153

1 BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

2

DOCKET NO. 060658-EI

3

In the Matter of:

4

PETITION ON BEHALF OF CITIZENS OF THE

5 STATE OF FLORIDA TO REQUIRE PROGRESS

ENERGY FLORIDA, INC. TO REFUND CUSTOMERS

6 $143 MILLION.

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11 A CONVENIENCE COPY ONLY AND ARE NOT

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12 THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

13 VOLUME 2

14 Pages 153 through 355

15

PROCEEDINGS: HEARING

16

BEFORE: CHAIRMAN LISA POLAK EDGAR

17 COMMISSIONER MATTHEW M. CARTER, II

COMMISSIONER KATRINA J. MCMURRIAN

18

DATE: Monday, April 2, 2007

19

TIME: Commenced at 1:30 p.m.

20 Concluded at 5:38 p.m.

21 PLACE: Betty Easley Conference Center

Room 148

22 4075 Esplanade Way

Tallahassee, Florida

23

REPORTED BY: JANE FAUROT, RPR

24 Official FPSC Reporter

(850) 413-6732

25

APPEARANCES: (As heretofore noted.)

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1 I N D E X

2 WITNESSES

3

NAME: PAGE NO.

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STEVEN M. FETTER

5

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1 EXHIBITS

2 NUMBER: ID. ADMTD.

3 33 242

4 213 Progress Fuels Corporation 304 353

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6 2003

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

2 (Transcript follows in sequence from Volume 1.)

3 CHAIRMAN EDGAR: We will go back on the record. And

4 I believe when we left off that, Mr. Burnett, it was time for

5 you to call your first witness.

6 MR. BURNETT: Yes, ma'am. Thank you. PEF calls

7 Steven Fetter.

8 May I proceed, Madam Chairman?

9 CHAIRMAN EDGAR: Yes, sir.

10 STEPHEN M. FETTER

11 was called as a witness on behalf of Progress Energy Florida,

12 Inc., and having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BURNETT:

15 Q Good afternoon, Mr. Fetter. Will you please

16 introduce yourself to the Commission and provide your address.

17 A My name is Stephen M. Fetter, and my address,

18 business address, is 1489 West Warm Springs Road, Number 110,

19 Henderson, Nevada 89014.

20 Q Mr. Fetter, who do you work for and what is your

21 position?

22 A I have my own energy advisory firm called Regulation

23 Unfettered, and I am the president.

24 Q Have you filed prefiled direct testimony and exhibits

25 in this proceeding?

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1 A Yes, I have.

2 Q And do you have a copy of those in front of you?

3 A Yes.

4 Q Do you have any changes to make to your prefiled

5 testimony or your exhibits?

6 A There is one small change. On Page 10, Line 6, the

7 verb tense "is" should be "are".

8 Q Any other changes, Mr. Fetter?

9 A No.

10 Q With those changes noted, if I asked you the same

11 questions in your prefiled testimony today, would you give the

12 same answers that are reflected therein?

13 A Yes, I would.

14 MR. BURNETT: Madam Commissioner, we request that the

15 prefiled testimony of Mr. Fetter be entered into the record as

16 if it were read today.

17 CHAIRMAN EDGAR: The prefiled testimony will be

18 entered into the record as though read.

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1 BY MR. BURNETT:

2 Q Mr. Fetter, do you have a summary of your prefiled

3 testimony?

4 A Yes, I do.

5 Q Will you please summarize that for the Commission?

6 A Yes. Madam Chairman and Commissioners, I am

7 providing testimony in this proceeding in an effort to assist

8 this Commission on matters of regulatory policy. I offer my

9 opinions based upon my experience as chairman of a state

10 utility commission, head of the utility ratings practice at a

11 major credit rating agency, and as someone who has both

12 operated under and analyzed fuel adjustment mechanisms.

13 I want to start with the widely accepted regulatory

14 principle that utility management decisions are not imprudent

15 if they fall within a range of reasonable business judgment.

16 It would be very rare for there to be a single right business

17 judgment on an issue, especially when the issue is a complex

18 one. Rather, the norm would be that a range of decisions exist

19 that an informed management could make and which would

20 represent a reasonable and prudent decision. As this

21 Commission knows, it is not a Public Service Commission's job

22 to manage the utilities they regulate. Thus, when it comes to

23 prudence reviews, commissions must guard against substituting

24 their after-the-fact judgment for the decisions management made

25 at an earlier time.

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1 Second, hindsight review must be avoided. This is

2 well understood but easier said than done. It is easy to fall

3 into the trap of thinking that what occurred was more

4 predictable than it was at the time a past decision was made.

5 One should be particularly careful when information relied upon

6 occurred or was revealed after the time that a decision was

7 made.

8 Third, regulatory certainty and finality with respect

9 to fuel costs are very important to the financial community.

10 Regulatory policy decisions impacting the timeliness and

11 certainty of fuel cost-recovery can affect a utility's credit

12 ratings. This is especially true when the issue is framed as

13 OPC has done here as reaching back over ten years with

14 approximately $143 million at stake. A negative result under

15 the unprecedented circumstances at issue here hold out the

16 potential to affect both investors and customers since a

17 weakening of Progress Energy's credit profile increases the

18 utility's cost of capital, which then gets flowed through into

19 the rates that customers pay.

20 There is no reason for this to occur. I understand

21 that Progress Energy makes regular required filings with the

22 FERC and this Commission setting out in detail its coal

23 procurement costs. The utility's records are open and

24 accessible to the Commission and OPC, and, in fact, Commission

25 audits have been undertaken and discovery has occurred

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1 regarding utility fuel decisions. Also, the utility regularly

2 goes through fuel cost-recovery proceedings leading ultimately

3 to hearings where costs are passed through to customer bills.

4 Moreover, the utility has regularly briefed the Commission and

5 OPC about its fuel procurement in between fuel adjustment

6 hearings.

7 This is the way the process should work and finality

8 should attach at the true-up process absent some material

9 concealment. In this way, a reasonable balance is struck

10 between what fuel procurement information is affirmatively

11 presented before and during the proceeding, and what

12 information is available for further detail or elaboration upon

13 request. Indeed, despite frequent statements that costs have

14 been approved subject to prudence review, there is no

15 regulatory process in place by which any other prudence review

16 can occur.

17 I find it hard to believe that this Commission has

18 for more than a decade passed on fuel costs for customers to

19 pay without determining that such costs were appropriate.

20 Rather, it appears to me that the Commission with staff support

21 has, in fact, conducted prudence review by the time the fuel

22 costs are ultimately trued up. No other conclusion makes

23 regulatory sense. To suggest otherwise imposes impossible

24 burdens. No utility should remain under perpetual prudence

25 review with customers having paid costs that may or may not

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1 have been appropriate.

2 In sum, if the Commission were to reconsider fuel

3 costs that have previously been trued up for cost-recovery

4 going back more than ten years, it would create a regulatory

5 environment within which no issue is ever finally resolved. I

6 expect that investors would react to such uncertainty by

7 requiring higher returns on equity and higher interest payments

8 on debt instruments, not only for Progress Energy but

9 potentially for all of the state's investor-owned utilities.

10 Such a process would be unfair to both investors and customers

11 and, thus, would represent bad regulatory policy.

12 Thank you very much.

13 MR. BURNETT: Thank you, Mr. Fetter.

14 We tender Mr. Fetter for cross-examination.

15 CHAIRMAN EDGAR: Mr. Twomey.

16 MR. TWOMEY: Thank you, Madam Chair.

17 CROSS EXAMINATION

18 BY MR. TWOMEY:

19 Q Mr. Fetter, good afternoon.

20 A Good afternoon.

21 Q Mr. Fetter, I assume you are being compensated to

22 testify in this proceeding, is that correct?

23 A Yes, I am.

24 Q And if I may ask, what is your total compensation for

25 your testimony and appearing here?

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1 A I am compensated at the rate of $580 an hour.

2 Q What is the -- 580?

3 A $580 an hour.

4 Q And what do you expect your total billings to be?

5 A I haven't calculated it. At this point, I think it

6 is somewhere around 35 or $40,000.

7 Q Okay, sir. Thank you.

8 At Page 7 of your testimony, at Line 19, you say, "I

9 would emphasize that I'm not suggesting that I know of any

10 circumstances that indicate that PEF's coal procurement

11 decisions could be shown to be 'wrong,' even if judged by later

12 events now known," correct?

13 A That is what that sentence says.

14 Q Okay. Let me ask you this. Wouldn't it also be

15 true, or isn't it true that you don't -- do you know of facts

16 and circumstances that you can conclude that the company is

17 correct in what it has done?

18 A As I note elsewhere in my testimony, I am not

19 testifying on the facts regarding their coal procurement. I am

20 testifying with regard to regulatory policy.

21 Q Okay. Thank you. Then it would be true that you

22 don't -- you don't know either way, then, whether their

23 behavior in their coal purchasing practices have been either

24 prudent or imprudent, is that correct?

25 A I'm not testifying on that issue.

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1 Q Okay. Now, Page 13, the question at Line 16 is how

2 is the principle concerning substitution of regulatory judgment

3 for management judgment involved here? And you say in the

4 first sentence, "It is potentially implicated in any proceeding

5 that purports to judge the prudence of past utility management

6 actions." And my question to you is that function purporting

7 to judge a utility's past practices is inherent in regulation,

8 is it not?

9 A Yes, it is.

10 Q Okay. So you are not critical of that fact?

11 A The fact that --

12 Q The fact that commissions of necessity have to go

13 back and judge a company's prudence in their past actions,

14 their management decisions?

15 A No, that is a key part of their job.

16 Q Okay. Now, part of your testimony is that it is

17 important for investors to have confidence in the finality of

18 Commission decisions, correct?

19 A That is an important asset among the financial

20 community.

21 Q And you mentioned that you were with -- was it Fitch?

22 A Fitch Investors Service.

23 Q Did you have an occasion to know what the Florida

24 Commission's -- let me ask you first. Fitch, does it not,

25 keep -- does it not rank state commissions?

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1 A You are asking does it not or does it?

2 Q Does it?

3 A It does not.

4 Q It does not. It has not ranked state commissions?

5 A Fitch does not.

6 Q Are you aware whether its competitors in bond ratings

7 rank commissions?

8 A To the best of my knowledge, they do not.

9 Q Okay. So you wouldn't know, then, how -- or would

10 you know how Florida is viewed vis-a-vis the other 49 states?

11 A Yes, I do. I have my own opinion, and there is also

12 a regulatory information service that provides information on

13 issues like that.

14 Q Isn't it true that over the better part of the last

15 two decades that Florida, the Florida Commission has been

16 viewed as supportive?

17 A It has been viewed as issuing constructive decisions

18 with regard to investor issues.

19 Q And if I read your testimony correctly, you suggest,

20 don't you, that having a supportive commission with

21 constructive decisions can benefit consumers by lowering the

22 cost of debt, is that correct?

23 A Without a doubt.

24 Q Okay. Isn't there also a danger, Mr. Fetter, that if

25 commissions are too constructive that the customers can bear a

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1 burden if equity costs are too high; that is, if equity awards

2 are too high?

3 A I'm not sure I understand your question.

4 Q Well, is there a risk that if a commission is number

5 one in the country in being supportive of utilities, and awards

6 higher, the highest equity ratings in the country, that

7 customers could be harmed in that fashion?

8 A Well, if the rankings I referred to earlier were just

9 lining up commissions based on ROEs authorized, then I think

10 your theory would play out. But it's a -- the rankings reflect

11 sensitivity to issues like that, but also timeliness and how

12 their administrative processes are carried out. And so, you

13 know, there is a trade-off where a highly ranked commission

14 will, in most cases, help the utilities that it regulates get a

15 stronger credit rating, which would reduce the costs that

16 bondholders require in order to make investments within a

17 jurisdiction.

