSIONER DAVIDSON: Second.

18 COMMISSIONER BAEZ: And a second. All those in favor  
19 say "aye."

20 (Simultaneous affirmative vote.)

21 COMMISSIONER BAEZ: I just want to take a moment to  
22 thank the parties. I know that a lot of kudos have been passed  
23 on to the staff, and I want to join them in doing that. But I  
24 think this particular case is a prime example of how it pays  
25 not to give up on the settlement process and not to give up on

1 the alternative dispute resolution, as Commissioner Davidson  
2 has -- this case has been docketed for quite some time now.  
3 And I can remember at least two separate occasions where a  
4 hearing has been continued in order that the parties might keep  
5 discussing the issues to try and come to some resolution, and I  
6 think that's a great sign that the parties never did give up on  
7 trying to resolve those issues. And I want to commend you, and  
8 I also want to commend staff again for their gentle nudging, as  
9 Ms. Kaufman put it. Congratulations all around. Thank you  
10 very much.

11 Ms. Gervasi, if there's nothing else --

12 MS. GERVASI: There is one small housekeeping  
13 matter --

14 COMMISSIONER BAEZ: Okay.

15 MS. GERVASI: -- and that is the matter of the  
16 petition to intervene that was filed in the docket on October  
17 the 17th by the Southern Alliance For Clean Energy, Inc. I  
18 spoke with the petitioner, and he explained to me that the  
19 purpose for filing intervention was to be able to file a brief  
20 if briefs were to be filed. And I let him know that all  
21 indications at that point were that the case would settle and  
22 that there would be no need for the filing of briefs. And he  
23 agreed then that if that were the case, that we could simply  
24 just state in the order that there is no need for a ruling on  
25 that petition.



1 STATE OF FLORIDA     )  
 2                             :             CERTIFICATE OF REPORTER  
 3 COUNTY OF LEON        )

4  
 5             I, TRICIA DeMARTE, RPR, Official Commission Reporter, do  
 6 hereby certify that the foregoing proceeding was heard at the  
 7 time and place herein stated.

8             IT IS FURTHER CERTIFIED that I stenographically  
 9 reported the said proceedings; that the same has been  
 10 transcribed under my direct supervision; and that this  
 11 transcript constitutes a true transcription of my notes of said  
 12 proceedings.

13             I FURTHER CERTIFY that I am not a relative, employee,  
 14 attorney or counsel of any of the parties, nor am I a relative  
 15 or employee of any of the parties' attorneys or counsel  
 16 connected with the action, nor am I financially interested in  
 17 the action.

18             DATED THIS 22nd DAY OF OCTOBER, 2003.

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*Tricia Demarte*  
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