18 Q On the debt side?

19 A On the debt side.

20 Q I've got you. And, lastly, I'll stop with, I noticed

21 in your vitae that you lobbied the Michigan Legislature to

22 exempt the Michigan Commission from the Open Meetings Act?

23 A Yes, I did.

24 MR. TWOMEY: Okay. I was just curious about that.

25 Thanks.

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1 That's all, Madam Chair.

2 CHAIRMAN EDGAR: Thank you.

3 Mr. McWhirter.

4 CROSS EXAMINATION

5 BY MR. McWHIRTER:

6 Q Mr. Fetter, you can't see me; just consider this a

7 voice from above. Oh, you can see me.

8 What did you say the name of your company is?

9 A Regulation Unfettered.

10 Q I see. Can you give us a brief description of how

11 you came by that name?

12 A Well, I was born and given a name, Steven Fetter, and

13 when I was going -- I actually started publishing regulatory

14 commentary pieces while at Fitch under the title Regulation

15 Unfettered. And when I went out on my own, I decided that I

16 owned the name Regulation Unfettered as opposed to Fitch owning

17 it, and I called my company that to indicate that through my

18 activities and testimony I would help to explain regulation to

19 all interested parties.

20 Q The connotation of regulation unfettered to me is

21 that you think less regulation is better rather than more

22 regulation, or do you think more regulation is better? What is

23 the connotation you want to give to the people whom you consult

24 with by that name?

25 A That name has nothing to do with deregulation or

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1 restructuring.

2 Q Do you provide consulting services to -- primarily to

3 utilities and rating agencies or do you provide it to consumer

4 groups, as well?

5 A I have been hired by consumer groups and by

6 Commissions.

7 Q What consumer groups have hired you in the past?

8 A The Maine Public Counsel and the Vermont Public

9 Counsel.

10 Q And what utilities have employed you in the last

11 three years?

12 A Progress Energy Florida, Georgia Power. If you want

13 me to give you all the names, it will take awhile, but I'm

14 willing to, if you would like.

15 Q Go ahead.

16 A Entergy, Consolidated Edison, Public Service of

17 Indiana, Pacific Gas and Electric, Arizona Public Service,

18 Central Vermont Public Service, Detroit Edison, Nevada Power,

19 Sierra Pacific Power, Great Plains Energy, Southwest Gas,

20 Baltimore Gas and Electric, Pepco, Delmarva.

21 Q I think that is sufficient, Mr. Fetter. It seems to

22 me that you predominately provide consulting services and

23 testimony for utilities as opposed to consumer groups. Would

24 that be a fair analysis?

25 A I listen to whoever calls, and if I agree with the

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1 position they want me to put forward, I agree to sign on with

2 them. And that is what happened with the consumer advocates I

3 worked with, as well as the commissions I worked with, as well

4 as the utilities I have worked with.

5 Q When you provide consulting services, do I understand

6 from your last answer that they ask you what they want you to

7 talk about and you testify if you agree with that?

8 A They usually raise an issue and either ask my opinion

9 of it or indicate the position that they feel, and I consider

10 whether I could support what they want said. And if I can't, I

11 either don't work for them or I indicate to what degree I can

12 support what they say, and then they decide whether that's

13 sufficient for them to retain me.

14 Q In your opinion, as a matter of regulatory policy,

15 should fuel purchase contracts be confidential or open to

16 public scrutiny?

17 A I believe to the extent that they can be open without

18 jeopardizing the competitive nature of that sector, I think

19 that is a positive thing. To the extent that it would skew the

20 market place on those issues, I think protection of

21 confidential information is appropriate.

22 Q Can you give me some hypothetical examples of where

23 you find the boundaries to be for what you just said?

24 A I'm not sure I understand what kind of hypothetical

25 you would want.

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1 Q Well, you said fuel purchase contracts should be

2 confidential if it -- what was the rest of what you said, if

3 they should not interfere with the competitive marketplace? Is

4 that a fair --

5 A Yes, if it would skew the marketplace by being 100

6 percent open.

7 Q I see. Well, what kind of information and under what

8 circumstances would the marked be screwed by -- skewed by --

9 I'm sorry about that -- skewed by opening the fuel purchase

10 information to public scrutiny?

11 A Where two entities, whether they be utilities or

12 industrial manufacturers, are both interested in procuring the

13 same commodity, I think it would not be in the interest of

14 setting of a fair market if not only those two parties, but all

15 parties knew what offers were on the table and what terms and

16 conditions of service were on the table.

17 Q Well, isn't that how the stock market operates and

18 how most of the Oasis, open access bulletin boards work? You

19 publish what the price is and people are able to purchase at an

20 exchange rate openly available price for the commodity?

21 A No, that is not how it operates.

22 Q How do they operate?

23 A A stock exchange puts out an equity for purchase, and

24 serves as basically, the clearing agent, and it's publicly

25 posted. It changes by every three or four seconds, and a

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1 purchaser can determine whether to attempt to buy a publicly

2 listed stock.

3 Q How about the commodity markets, do they work in the

4 same fashion?

5 A I think some commodity markets do and others don't.

6 Q Do you find it against regulatory policy for

7 commodity markets to give current and future prices for

8 commodities, spot market and future prices?

9 A I'm sorry. Do I find that it violates what?

10 Q Does it interfere with -- or does it skew the

11 competitive marketplace if people know what the current and

12 future market prices are for a commodity?

13 A It can.

14 Q How would it be not in the public interest for people

15 to know what the present current price for a commodity is?

16 A Let me use an example of a hypothetical utility

17 company that wants to procure a certain fuel at a certain

18 amount on certain timing, but because of that location of that

19 utility it is under kind of unusual transportation conditions.

20 And so, therefore, there may not be as many competitors able to

21 provide that supply. So if all information, including the

22 difficulties of transporting that fuel were known in the open

23 marketplace, then another, not only a utility, but a

24 manufacturer, anyone could step in and say, listen, we will

25 give you the same terms that the hypothetical utility offered,

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1 but transportation wise we will create a smoother transition of

2 delivery of that fuel to us. So in that case, the hypothetical

3 utility with the unusual conditions would probably have to pay

4 more, and that cost would appropriately be flowed through to

5 customers if that was the only choice the utility had.

6 Q But then competition would come into play, and it

7 would tend to reduce the cost to people who could provide the

8 cheapest transportation, wouldn't it?

9 A It depends on how many competitors could meet the

10 unusual conditions of that utility.

11 Q Tell me your opinion about a regulated utility

12 dealing with an affiliated nonregulated company. Can you give

13 me the parameters as to circumstances when purchases of

14 commodities from an affiliated nonregulated company should be

15 confidential?

16 A I would think the Commission should have the ability

17 to gain information so that it can tell whether the regulated

18 utility and its customers are being treated appropriately.

19 Q You indicated that -- are you familiar with how long

20 it takes to process a fuel recovery case in Florida?

21 A I generally know the process of setting of a fuel

22 factor, and then at some point after the end of the year there

23 is a filing, and then a true-up.

24 Q But do you know that it's generally about 80 days

25 from the date that the forecasted prices are filed with the

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1 Commission that it must make a decision with respect to setting

2 the factor for the forthcoming year? Are you aware of that

3 circumstance in Florida?

4 A I didn't know the 80 days.

5 Q Well, presume that or assume that for hypothetical

6 purposes. Do you think 80 days would give intervenors an

7 adequate time to fully explore the cost of the commodities that

8 are being purchased for the forthcoming year when, say,

9 $2 billion worth of fuel is being purchased by a utility?

10 A I would think that 80 days would give enough time for

11 notice to be provided by intervenors who had issues.

12 Q Do you think that intervenors would have enough time

13 within that stretch to discover the salient facts, employ

14 experts, and file countervailing testimony to the proposed fuel

15 factor?

16 A My experience as explored by the previous questioner

17 related to executive branch service, legislative service, and

18 then serving on a commission. And it was my belief that if a

19 law is in place or a rule or regulation is in place and that

20 the public interest would be better served by an amendment,

21 then stakeholders who have an interest should take steps to

22 approach the decision-maker to modify that process. And so, as

23 I said, I view 80 days as certainly sufficient time for issues

24 to be raised that would be of interest to the Commission. And

25 if there is a legislative deadline that does not allow the

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1 smooth operation of an effectuation of public policy, then I,

2 as an interested stakeholder, would certainly attempt to take

3 steps to smooth out that process.

4 Q You, as a stakeholder, can take steps to smooth out

5 the process. What does that mean?

6 A I might approach the legislature. I might approach

7 the Commission if it was under by rule.

8 Q You being a consumer or you being a what?

9 A Someone who has an interest in that law or rule or

10 regulation.

11 Q What should be the time limit then for that consumer

12 to come in and make his concerns known to the legislature or

13 the Commission?

14 A I'm not sure what you mean by a time limit.

15 Q Well, you indicated that from a rating agency's

16 viewpoint, rating agencies wanted decisions to be

17 administratively final and not subject to later unsettling

18 changes in the fuel costs that were passed through to the

19 customers. Didn't I understand your testimony to say that?

20 A Well, not only rating agencies, but any entity that

21 is investing their own funds in a utility, they want certainty

22 and finality with regard to regulatory decisions which are made

23 on a timely basis.

24 Q Now, with respect to the process in Florida, are you

25 familiar with the true-up process concept, is that generally

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1 done throughout the United States?

2 A True-ups are very common across the U.S.

3 Q And what that means is if they come in with a

4 forecast of their estimated prices, and the prices come in

5 higher during the forthcoming year, then the utility can

6 collect the higher prices, what its actual costs, out-of-pocket

7 costs have been, is that correct?

8 A Or lower.

9 Q And it goes the other way, too.

10 A Sure.

11 Q If the prices go down?

12 A Sure. That is the whole idea of the true-up.

13 Q Now, in Florida that process, we generally deal with

14 the two preceding years when you come in for a fuel true-up.

15 Have you found that fact that the Commission can go back for

16 two years to true-up costs to be unsettling to the financial

17 community?

18 A I think that that is better understood than the idea

19 that there have been no -- very few prudency determinations

20 over the past 20 or 30 years. So I think a two to three-year

21 window with notice is something that rating agencies could

22 understand would be -- might be reasonable within the processes

23 of a particular state.

24 Q So you think the Commission without disturbing rating

25 agencies could go back three years, is that it?

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1 A As I said, with notice and timeliness and reasonable

2 processes.

3 Q Well, tell me first of all what you mean by notice?

4 A That as soon as is reasonable for a party to object

5 to a fuel determination, either a forecast or actual

6 expenditures, that that party put not only the Commission on

7 notice, but the utility that they are challenging on notice.

8 Q In order to challenge it, then, a consumer group

9 would have to have the opportunity to go in and examine

10 confidential information, wouldn't it?

11 A Or they could, through discovery, gain information

12 that would allow them to put a challenge on the public record,

13 and then it would be up to the Commission to set processes so

14 that all parties could fairly put forth their positions on a

15 timely basis.

16 Q What if an unlawful act was discovered, I

17 would imagine -- would you think it would disturb rating

18 agencies if they found that an unlawful act that occurred five

19 years ago, sets as a daisy chain markup that resulted in

20 unfettered profits to the utility, do you think that the rating

21 agencies would be concerned about going back to set aside those

22 unlawful transactions?

23 A Well, you realize I was head of the Fitch group

24 during the Enron era, so I think rating agencies could

25 appreciate the situation where if a hypothetical utility did an

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1 unlawful act that that might be punished at a later time upon

2 it being learned that that occurred.

3 Q So, you think you could go back for three years with

4 appropriate process and notification for lawful purchases and

5 further for unlawful purchases, is that, in summary, your

6 opinion for good regulatory policy?

7 A Well, how far you go back and the measure of

8 unlawfulness, I would say there has to be some parity there.

9 But I think, as I note in my testimony, concealment, fraud, I

10 don't think there would be an expectation on the rating

11 agency's part that activities like that should not be able to

12 be acted upon once they come to public notice.

13 Q So, in essence, you would say a rule of

14 reasonableness in our application of regulatory policy as to

15 how far you can go back on fuel prices would be a good policy

16 to recommend to this Commission?

17 A No, I don't think I said a rule of reasonableness. I

18 said to the extent that the two to three-year is an ongoing

19 process that everyone understands and that notice can be

20 provided, you know, that seems to make sense. Fraud or

21 concealment going further back than that, I have a comfort

22 level with that. But, you know, when you say rule of

23 reasonableness, then I think it creates this ambiguity and fog

24 which allows some parties to say I am going to go back and

25 challenge 10 or 11 or 15 years. I don't view that going back

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1 under those conditions would be appropriate, as I testify

2 within my filed testimony.

3 Q What if a utility built a boiler and charged

4 consumers extra for the cost of that boiler in their base rates

5 in order that it could burn a certain kind of fuel, and then

6 when that fuel came available at a lower price, failed to

7 acquire that fuel. Would you think that -- where would that

8 fall in your ambit of a reasonable period of examination plus

9 an opportunity to go beyond that in the event of criminal or

10 other untoward action?

11 A That sounds like the type of issue that should be

12 subject to a multi-day hearing with substantial filings for the

13 Commission to learn all relevant information. It's not a

14 hypothetical that I can offer an answer to based on a 10 to

15 15-second rendition of your hypothetical facts.

16 Q I see. One in which you would have some 212

17 exhibits, and so forth, to examine?

18 A It might even have more exhibits than that.

19 MR. McWHIRTER: I have no further questions.

20 CHAIRMAN EDGAR: Thank you.

21 Mr. Brew.

22 MR. BREW: Yes. Thank you.

23 CROSS EXAMINATION

24 BY MR. BREW:

25 Q Good afternoon, Mr. Fetter.

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1 A Good afternoon.

2 Q Do I understand your testimony generally to be

3 discussing your views of general regulatory policies as applied

4 to the Florida Commission's fuel practices?

5 A My views with regard to Florida processes, as well as

6 my views based on what I think is appropriate regulatory policy

7 across other jurisdictions.

8 Q Okay. Good. With respect to the Florida processes,

9 would you say that you are generally familiar with it or

10 specifically familiar with it?

11 A I'd say generally familiar.

12 Q Generally, did you look at any documents in past

13 Florida fuel cases?

14 A I looked at some of the 423 filings and Schedule A

15 filings, which are filed monthly, I believe, before this

16 Commission. It's my understanding that there are quarterly

17 meetings where utilities brief the Commission staff.

18 Q No, what did you look at?

19 A I'm sorry?

20 Q What did you look at?

21 MR. BURNETT: May the witness finish his answer,

22 please? I don't believe Mr. Fetter was finished.

23 CHAIRMAN EDGAR: Mr. Fetter, did you have additional

24 information that you would like to share on that question?

25 THE WITNESS: Yes. Thank you, Madam Chairman. It is

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1 my understanding that there are quarterly meetings where the

2 state's utilities are able to brief Commission staff and

3 interested stakeholders. I reviewed Mr. Windham's deposition

4 where he discussed that he follows these filings, feels that it

5 is his role to see if there are things that might implicate

6 prudence or imprudence, and he's in a position where he can

7 provide information to the Commission or others on Commission

8 staff.

9 I found from what I learned about the processes that

10 they were not very much different than -- when I was in

11 Michigan we had certain processes where staff had an ongoing

12 role to garner information with regard to prudence, and then

13 provide it through channels so that the commission wouldn't be

14 caught short with regard to prudence issues. And so it seemed

15 to me that what's going on in this state is that all these

16 filings that I referred to are not just going on a shelf, but

17 they are being reviewed towards the end goal of deciding

18 whether there should be activities related to finding an

19 imprudent disallowance.

20 BY MR. BREW:

21 Q Is that it?

22 A I'm sorry?

23 Q Is that it? Are you finished?

24 A Yes.

25 Q Okay. Let's talk specifics. The last fuel docket,

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1 06000-EI (sic), did you look at any of the filings in that

2 docket?

3 A Which one?

4 Q The last fuel docket, 06000-EI?

5 A As I said, I looked at some 423 and Schedule A

6 filings. Whether it was in that docket or not, I couldn't say

7 for sure.

8 Q How many issues did staff address in their prehearing

9 statement in that docket?

10 A I'm sorry?

11 Q In the last fuel filing, how many issues did staff

12 address in their prehearing statement? Ten, 50, 100, do you

13 know?

14 A Did staff what?

15 Q Address in their prehearing statement.

16 A I'm not sure.

17 Q Did you look at it?

18 A I didn't look at what issues staff raised.

19 Q And you wouldn't know whether the level of issues

20 that staff had and the parties had to address in that docket

21 was, say, typical of what goes on in a fuel case?

22 A No, I didn't review what issues were raised.

23 Q All right. Could I refer you to your testimony at

24 Page 5, where you describe the purpose of your testimony. Do

25 you see it?

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1 A I'm there.

2 Q And you say at the end on Lines 23 and 24, that your

3 testimony does not address the factual assertions in OPC's

4 petition or the testimony of Mr. Sansom, do you see that?

5 A Yes.

6 Q Assume for me a moment that the Commission finds that

7 the factual assertions raised by OPC and Mr. Sansom were

8 accurate. Is it your testimony that there should be no relief

9 for consumers?

10 A It's my testimony that going back ten or eleven years

11 with a determination of relief would be inappropriate.

12 Q Let's take the last fuel docket, were you in

13 attendance when Mr. McGlothlin gave his opening statement?

14 A Yes, I was.

15 Q Good. For last year, if the Commission were to find

16 that OPC's statements were substantially accurate, would you

17 agree that a $29 million adjustment would be appropriate to

18 fuel costs?

19 A I mean, the Commission has to weigh the evidence and

20 make a determination of what's appropriate.

21 Q Please don't fight my question. I asked if the

22 Commission finds those facts, are you saying that there should

23 be relief or no relief?

24 A If they find what facts?

25 Q If they find the facts as alleged by OPC regarding

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1 excessive coal costs in that year.

2 A If they find that there was imprudent behavior within

3 that year, then the Commission should take action to remedy

4 that situation.

5 Q Thank you. You mentioned your work in other states.

6 And, specifically, I thought I heard you say that one of your

7 clients recently was Public Service of Indiana, is that right?

8 A Yes.

9 Q Does Indiana have a fuel clause?

10 A Yes.

11 Q Do they currently have a subdocket, Docket

12 38707-FAC-68-S1?

13 A I don't know.

14 Q Would you accept that subject to check?

15 A Subject to check.

16 Q And would you also accept that that is a subdocket to

17 look at the hedging costs of Duke Energy?

18 A If that is what you tell me, I'll accept it subject

19 to check.

20 Q Okay. A couple of years ago did Indiana have a

21 prudence case in a fuel subdocket associated with the extended

22 outage of the D.C. Cook Nuclear Power Plant?

23 A I wasn't involved in that case.

24 Q You weren't involved in that case. Would you accept,

25 subject to check, that Docket 38702-FAC-39 was that subdocket

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1 in Indiana?

2 A Subject to check, I'll accept that.

3 Q Mr. Fetter, on Page 24 of your testimony.

4 A I'm there.

5 Q Good. You quote extensively from a report that you

6 say is entitled, "New York Regulators' Consistency Supports

7 Electric Utility Credit Quality." Do you see that?

8 A Yes.

9 Q Did the New York Commission formally have a fuel

10 adjustment clause before it entered into restructuring, do you

11 know?

12 A Say again?

13 Q Before it entered into restructuring, did the New

14 York Utilities have fuel clauses subject to the New York PSC's

15 review?

16 A I'm not sure.

17 Q Okay. You have done work recently for Consolidated

18 Edison of New York, though, right?

19 A A couple of years ago.

20 Q Okay. Would you accept that the New York Commission

21 conducted a prudence proceeding in the 1980s, Case 28598,

22 addressing the coal costs of Niagara Mohawk Power Company?

23 A Would I accept that --

24 Q That such a docket occurred?

25 A I don't know if such a docket occurred.

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1 Q Would you accept that docket subject to check?

2 A That that existed?

3 Q Yes.

4 A That docket? Subject to check, I'll accept that such

5 a docket existed.

6 Q And would you also accept that in that docket the New

7 York Commission went back at least eight years with respect to

8 coal-related costs passed through the fuel clause?

9 A I'm sure there were circumstances which led to such

10 an unusual decision.

11 Q But you are not disputing the fact that a separate

12 coal related fuel docket occurred?

13 A I'm accepting subject to check anything you want to

14 say.

15 Q Okay. That's fine. Did Missouri conduct a prudence

16 proceeding related to fuel costs associated with their blowing

17 up of the Hawthorn coal plant?

18 A I don't know.

19 Q Okay. More generally, in your experience,

20 Mr. Fetter, states that have fuel clauses, would you say it's

21 unusual for them to create subdockets when circumstances occur

22 that require more time to consider than the normal F.A.C

23 process normally allows?

24 A I think the states take whatever procedural steps are

25 necessary.

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1 MR. BREW: Thank you. That's all I have.

2 CHAIRMAN EDGAR: Thank you.

3 Ms. Bradley.

4 CROSS EXAMINATION

5 BY MS. BRADLEY:

6 Q Mr. Fetter, are you aware that the Florida PSC is

7 created by the Legislature here?

8 A Is your microphone on? I'm sorry.

9 Q Actually, it's not. That might help. Let me try

10 again. Are you aware that the Florida PSC is created by the

11 Legislature here?

12 A I believe it is.

13 Q Is that true of Michigan, as well?

14 A In Michigan it's created by the legislature.

15 Q And are you aware that the PSC has only the powers

16 granted them by the Legislature?

17 A Delegated authority, yes.

18 Q Okay. Are you aware of what their primary

19 responsibility or directive from the Legislature is here?

20 A I don't know the exact terms that the Legislature

21 would describe it, but I have a sense of what the delegation of

22 authority to a public utility commission would be.

23 Q Now, in your testimony you talk about deference given

24 to management decisions of the utility, but would you agree

25 that if approval of a management decision conflicts with the

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1 primary directive or responsibility that the Legislature has

2 given the PSC, that they have a duty to follow that legislative

3 directive?

4 A Well, when I say deference, I'm saying that the

5 Commission should not substitute its own judgment for

6 management decision-making. But if management makes a decision

7 that is at odds with the law, then I think the Public Service

8 Commission should take steps with regard to that management

9 decision.

10 Q When you say take steps, you mean they can regulate

11 that, take whatever is necessary to correct that?

12 A Within law and rule.

13 MS. BRADLEY: All right. No further questions.

14 CHAIRMAN EDGAR: Mr. Burgess.

15 MR. BURGESS: Thank you, Madam Chair.

16 CROSS EXAMINATION

17 BY MR. BURGESS:

18 Q Mr. Fetter, my name is Steve Burgess. I'm here on

19 behalf of the Office of Public Counsel.

20 A Hello, sir.

21 Q Hello. And I need to first -- I thought I had a good

22 handle on your testimony on this, and I'm not sure whether I

23 might have been confused a little bit by some of your answers.

24 As I understand it, what you're saying, correct me if I'm

25 wrong, please, is that the determination of prudence should be

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1 considered in the true-up proceeding, and anything subsequent

2 is off limits with regard to that, short of concealment with

3 your two standards for concealment, is that right?

4 A I'm saying that true-up is an appropriate time at

5 which to create finality.

6 Q Well, I'm trying to understand what you are advising

7 the Commission in this case. You're saying that it should

8 consider any transactions that occurred and were subject to

9 true-up hearings to be -- to have the issue of prudence

10 adjudicated, is that your point?

11 A I'm saying what I have seen in the information I have

12 reviewed in this case is that staff tracks the company's

13 filings, is in a position to channel information with regard to

14 prudence or imprudence issues for further consideration, and

15 that from the structure I see that a true-up proceeding would

16 be the appropriate point during which such issues would be

17 reviewed and finality and certainty was reached.

18 Q Short of a demonstration, a later demonstration of

19 concealment as you've defined it?

20 A Concealment and fraud, I think, are bad things, and

21 no entity regulated or not should benefit from doing such acts.

22 Q Right, and I appreciate that. Now, when you were

23 responding to Mr. McWhirter, you also discussed unlawful acts.

24 Now, there could be unlawful acts that are not within the

25 definitions that you presented as far as concealment, is that

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1 right?

2 A Yeah, like if I cross the street and get a jaywalking

3 ticket.

4 Q Well, I assume you are talking about material

5 unlawful acts. If unlawful acts were demonstrated later, that

6 that would be grounds for opening issues in addition to your

7 concealment?

8 A You added the word material. That is precisely the

9 type of differentiation that I was concerned with. Just using

10 the word unlawful could lead to such misunderstandings and

11 ambiguity.

12 Q Right. But you are agreeing that it might be beyond

13 concealment, beyond the two standards of concealment; that is,

14 a fraudulent statement or a refusal to provide information that

15 was asked?

16 A Like I said, there has to be a certain degree of

17 parity. You can't take an unlawful relatively non-material act

18 from 15 years ago and say the whole ballgame is open again.

19 Q And with regard to the questions that you were being

20 asked, subject to check, and, of course, you didn't -- not

21 having looked at that information, you're willing to accept

22 them. But if that is so, if those were accurate descriptions

23 of fuel dockets in those other various jurisdictions about

24 which Mr. Brew was asking, wouldn't it be correct that rating

25 agencies would be aware that this type of evaluation takes

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1 place across the country with regard to fuel evaluation?

2 A No, I think the circumstances referred to were very

3 unusual. I'm certain there were certain circumstances

4 underlying those situations. And if I could just read from a

5 rating agency report with regard to this very docket and how

6 surprised at least one rating agency would be. It's a Fitch

7 Ratings Report dated December 28th, 2006, entitled, "Florida

8 Power Corporation Doing Business as Progress Energy Florida."

9 And it states on Page 2, "While the FPSC already approved fuel

10 purchases in those years in prior annual fuel filings, a full

11 hearing on the matter will be held in the spring of 2007. The

12 outcome of this matter cannot be determined at this time, but

13 in Fitch's view the fact that the costs were already approved

14 by the FPSC lessens the risk of an adverse decision. However,

15 PEF's existing credit metrics could likely withstand an adverse

16 outcome within the current ratings, but an adverse decision

17 would indicate a more challenging regulatory environment in

18 Florida."

19 Q Yes. But before you started reading that you said

20 something to the effect you are certain that in those cases

21 that Mr. Brew asked you about there were certain specific

22 instances that made it unusual. But when you were answering

23 the question you said you didn't know anything about them?

24 A Based on my 20 years experience with utility

25 regulation, you know, I'm willing to base my reputation on the

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1 fact that in Niagara Mohawk issues eight years old did not

2 spring anew out of the blue. And if that is the case, I'm sure

3 Mr. Brew will brief it as such.

4 Q But your concern here is more than just issues eight

5 years old. Your concern, as I understand it, is any issue that

6 is raised subsequent to the true-up proceeding, unless there is

7 concealment. Now, that puts it -- there is a wide range

8 between what I just described and eight years, is there not?

9 A Well, my understanding is that OPC and others have

10 been able to track these issues for 20 years. If they had

11 problems, they could have made challenges. I think it's

12 important, and my advice to the Commission would be not to

13 create an environment of gotcha, where entities that feel that

14 something is wrong can benefit by just sitting on their hands

15 and waiting not only years, but in a case like this, a decade

16 before coming forward.

17 Q May I get an answer to my question? Your suggestion

18 to the Commission is that any issue of prudence should not be

19 raised subsequent to the true-up proceeding short of a

20 demonstration of concealment. And I asked, isn't there a wide

21 range between that and an eight-year-old case?

22 A And what I'm saying is the Commission should put

23 weight on the fact that parties should have an obligation to

24 take steps, challenging steps contemporaneous with the events

25 at issue.

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1 Q And I am going to ask a third time if I can get an

2 answer to my question. You were being asked by Mr. Brew about

3 cases that were -- wherein he asked you were you aware of these

4 cases wherein subdockets were created and examinations were

5 made subsequent to the initial fuel determination. And I'm

6 asking you is there a difference between -- is there a

7 significant difference between the standard you're suggesting,

8 that is, nothing can be examined short of a demonstration of

9 concealment following the true-up determination and eight years

10 later?

11 See, you keep going back to eight years and

12 reasonableness. And I'm asking you are some of these issues to

13 where they may not be the full ten years and eight years you

14 are speaking of, but around the country are there not

15 jurisdictions that regularly examine the issue of prudence

16 beyond the standards that you are recommending that this

17 Commission adopt?

18 MR. BURNETT: Objection, compound, confusing, vague,

19 ambiguous, asked and answered and a mischaracterization of

20 evidence.

21 MR. BURGESS: May I respond to the objection? The

22 witness has been asked -- was asked a specific question. We

23 started off when I asked him about these cases that he was

24 asked about by Mr. Brew and what he knew about them. He said

25 he was certain that they couldn't be -- that there couldn't be

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1 cases that weren't involving very specific circumstances. And

2 I said, how do you know that? And he started talking about

3 conditions that were eight years old. And I asked him, isn't

4 there a vast difference between going back eight years and the

5 standard he is talking about. Isn't there some significant

6 ground in between, and he has not answered that question yet.

7 MR. BURNETT: Same objection.

8 CHAIRMAN EDGAR: Mr. Burgess, I'm going to allow you

9 to try again. I am going to ask you, though, to -- for my

10 benefit, if not the witness', to ask the questions in a little

11 shorter questions, because I am having a hard time following

12 them as well, quite frankly.

13 And to the witness, please try to answer the question

14 that is asked. You can start with a yes or no, that is always

15 helpful if, indeed, it can be answered that way.

16 Mr. Burgess.

17 BY MR. BURGESS:

18 Q Let me ask -- I'm going to move on to another area.

19 Mr. Fetter, as I understand your standard, then, in

20 this case, and you have been asked this, if the Commission

21 finds imprudence, but does not find concealment, it should say

22 case closed, is that right?

23 A I believe in answer to Mr. Brew's questions I talked

24 about a reasonable cycle period, so I think your statement is

25 wrong.

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1 Q Okay. So you think that even if there has been a

2 true-up proceeding, that if a subsequent finding of imprudence

3 is found by the Commission, that it should make an adjustment,

4 am I right about that?

5 A What I said before is if you have information that

6 you knew before the true-up occurred, and you did not raise it,

7 and then you attempted to bring it up after the true-up

8 proceeding -- I know when I was sitting as a Chairman, I would

9 not be very happy that the party did that, and so I might not

10 allow it to be considered.

11 Q So that there are cases, there are circumstances here

12 if the Commission finds imprudence, but does not find

13 concealment, that it should just say to the public, we have

14 found imprudent expenditures, but we intend for you to bear

15 them?

16 A No. They probably would say that the challenges were

17 not timely made, and they should have been raised at an earlier

18 time based on the information that the parties had in their

19 possession.

20 Q One of the issues before the Commission in this

21 docket is whether there has been any imprudence, is that right?

22 A Say again.

23 Q Is one of the issues before the Commission today

24 whether there is any imprudence on the part of Progress Energy?

25 A That's my understanding.

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1 Q Okay. And if they find imprudence without finding

2 concealment, I'm trying to understand, are you saying that the

3 customers should have to bear that cost?

4 A And as I said --

5 Q May I get an answer and then a full explanation?

6 A Well, I believe it is the same question I just

7 answered, but I'm willing to answer it again.

8 CHAIRMAN EDGAR: Mr. Burgess, why don't you ask the

9 question again.

10 BY MR. BURGESS:

11 Q You've just agreed that one of the issues before the

12 Commission today is whether Progress Energy has been imprudent

13 in its fuel procurement practices. If they make the finding to

14 that issue yes, are you saying that short of a finding of

15 concealment that the customers should have to bear that cost?

16 A And I said every administrative agency, just like

17 every court, has to have processes so that cases don't go on

18 forever, and there is finality and certainty, not only for the

19 litigants, but also for entities that are affected by the

20 litigation. And if the Commission finds that the processes

21 were abused by the parties making the challenges, I believe

22 that they can make a judgment totally apart. They could --

23 they could not even make a determination on prudence if they

24 feel that the parties through whether statute of limitations or

25 the legal concept of laches had sat on their rights, then I

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1 think that is within their purview.

2 Q Is it your understanding that the recommendations

3 that you are providing to the Commission; that is, that the

4 fuel costs should be considered prudent if there was not a

5 challenge to it during the true-up, short of a subsequent

6 finding of concealment, is it your understanding that that

7 standard that you are recommending to the Commission is the

8 current law in the state of Florida?

9 A What I'm saying -- certainly there is ambiguity. But

10 what I'm saying is from what I have seen of the processes,

11 including the deposition of Mr. Windham, the information about

12 substantial filings on an ongoing basis monthly, quarterly

13 meetings, that what is in place is a model for review where, by

14 the time of true-up, issues, challenges could have been raised.

15 And if they have not been raised, then I think nothing is on

16 the table.

17 Q When you were making a determination as to your

18 recommendations to the Commission, did you examine what you

19 understood to be the documents that defined the current law on

20 the subject?

21 A When I first did my testimony I had not looked at the

22 Maxine Mine decision, and I believe the Supreme Court

23 affirmation, but I did subsequently. And then after reading

24 Mr. Bohrmann's deposition with his mention of Order Number

25 12645, I believe, I did read that order, and I found tw

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1 interesting things within that order.

2 Q When you read 12465 -- well, let me backup and say is

3 it your understanding from taking a look at that, that Order

4 Number 1265 (sic) defines the boundaries of procedure for the

5 fuel adjustment process for the state of Florida?

6 A It comments upon them, but there is also comment

7 within that order about the appropriateness of a future

8 rulemaking to codify the conditions, and it's my understanding

9 that such rulemaking has never occurred.

10 Q So is it your understanding, then, that that means

11 that that order is of no effect?

12 A Well, from my experience as a Commissioner in

13 Michigan and from interacting with commissioners throughout the

14 country, it's my understanding that one commission cannot bind

15 a future commission. And so I think with this order being out

16 there and not having gone through a rulemaking process, then

17 the decision of appropriateness should be within the minds of

18 the three individuals who are hearing this case, rather than

19 deferring to an order from --

20 Q 24.

21 A -- 23, 24 years ago.

22 Q Would you agree that parties, that interested parties

23 and parties whose interests are affected by Public Service

24 Commission decisions should be entitled to rely on the law as

25 expressed by the Public Service Commission?

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1 A They can read this decision. They can see in this

2 decision that not only does it refer to the appropriateness of

3 a rulemaking, and so, you know, if they want to make decisions

4 about legal rights, that should be a red flag to them that such

5 rulemaking never occurred. And they also would see a statement

6 within that order that even back then, 24 years ago, the

7 Commission sitting at that time said the appropriate limitation

8 of our jurisdiction is based on whatever statute of limitations

9 or other jurisdictional limitations applies to our actions as a

10 matter of law.

11 Q Whatever statute of limitations exists. Would you

12 agree that it also said that we, therefore, accept any relevant

13 proof the utility choses to present at true-up, but we will not

14 adjudicate the question of prudence nor consider ourselves

15 bound to do so until all relevant facts are analyzed and placed

16 before us. We will feel free to revisit any transaction until

17 we explicitly determine the matter to be fully and finally

18 adjudicated?

19 A That is what those five individuals wrote at the same

20 time they wrote that it would be appropriate to codify those

21 conditions in a rulemaking.

22 Q Do you agree that they also said we see no

23 justification in limiting our ability to scrutinize past

24 transactions?

25 A That is a sentence that comes a couple before the

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1 discussion of statute of limitations or other jurisdictional

2 limitations.

3 Q So you agree they did say that.

4 A Could you -- could you say the sentence again?

5 Q Yes. We see no justification in limiting our ability

6 to scrutinize past transactions.

7 A And then modified by the sentence I read about

8 statute of limitations limiting their jurisdiction.

9 Q Would you agree as well that the principles of this

10 case were tested subsequently in the Maxine Mine case that you

11 have had an opportunity to examine?

12 A I did read that decision.

13 Q And would you agree that in the Maxine Mine case the

14 Public Service Commission held a hearing in September of

15 1983 and issued an order in June of 1984?

16 A June 22nd, 1984.

17 Q And would you agree that they required refunds of

18 fuel revenues that were collected in 1980, 1981 and 1982?

19 A Yes.

20 Q And would you agree that that ability, that that

21 jurisdiction of the Commission, that decision of the

22 Commission, was challenged by Gulf Power Company before the

23 Florida Supreme Court?

24 A That is my understanding.

25 Q Would you agree that the Florida Supreme Court agreed

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1 with the Public Service Commission, and stated that the fuel

2 adjustment proceeding is a continuous proceeding and operates

3 to a utility's benefit by eliminating regulatory lag. This

4 authorization to collect fuel costs close to the time they are

5 incurred should not be used to divest the Commission of the

6 jurisdiction and power to review the prudence of these costs.

7 The order was predicated on adjustments for 1980, 1981 and

8 1982, we find them permissible?

9 A And what I found most interesting about that

10 decision --

11 Q May I get an answer? Is that your understanding of

12 what the court said in that ruling?

13 A Can you direct me to the sentences you are reading so

14 I can make sure that you are reading them appropriately?

15 Q Yes. It's 487 So.2d 1037, under Footnote 3, or under

16 Headnote 3, Description Headnote 3.

17 A And you want to say it again, or do you want me to

18 read it, or --

19 Q Do you disagree with how I read it, or do you want me

20 to read it again?

21 A No, I didn't have it in front of me when you said it.

22 Q Do you agree that the Supreme Court held that the

23 fuel adjustment proceeding is a continuous proceeding and

24 operates to a utility's benefit by eliminating regulatory lag.

25 This authorization to collect fuel costs close to the time they

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1 are incurred should not be used to divest the Commission of the

2 jurisdiction and power to review the prudence of these costs.

3 This order was predicated on adjustments for 1980, 1981 and

4 1982. We find them permissible.

5 A The Supreme Court using its standard of review made

6 that finding.

7 Q Would you agree that that has not been -- that that

8 Supreme Court case has not been overturned?

9 A To my understanding it hasn't been overturned.

10 Q Would you agree that that means, then, that that is

11 the law of the land on this subject?

12 A That decision related to certain facts. Those facts

13 being that notwithstanding that there appeared to be imprudent

14 actions during the 1970s, the Commission limited its remedy to

15 three years immediately preceding during the time of their

16 proceeding of 1980, 1981, 1982, and so I find the decision of

17 the Commission back then and as affirmed by the Supreme Court

18 as not inconsistent with what I'm saying about contemporaneous

19 review and notice to the party that's being challenged.

20 Q So would you agree, then, that the Supreme Court

21 agreed that the Commission can go back at least three years

22 beyond the years in which it had before it at the time it began

23 its examination?

24 A Based on the -- based on the factual circumstances of

25 that case.

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1 Q And would you agree that parties should be able to

2 rely on that law in conducting their affairs with regard to

3 Public Service Commission cases?

4 A Based on the factual circumstances of that case.

5 Q Now, I understand that you have said that you have

6 not explored, yourself, all the factual disputes or the factual

7 disputes associated with this. Would you know of the

8 circumstances involving Progress Energy or its predecessor,

9 Florida Power Corp, its licensing under the Clean Air Act in

10 1996?

11 A I'm sorry, I lost the question.

12 Q Do you have any knowledge of how Florida Power Corp

13 brought forward its licensing application under the Clean Air

14 Act in 1995 -- 1996?

15 MR. BURNETT: Objection; vague and ambiguous.

16 MR. BURGESS: It seems pretty clear to me, does he

17 have any awareness of how it made its presentation.

18 CHAIRMAN EDGAR: I'll allow.

19 MR. BURNETT: For what units?

20 BY MR. BURGESS:

21 Q For Units CR4 and CR5.

22 A No, I don't.

23 Q So if there was a shift in what Power -- in what

24 Florida Power Corp could burn, based on that, from what they

25 originally constructed those plants to burn, you are not aware

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1 of that?

2 A That is not the subject of my testimony.

3 Q If there were a shift, would that be something you

4 would examine when you were a public service commissioner to

5 determine whether it was a prudent decision?

6 A If parties raised it in a proceeding, it would be

7 looked at.

8 Q You speak of -- you speak in your testimony on

9 several occasions of conversations that are held during the

10 process between Progress Energy and PSC staff and Office of

11 Public Counsel, correct?

12 A Can you direct me to that?

13 Q Yes, I can. You mention it in Page 13, Line 7; Page

14 15, Line 13; and Page 19, Line 17.

15 A Okay. I'm at Page 13, Line 7, the Commission

16 regularly briefed the Commission staff and OPC on fuel

17 procurement between fuel adjustment proceedings. As I said or

18 testified to earlier today, it's my understanding that there

19 would be quarterly meetings at which there were briefings.

20 Q Okay. And I am just asking you, do you agree that

21 you spoke of conversations that were continuous and taking

22 place between the parties outside the actual fuel adjustment

23 proceedings?

24 A That's what I have testified to, at least on Page 13.

25 If you want me to -- you want to give me the other citations?

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1 Q Page 15, Line 13; Page 19, Line 17.

2 A It helps to do one at a time.

3 Q Yes. Page 15 --

4 A Page 15, line what?

5 Q Line 13.

6 A And Page 19.

7 Q Page 19, Line 17.

8 A On Page 19, I have conversation in quote marks, so

9 that would be kind of more theoretical communication going back

10 and forth. The earlier two citations would refer to the

11 quarterly briefings.

12 Q Do you know if in any of these conversations or

13 briefings Florida Power Corporation alerted the PSC staff to a

14 shift in the fuel that it could burn in CR4 and CR5?

15 A I don't know.

16 Q You were asked at your deposition some questions by

17 Ms. Bennett about docket -- and when you were a Public Service

18 Commissioner in the State of Michigan.

19 A I have a question. If we are going to a new topic

20 could I take a break? Is that allowed?

21 CHAIRMAN EDGAR: We can take a break. Let's take

22 about ten minutes.

23 (Recess.)

24 CHAIRMAN EDGAR: Okay. We will go back on the

25 record. And, Mr. Burgess, if you will continue your

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1 questioning.

2 MR. BURGESS: Thank you, Madam Chair. And for your

3 information as well as that of the witness, I just have one

4 more line of questions.

5 BY MR. BURGESS:

6 Q And that is with regard to information that was asked

7 by Ms. Bennett during your deposition. It had to do with the

8 Docket Number U7830 when you were a Michigan Public Service

9 Commissioner.

10 A Yes, sir.

11 Q And am I correct in understanding that with regard to

12 Consumers Power Company, the Midland -- the Midland production

13 plant was -- a large part of it was disallowed after there was

14 some discontinuance of the construction, is that correct?

15 A It was a nuclear plant, and it was abandoned and

16 turned into a cogeneration plant. And there was a significant

17 disallowance related to the nuclear construction.

18 Q Was the disallowance that the Michigan Public Service

19 Commission made because of a finding of imprudence?

20 A Yes.

21 Q And there was a question that you were asked at your

22 deposition and you accepted subject to check. Have you gone

23 back and checked that order?

24 A No, I haven't read that order.

25 Q Okay. So am I correct -- well, do you recall that it

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1 was a request of recovery of $2.1 billion by Consumers Power

2 Company?

3 A It was a long time ago and a lot of figures, but if

4 that's what the order says, I will accept it subject to check.

5 Q The point that I do want to address, actually, is at

6 the time, though, you would have known that your disallowance

7 could and probably would have an impact on the company's credit

8 worthiness bond rating, is that correct?

9 A Actually, as I noted at my deposition, it was a very

10 unusual situation because had the Commission, prior to my time,

11 not stepped in with extraordinary relief, Consumers Power would

12 have gone into bankruptcy. And so the Commission stepped in

13 with extraordinary relief to maintain the company out of

14 bankruptcy and set in place certain conditions that the company

15 had to live up to as it worked its way back from its very

16 weakened financial state.

17 And I think the 7830 orders -- basically, I was at

18 the Commission for a little over six years, and these issues

19 were, basically, with me and my colleagues every day of those

20 six years. And so the orders that were referred to at my

21 deposition were after the extraordinary relief was in place and

22 while the conditions were also in place. And so, as I noted,

23 it was a very unusual situation where the Commission was more

24 involved in Consumers Power's affairs than both we would have

25 liked and, also, what would be normal for a Commission.

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1 Q Nevertheless, isn't that case an example of where,

2 even if as a Commissioner you may believe it could have a

3 detrimental effect on the bond rating, your obligation to the

4 public may call for a disallowance if you make a finding of

5 prudence -- of imprudence?

6 A I guess the differentiation I see is where -- there

7 the issue was this abandonment of the nuclear plant. And so,

8 clearly, everyone was on notice from basically the day the

9 first shovel went into the ground until it was laid down, and

10 then over the course of ten or so years until the issues were

11 finally resolved.

12 As compared to what I note in my testimony, you know,

13 not only any dollar disallowance, but if this Commission were

14 to go back ten or eleven years, I would view it, and I think

15 many would view it, as unprecedented. And I think it could

16 affect the way this Commission, its positive reputation, not

17 only among the financial community but also among their

18 colleagues, I hear positive things.

19 And so, it is like the double-whammy of, you know,

20 not only the dollar figure, but also the way the Commission is

21 viewed with regard to not only this utility but also every

22 regulated utility. It would be concern on the part of the

23 financial community as to what direction regulatory policy is

24 taking within the state of Florida.

25 Q Thank you. And I have just one more question with

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1 some trepidation of going back on my representation that I only

2 had one more line of questioning. But with regard to what we

3 were discussing earlier about rulemaking for the Commission

4 order setting the procedure for a fuel adjustment process. Do

5 you know anything about the Florida statutory requirement for

6 rulemaking with regard to fuel adjustment, the fuel adjustment

7 process?

8 A No, I don't.

9 MR. BURGESS: Thank you.

10 Thank you very much, Mr. Fetter. I appreciate it.

11 THE WITNESS: Thank you, sir.

12 CHAIRMAN EDGAR: Thank you. Are there questions from

13 staff?

14 MS. BENNETT: Yes, there are just a few.

15 CROSS EXAMINATION

16 BY MS. BENNETT:

17 Q Mr. Fetter, would you agree that a role of a public

18 service commissioner is to strike a fair balance between the

19 interests of all stakeholders to the regulatory process?

20 A Yes, I would.

21 Q And would you agree that the term "stakeholders"

22 includes both shareholders and ratepayers?

23 A Among others. It includes basically anyone who would

24 have an interest in a decision at this body.

25 Q Would you agree that one of the principle roles of

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1 regulatory commissions is to conduct prudence reviews of the

2 utilities and their jurisdictions?

3 A Yes.

4 Q Do you agree that at times the utility's definition

5 of prudence may be different than a regulator's definition of

6 prudence?

7 A I guess saying definition complicates it. I think it

8 would be easier to say that a utility might take an action that

9 it viewed as prudent, and a regulator might later feel that

10 putting themselves in the shoes of the utility management, and

11 only considering facts known to a utility management at that

12 time, the regulator might feel that the actions taken by the

13 utility did not fall within a range of reasonable behavior. So

14 there might be a disagreement.

15 Q Okay. While you served on the Michigan Commission,

16 did you ever vote to disallow recovery of expenses by a

17 utility?

18 A Yes, I did.

19 Q For instance, as Mr. Burgess was discussing, while

20 serving as chair of the Michigan Public Service Commission, you

21 considered the prudence of 2.1 billion expended by the

22 investor-owned utility, Consumer Power Company, for an

23 abandoned construction project, is that correct?

24 A As I said, with regard to the number, I'm taking it

25 subject to check, but, yes, that's true.

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1 Q And while the utility was seeking full recovery of

2 the $2.1 billion, the Michigan Public Service Commission only

3 allowed recovery of approximately 760 million, is that correct?

4 A Subject to check, I'll accept that number.

5 Q In the past year you have filed testimony as an

6 expert witness before the Arkansas Public Service Commission

7 regarding fuel adjustment clauses, is that correct?

8 A Yes, I did.

9 Q And in that testimony you stated if the costs for

10 fuel and power supply are not prudently incurred, there should

11 be a process to allow challenge of such improper action,

12 followed by the ability of the regulatory body to order

13 disallowances and prevent inappropriate recovery. Is that also

14 correct?

15 A From what I recall, that sounds like what I might

16 have written.

17 Q And would you agree with your testimony today that --

18 I'm sorry, let me rephrase that.

19 Would you agree that your testimony before the

20 Arkansas Public Service Commission is true and accurate today?

21 A As I noted at my deposition, when we discussed this

22 phrase, elsewhere in my Entergy Arkansas testimony I

23 incorporate the concept of timeliness. So adding timeliness to

24 what you've just read, it reflects my view.

25 Q Would you agree that it is generally understood b

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1 rating agencies that one of the principle roles of regulatory

2 commissions is to conduct prudence reviews of the expenditures

3 and actions of utilities within their jurisdiction?

4 A Yes.

5 Q In your direct testimony on Page 6, and I will give

6 you a minute to get there, Lines 20 through 22?

7 A I'm there.

8 Q You testified that regulators should not substitute

9 their judgment for that of utility management so long as the

10 judgment of management was within a range of reasonable

11 business judgment at the time the judgment was made, is that

12 correct?

13 A That's what I testify to.

14 Q And you agree with that testimony today?

15 A Yes, I do.

16 Q But isn't it true that during your term as Chairman

17 of the Michigan Public Service Commission, the Commission

18 considered the appropriate disposition of approximately

19 $1.5 billion of proceeds for the transfer of a portion of

20 Consumer Power Company's investment in the unfinished Midland

21 nuclear power plant to the Midland Cogeneration Venture Limited

22 Partnership?

23 A As I noted at the deposition, and as I noted earlier

24 here today, that was a case so unusual that I don't think it

25 has occurred anywhere else. And that was a case where in

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1 exchange for extraordinary relief to keep the utility out of

2 the bankruptcy, the Commission set a list of conditions. And

3 one of the conditions was the ability to have an impact on how

4 proceeds coming into the utility would be utilized to

5 strengthen the financial strength of the utility as opposed to

6 being able to be used for unregulated activities.

7 Q Okay. Isn't it true that the Michigan Public Service

8 Commission in that case required CMS Energy to return

9 approximately 1.5 billion in proceeds, plus an additional

10 14.1 million in cash to Consumers Power Company?

11 A Like I said at deposition, you know, that sounds like

12 the path taken. I can't confirm the numbers, but subject to

13 check, I think that sounds like something I would have done

14 with my colleagues.

15 Q And isn't it true that you and your colleagues also

16 ordered Consumer Power Company to use those proceeds to retire

17 utility debt and to increase spending on capital additions to

18 improve the reliability of the utility's electric system?

19 A That sounds like a good thing to do.

20 MS. BENNETT: I have no further questions.

21 CHAIRMAN EDGAR: Mr. Burnett.

22 MR. BURNETT: No redirect, Madam Chairman.

23 And, if appropriate, we would move into evidence

24 SMF-1 as Exhibit 33.

25 CHAIRMAN EDGAR: Exhibit 33 will be entered into the

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1 record.

2 (Exhibit 33 admitted into evidence.)

3 CHAIRMAN EDGAR: And the witness is excused. Thank

4 you.

5 THE WITNESS: Thank you very much.

6 MR. BURNETT: May he be dismissed from the

7 proceeding?

8 CHAIRMAN EDGAR: He may be dismissed.

9 MR. BURNETT: Thank you.

10 CHAIRMAN EDGAR: Thank you.

11 And you may call your next witness.

12 MR. WALLS: Thank you, Madam Chairman. We call Donna

13 Davis.

14 DONNA M. DAVIS

15 was called as a witness on behalf of Progress Energy Florida,

16 and having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WALLS:

19 Q Ms. Davis, will you please introduce yourself to the

20 Commission and provide your address?

21 A My name is Donna Davis. My address is 100 East David

22 Avenue, Raleigh, North Carolina.

23 Q And who do you work for and what is your position?

24 A I work for a firm, Comensura, who is contracting

25 services for Progress Energy Service, and my title is Mines

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1 Controller.

2 Q Have you filed prefiled direct testimony and exhibits

3 in this proceeding?

4 A Yes, I have.

5 Q And do you have those in front of you?

6 A Yes, I do.

7 Q Do you have any changes to make to your prefiled

8 testimony and exhibits?

9 A No, I do not.

10 Q If I asked you the same questions in your prefiled

11 testimony today, would you give the same answers that are in

12 your prefiled testimony?

13 A Yes, I would.

14 MR. WALLS: At this time we request that the prefiled

15 testimony be moved into the evidence as if it were read in the

16 record today, and I would note that there is both direct and

17 confidential direct testimony.

18 CHAIRMAN EDGAR: The prefiled direct testimony will

19 be entered into the record as though read.

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1 BY MR. WALLS:

2 Q Ms. Davis, do you have a summary of your testimony?

3 A Yes, I do.

4 Q Will you please summarize your prefiled testimony for

5 the Commission?

6 A Yes. During the years 1996 through 2002, I was

7 responsible for reporting to this Commission and FERC the coal

8 and transportation costs incurred by Progress Fuels

9 Corporation. As a result, I was familiar with, participated in

10 PFC's coal procurement practices. Our coal procurement policy

11 and practices from 1996 through 2002 were consistent with the

12 Commission guidelines set.

13 PFC issued RFPs for Crystal River 4 and 5 for one or

14 more years, for 1996, 1998 and 2001. We maintained a bidder

15 list of over 100 bidders. This bidder list always included

16 coal suppliers or coal brokers, with domestic, foreign, and PRB

17 subbituminous coal. Also, our RFPs were published in the coal

18 publications, and we were known in the industry to be on a spot

19 basis from month-to-month. PFC's RFPs were sent to all bidders

20 on the bidder list. PFC's RFPs always included specifications

21 for bituminous and subbituminous coal. PFC expressed an

22 expectation for coal quality, but stated only coals exceeding

23 the sulfur requirement for Crystal River 4 and 5 would not be

24 considered. All other coals were considered and evaluated.

25 PFC did evaluate coals in response to the RFPs based

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1 on a delivered cost and an evaluated busbar cost basis when the

2 coal offered differed from the preferred quality specification.

3 We conducted the RFPs the same way in '96, '98, and 2001.

4 PFC received several bids from PRB suppliers in

5 response to the 2001 RFP. PFC did not receive any response for

6 the PRB suppliers in response to the 1996 or the 1998 RFP.

7 PFC also received numerous spot purchase offers from

8 time to time from a variety of coal suppliers. It is well

9 known in the industry that PFC purchased coal pursuant to spot

10 offers month-to-month. Subbituminous coal suppliers would have

11 been considered had they offered coal on the spot market, but

12 to the best of my knowledge, none of these did during my time

13 frame.

14 PFC was aware of PRB coals throughout the '96 to 2002

15 time period and examined it regularly. We understood that PRB

16 coals were different from bituminous coals, and there might be

17 a potential for derates and additional costs if they were used.

18 PFC also examined other fuel sources for Crystal 4

19 and 5, such as synfuels, petcoke and foreign bituminous coals.

20 PFC did not favor any coal or coal supplier over

21 another. We bought the lowest cost offered to us on an overall

22 evaluated basis. We did evaluate coal shipped by water,

23 including PRB and foreign coals, using the waterborne market

24 proxy approved by this Commission. We applied the waterborne

25 proxy to all coals that would be shipped to Crystal River in

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1 our coal evaluations during this period of '96 to 2002.

2 I do want to say that Mr. Sansom's reliance on TECO

3 FERC Form 423 for PRB delivered prices do not include a cost to

4 unload the coal at the terminal, store it, or load it onto a

5 Gulf barge. Those terminals are included in PEF's Form 423 for

6 delivered prices to IMT. I know this because I have prepared

7 the forms for both Tampa Electric and Progress Energy Florida.

8 I have a few words to say about synfuels. Many

9 utilities in the southeast and eastern United States were

10 purchasing synfuels during the time period PFC was purchasing

11 synfuels for Crystal River 4 and 5. PFC affiliates were

12 involved in the production, marketing and sale of synfuels and

13 did receive tax credits. PEF, however, was a very small

14 customer of synfuels from PFC affiliates, and the tax credits

15 from synfuel sales to PEF were an insignificant part of the

16 total tax credits that PFC received. PFC affiliates sold many

17 more tons of synfuels to other customers who, like PFC,

18 purchased synfuels when it was cost-effective to do so.

19 I also want to express PFC and PEF met regularly with

20 this Commission staff and other parties to tell them about what

21 we were doing and to answer any questions they had. I know

22 that because I was present at all of those meetings. Our

23 records on coal procurement, in addition to what we filed with

24 the staff were available at the asking, and we responded to any

25 questions that they had. Our coal purchases have been audited

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1 every year, and we have answered any questions raised during

2 those audits at our meetings, which would be two to four a

3 year, with the staff, the Office of Public Counsel, and FIPUG,

4 and many of the people present in here today.

5 To sum up, we cannot buy coal that is not offered to

6 us. If our coal procurement practices are the same during this

7 entire period of time, and they were, they were adequate to

8 generate bids from PRB suppliers and foreign bituminous coal

9 suppliers at certain times, and they did, then they must have

10 been reasonable and prudent. I believe they were.

11 Thank you very much.

12 MR. WALLS: We tender Ms. Davis for

13 cross-examination.

14 CHAIRMAN EDGAR: Thank you.

15 Mr. Twomey.

16 MR. TWOMEY: Madam Chair, I don't have any questions

17 of Ms. Davis, but I have a request on behalf of all the

18 intervenors. And that is that you consider allowing Public

19 Counsel to cross first for each of the company's witnesses with

20 our expectation that that will shorten the total time of cross.

21 Thank you.

22 CHAIRMAN EDGAR: Thank you, Mr. Twomey.

23 Mr. McGlothlin.

24 MR. McGLOTHLIN: Thank you.

25 CROSS EXAMINATION

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1 BY MR. McGLOTHLIN:

2 Q Ms. Davis, at Page 3 and the top of Page 4 of your

3 prefiled testimony, you state that from '84 to 2005 you held

4 positions involving the accounting and reporting of PFC's

5 regulated business and reported fuel costs to the Public

6 Service Commission and FERC, and that in 2004 you also became

7 responsible for the accounting of PFC's nonregulated coal

8 activities, is that correct?

9 A That's correct.

10 Q PFC being Progress Fuels Corporation?

11 A That's correct.

12 MR. McGLOTHLIN: I'm going to distribute a document

13 for some questions, and I ask that an exhibit number be

14 assigned to it.

15 CHAIRMAN EDGAR: Thank you. That would be 213.

16 And what would you like to label it, Mr. Mcglothlin?

17 MR. McGLOTHLIN: Progress Fuels Corporation

18 Organizational Chart.

19 (Exhibit 213 marked for identification.)

20 BY MR. McGLOTHLIN:

21 Q Ms. Davis, we have provided you with a one-page

22 exhibit marked 213, and captioned Progress Fuels Corporation

23 Energy Affiliates for Deliveries to FPC 2002. It's an excerpt

24 from a staff document. Have you had a chance to look it over?

25 A Yes, sir.

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1 Q Do you recognize this to be an organizational chart

2 showing the corporate structure of Progress Energy and its

3 subsidiaries?

4 A Yes, sir.

5 Q And focusing on Progress Fuels Corporation, by whom

6 you were employed, would you take a moment and identify for us,

7 and I'll ask you one at a time, the business of each entity

8 that is involved there. For instance, under Progress Fuels

9 Corporation, the first block to the left under Progress Fuels

10 Corporation is Homeland Coal Company, Inc. Who is Homeland

11 Coal Company, Inc.?

12 A Homeland Coal Company was a company which held an

13 interest in Powell Mountain Joint Venture.

14 Q What is their business?

15 A The business would be for the mining and selling of

16 coal.

17 Q And to whom did they sell coal?

18 A Anyone who would be in the market that would need the

19 coal which they produced.

20 Q Would that include Florida Power Corporation?

21 A At one time. Homeland did not sell coal to Progress

22 Fuels Corporation; Powell Mountain did.

23 Q So Powell Mountain Joint Venture would sell coal to

24 Progress Fuels Corporation and Progress Fuels would buy as

25 agent for the utility, is that correct?

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1 A That's correct. They had a contract with the

2 utilities, not as agent for.

3 Q All right. The next block over is Kentucky May Coal

4 Company, Inc. Who is that entity?

5 A Kentucky May Coal Company, Inc. was purchased in

6 1985, and they were in the coal mining and terminal business.

7 Q And that's a subsidiary also of Progress Fuels

8 Corporation?

9 A That is correct.

10 Q Were they in the business of selling coal to Progress

11 Fuels Corporation?

12 A Yes, Kentucky May Coal at times have had a contract

13 with Progress Fuels Corporation. They sold to many people.

14 Q And that was in Progress Fuels Corporation's capacity

15 as procurer of coal for Florida Power Corporation, is that

16 correct?

17 A Kentucky May did sell to Progress Fuels to sell to

18 Florida Power Corporation.

19 Q The first subsidiary under Kentucky May Coal Company

20 is Cincinnati Bulk Terminals. What is that entity?

21 A Cincinnati Bulk Terminals was, as is stated, a

22 terminal. It also sold bulk commodity products, including some

23 coal.

24 Q Did they sell of their own capacity or did they have

25 an agent?

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1 A Cincinnati Bulk Terminals purchased other coal and

2 sold.

3 Q And did they sell to Progress Fuels Corporation?

4 A They sold a little to Progress Fuels over the years.

5 Q And that was in Progress Fuels Corporation's capacity

6 of coal procurer for the utility, is that correct?

7 A That's correct.

8 Q What about Kanawha River Terminals, Inc.?

9 A Kanawha River Terminals is a terminal up on the

10 Kanawha, and it sells coal and has terminaling services.

11 Q What do you mean by terminaling services?

12 A It would be where you transload coal onto barges for

13 customers.

14 Q I see. On occasion would it transload coal that was

15 being purchased and delivered to Florida Power Corporation?

16 A Yes. We discussed that at length during our

17 '88 hearings.

18 Q Who is Black Hawk Synfuel LLC?

19 A Black Hawk is owned 10 percent by Kanawha River

20 Terminals here, and it is a company which sells feed stock to

21 New River Synfuel LLC.

22 Q And who is New River Synfuel LLC?

23 A New River Synfuel LLC, as I said, is -- Black Hawk

24 owns 10 percent of it, another party owns 90 percent of it, and

25 it produces synfuel.

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1 Q Black Hawk, I believe you said, sells coal to New

2 River Synfuel, I imagine for New River Synfuels' use in

3 preparing the synfuel product, is that correct?

4 A That is correct.

5 Q Does New River Synfuel then sell the synfuel product

6 back to Black Hawk?

7 A No, sir.

8 Q To whom does it sell synfuel?

9 A To many people up and down the river, the Ohio River,

10 and to anybody who would request to buy synfuel.

11 Q Including Progress Fuels Corporation?

12 A Yes, we have sold -- we have purchased some from New

13 River.

14 Q In Progress Fuels Corporation's capacity as a

15 procurer of fuel for Florida Power Corporation?

16 A Yes. We discussed that quite extensively when this

17 form was made back in the 2002 period.

18 Q Under Kanawha River Terminals, Inc., there is a block

19 for Marmet Synfuel, LLC. What is that entity?

20 A That is a host plant, an investor-owned plant who

21 makes synfuel.

22 Q And does Kanawha River Terminals then have an

23 ownership interest in Marmet Synfuel, LLC?

24 A Let me restate that, sir. Marmet Synfuel actually is

25 owned by Kanawha River Terminals, but it does not produce

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1 synfuel. There are two host plants, Calla and Imperial

2 (phonetic), who Marmet Synfuel sells feed stock to to produce

3 synfuel.

4 Q Are they shown on this organizational chart at all?

5 A They are not related to us.

6 Q I see. There is a block for Dixie Fuels Limited.

7 Who is that entity?

8 A Dixie Fuel was a transportation supplier which we

9 held a partnership in that delivered the coal from -- to the

10 Crystal River plants.

11 Q And that is a subsidiary of Progress Fuels

12 Corporation?

13 A It was a partnership at one time during this period.

14 Q A partnership in which Progress Fuels Corporation had

15 a partnership interest?

16 A That's correct.

17 Q And did Progress Fuels Corporation contract with

18 Dixie Fuels Limited to transport coal that Progress Fuels

19 Corporation had purchased for the utility?

20 A Yes, sir.

21 Q For Florida Power Corporation?

22 A Yes, sir.

23 Q There is a block for Progress Rail Services

24 Corporation. What is that entity?

25 A Progress Rail Corporation repaired rail cars. They

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1 had leased rail cars. There was a number of different things

2 to do with rail cars that they were involved in.

3 Q And is that a subsidiary of Progress Fuels

4 Corporation?

5 A Yes, it is.

6 Q Did Progress Rail Services Corporation contract with

7 Progress Fuels Corporation to provide rail services to haul the

8 coal being purchased for the utility?

9 A No, sir.

10 Q And what was the nature of Progress Fuel Services

11 Corporation's business then?

12 A A maintenance agreement for the rail cars that

13 Progress Fuels owned.

14 Q I see. With respect to Homeland Coal Company, Inc.,

15 Kentucky May Coal Company, Inc., Dixie Fuels Limited, and

16 Progress Rail Services Corporation, was there any commonality

17 to the administration or the physical offices among those

18 entities?

19 A During what time frame?

20 Q Well, let's use the 2002 date to begin with.

21 A Well, all the companies were owned by Progress Fuels

22 Corporation or either it was a partnership with Progress Fuels

23 Corporation. Their books were done at different places. They

24 were not all done at the same place, the accounting was not all

25 done at the same place, but they were all either a partnership

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1 or owned by Progress Fuels. That would be their commonality.

2 Q What about their physical headquarters, any

3 commonality there?

4 A The reason I am hesitating, I'm trying to remember

5 about Homeland Coal Company, when that changed. At one time it

6 was in St. Petersburg, their headquarters was, and Kentucky

7 May, but Dixie was not. And Progress Rails' headquarters was

8 in Alabama.

9 Q What about the officers of the corporations that we

10 have talked about so far, were any individuals officers of more

11 than one of any of these corporations at any point in time?

12 A Yes, sir.

13 Q Can you identify any officers who served either as

14 president or vice president for more than one of these

15 companies?

16 MR. WALLS: Object, as ambiguous to time frame.

17 CHAIRMAN EDGAR: Can you clarify?

18 MR. McGLOTHLIN: At any time frame.

19 CHAIRMAN EDGAR: Can the witness answer the question?

20 THE WITNESS: I would say our president might have

21 been an officer on the companies at one time, all the companies

22 at one time, but that would be the only one I could speak to.

23 BY MR. McGLOTHLIN:

24 Q And who was that?

25 A Mr. Rich Keller.

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1 MR. McGLOTHLIN: If we can have another moment,

2 please.

3 CHAIRMAN EDGAR: Okay. We are at Number 214.

4 Mr. McGlothlin, will you give us a title?

5 MR. McGLOTHLIN: Yes. Progress Energy, Inc., U-9C-3,

6 March 2003.

7 (Exhibit 214 marked for identification.)

8 BY MR. McWHIRTER:

9 Q Ms. Davis, we've provided you a document which has

10 been identified as 213 (sic). It is a Form U-9C-3 that

11 Progress Energy filed with the Securities and Exchange

12 Commission for March '03. Would you turn to Page 2 of 7, which

13 is entitled Organizational Chart, and take a moment to review

14 that, please.

15 A Where is the page number on here?

16 Q Top left.

17 A Okay. 2 of 14, is that what you said?

18 Q 2 of 7.

19 A 2 of 7.

20 Q And there is a caption that says, Item 1,

21 Organization Chart.

22 A Mine in the right top corner says 1 of 14, and then

23 continues.

24 Q If you're looking at that, then Page 4 of 14 is what

25 corresponds.

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1 A I'm sorry, I didn't hear you.

2 Q Page 4 of 14, which is also 2 of 7.

3 A Page 4 of 14, you said?

4 Q Yes. You will see Item 1, Organization Chart there.

5 A Yes.

6 Q If you will take a moment to review that, I want to

7 ask you a few questions about it.

8 A Okay.

9 Q You've indicated your positions with Progress Fuels

10 Corporation. What is your involvement, if any, with Progress

11 Ventures, Inc.?

12 A Progress Ventures, Inc. an arm of Progress Fuels, but

13 I don't have really any involvement with them.

14 Q It is related to Progress Fuels Corporation, though?

15 A (Indicating affirmatively.)

16 Q There are some entities listed here that differ from

17 the 2002 organizational chart, and I want to ask you, if you

18 can, to tell me the business each is in. CPL Synfuels, LLC,

19 are you familiar with that entity?

20 A No, sir, I'm not familiar by that name.

21 Q Do you know it by another name?

22 A Unless it -- underneath that is Solid Fuels and Sandy

23 River, so it may be what Progress Fuels calls the upper level

24 company.

25 Q Did you say --

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1 A It says holding company over in the far right-hand

2 corner.

3 Q Okay. Who are Solid Fuel and Sandy River Synfuel?

4 A Solid Fuel and Sandy River are synfuel-producing

5 companies owned by Progress Fuels and Progress Ventures.

6 Q And, if you know, did they sell synfuel to Progress

7 Fuels Corporation for delivery to the utility?

8 A They sold a little bit during one year, I believe.

9 Q Okay. Under the item for Progress Fuels Corporation,

10 you will see several entities listed, EFC Synfuel, LLC, who is

11 that?

12 A That is the holding company for the companies listed

13 underneath it.

14 Q All right. Ceredo Synfuel, LLC, who is that.

15 A That is the synfuel plant at Ceredo, West Virginia.

16 Q Did Ceredo Synfuel, LLC sell products to Progress

17 Fuel Corporation?

18 A No, sir.

19 Q What about Sandy River Synfuel?

20 A I think during one year they sold a little bit, but

21 normally they cannot sell because of their ownership interest.

22 Q And Solid Energy, LLC?

23 A Again, the same answer.

24 Q Kentucky May Coal Company is listed there, and that

25 is one of the entities on the 2002 organizational chart, but

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1 the entities listed under KRT Holdings, Inc. differs somewhat.

2 For instance, Coal Recovery V, LLC, what is that entity?

3 A Coal Recovery V is a company which held some patents

4 to the synfuel plant at one time.

5 Q What about the Colona Newco, LLC?

6 A I'm not familiar with all of the names as they are

7 listed. I work more with the operating companies.

8 Q All right.

9 A It says that Colona Newco is a holding company.

10 Q If Colona Newco is the holding company, then, would

11 the Colona Synfuel Limited Partnership be one of the operating

12 companies of which you are familiar?

13 A No, sir. It is not really the operating company.

14 This would be the different layers of the companies from the

15 operating company up to Colona Newco.

16 Q All right.

17 MR. McGLOTHLIN: Let's have the agenda passed out.

18 We are going to distribute another document.

19 CHAIRMAN EDGAR: This will be Number 215.

20 Mr. McGlothlin, for a title.

21 MR. McGLOTHLIN: March 14th, 2005, Agenda, New River

22 Synfuel.

23 (Exhibit 215 marked for identification.)

24 BY MR. McGLOTHLIN:

25 Q Ms. Davis, you have been provided a copy of a

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1 document that has been marked as 215, proposed agenda, New

2 River Synfuel LLC. Do you have that before you?

3 A Yes, sir.

4 Q You'll see on the first page under the cover sheet

5 that it indicates that you were a participant on behalf of

6 Black Hawk Synfuel LLC. Do you see that?

7 A Yes, sir.

8 Q And did you attend a meeting on March 14th for which

9 this served as a proposed agenda?

10 A Yes, sir, I did.

11 Q And do I understand correctly that Mr. Weintraub was

12 also there in a similar capacity on behalf of Black Hawk?

13 A Yes, sir.

14 Q The second page refers to a $4 spread for the Synfuel

15 feed stock spread. Would you tell the Commissioners what that

16 means?

17 A Yes, sir. That would be the difference in the cost

18 of the feed stock and the amount of sale to the ultimate

19 consumer.

20 Q In other words, the price of the product would be $4

21 above the cost of the raw material, is that correct?

22 A The sale would be $4 less than the raw material.

23 Q Number 6 refers to a $4 Infinity commission sales on

24 purchase and sales, do you see that?

25 A Yes, sir.

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1 Q Would you explain what that item involved?

2 A Are you referring to 6A, sir?

3 Q Yes, 6A, B, and C?

4 A It refers to the $4 differential between the cost of

5 the feed stock and the sale to the ultimate consumer.

6 Q I'm sorry, could you speak up just a little bit? I'm

7 having trouble.

8 A It refers to the $4 differential between the feed

9 stock and the sale to the ultimate consumer.

10 Q Okay. But this is mentioned as specific to Infinity.

11 Does it differ in any way from the discussion or the treatment

12 of the synfuel feed stock spread that was discussed in

13 Number 5?

14 A No, sir. The spread is what it is. It is just the

15 difference in your feed stock cost and whatever the ultimate

16 consumer pays. Most often that would be a $4 spread.

17 Q Was there a particular transaction between Infinity

18 and either New River or Black Hawk that was the subject of this

19 agenda?

20 A Would you repeat that question, please?

21 Q Yes. Was there a particular transaction, either

22 existing or pending, between Infinity, on the one hand, and

23 either New River or Black Hawk on the other, that was the

24 subject of this item on the agenda?

25 A No, sir, I don't think it was a particular

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1 transaction. They were just overall looking at the $4 spread

2 for Infinity. It was not one single transaction.

3 Q Was the $4 spread between the feed stock and the

4 final price applicable generally to all of the synfuel

5 transactions?

6 A It varied. It wasn't necessarily four, it could be

7 three, it could be two, it could be five, it could be six.

8 Q And what would govern the determination of the spread

9 in a particular transaction?

10 A The cost at which the synfuel could be sold.

11 Q Now, who is Infinity?

12 A It's a sales agent for Panther Coal, and I don't know

13 if they have other coal companies. I think they did. That is

14 the way I knew them; they were the sales agent for Panther.

15 Q And did Progress Fuels Corporation purchase coal from

16 Infinity for delivery to Crystal River 4 and 5?

17 A During the time frame '96 to 2002, I do not recall

18 any.

19 Q Was Infinity a participant or a bidder to any RFPs

20 that Progress Fuels Corporation conducted on behalf of the

21 utility?

22 A Not between '96 and 2002, during my time period.

23 Q Do you know whether they were at any point?

24 A I believe there was some mention in Mr. Pitcher's

25 testimony that he could address.

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1 Q And did Black Hawk purchase coal from Infinity for

2 delivery to the synfuel production plant?

3 A Black Hawk would not purchase coal from Infinity.

4 Black Hawk would purchase their coal from KRT.

5 Q KRT being --

6 A At cost.

7 Q Would any subsidiary or affiliate of Progress Fuels

8 Corporation purchase coal from Infinity as feed stock for the

9 synfuel production process?

10 A Yes, sir. They purchased from a lot of suppliers.

11 That would have been one.

12 Q If you would, Ms. Davis, turn to DMD-15?

13 A Yes, sir.

14 Q And I will do the same. Would you identify this

15 document captioned 2003 Compliance Coal Costs, which

16 constitutes your DMD-15?

17 A Yes, sir. It was a document done by Mr. Edwards, who

18 was my boss, on February the 9th, 1999. And it is labeled

19 Exhibit Number DMD-15. It was comparing a forecast for Central

20 Appalachian Powder River Basin 50/50 blend and South American

21 coal, what he thought might be happening in 2003, four years

22 into the future.

23 Q Right. And focusing on the Powder River Basin

24 prediction, there is a reference to a transfer of 250 at

25 McDuffie Terminal. Do you see that?

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1 A Yes. sir.

2 Q What is McDuffie Terminal?

3 A McDuffie would be at Mobile, Alabama. It's a state

4 terminal.

5 Q And that was the assumption that Mr. Carter used at

6 the time he prepared this estimate, that it would be delivered

7 through the McDuffie Terminal?

8 A Mr. Edwards at that time --

9 Q Mr. Edwards, I'm sorry.

10 A -- was projecting that it might move, and he was

11 using his projections here, the McDuffie Terminal.

12 Q Now, if you would turn to DMD-5, Page 21?

13 A Yes, sir.

14 Q This is the letter from Kennecott Energy to which you

15 refer in your prefiled testimony, do you not?

16 A Yes, I do.

17 Q It's dated 1998. Was that in conjunction with the

18 RFP that the company issued in 1998?

19 A Yes, it was.

20 Q And in your testimony you say that Kennecott Energy

21 declined to submit a bid, do you not?

22 A Yes, I do.

23 Q First of all, is it true that there is no copy of the

24 RFP document that was provided to us in discovery for 1998, if

25 you know?

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1 A I'm sorry, sir. I don't know what was provided

2 during discovery. I assume they provided everything.

3 Q All right. Would you read the second full paragraph

4 of the letter?

5 A The full paragraph?

6 Q Yes.

7 A Our current coal portfolio is comprised of

8 subbituminous Powder River Basin coals, with a heating value

9 ranging from 8400 to 9400 Btu per pound, and a Colorado coal

10 with a heating value of 10,500 Btu. We continue to pursue

11 opportunities that might fit your future requirements and would

12 appreciate remaining on your bid solicitation list.

13 Q Okay. Focusing first on the first sentence, would

14 you agree with me that the sense of this sentence is that they

15 do have some coal for sale of the properties or description

16 provided in that sentence?

17 A I would agree that it says they have a current

18 portfolio. I would not necessarily agree that it is for sale.

19 Q They provide a heating value ranging from 8400 to

20 9400 Btus per pound for Powder River Basin coals. Was there

21 anything about that range of Btu content that would have not

22 met the criteria of the '98 RFP, if you know?

23 A The Btu would have met the subbituminous minimum

24 requirements.

25 Q What about the Colorado coal with the heating value

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1 of 10,500 Btus, would that have been an eligible coal in the

2 1998 RFP, if you know?

3 A The Btu would have met the requirements, whether it

4 would have been eligible would have been another question.

5 Q I see. Is the term "portfolio" one that is commonly

6 used by participants in an RFP?

7 A No, sir. I normally don't see that term. Normally I

8 would see, you know, a bid, an actual bid.

9 Q The second sentence says we continue to pursue

10 opportunities that might fit your future coal requirements and

11 would appreciate remaining on your bid solicitation list.

12 Would you agree with me that this conveys the sense that they

13 are of the view that their current portfolio is not responsive

14 to the RFP?

15 A Would you repeat that one more time, please?

16 Q Yes. Looking at the second sentence beginning with

17 we continue, would you agree with me that the sense of that

18 sentence is that they have formed the view, for whatever

19 reason, that their current portfolio is not responsive to the

20 RFP?

21 MR. WALLS: Objection, calls for speculation.

22 MR. McGLOTHLIN: I'm asking how she understands the

23 letter that was written in response to the 1998 RFP, and she

24 has characterized it as a decision of the company to decline

25 the bid which might be equally speculation, so I'm probing

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1 that opinion that she has formed.

2 CHAIRMAN EDGAR: You may restate the question, and

3 the witness is directed to attempt to answer it.

4 BY MR. McGLOTHLIN:

5 Q Ms. Davis, would you agree with me that the sentence

6 we continue to pursue opportunities that might fit your future

7 coal requirements, conveys the view that they have formed, for

8 whatever reason, that the portfolio described is not responsive

9 or acceptable to the utility?

10 A I think what I would agree is that they are not

11 offering any coal, because they are saying they would continue

12 to pursue opportunities. But there is no bid attached to it.

13 There is nothing else there. And if I receive a -- when I send

14 out a bid solicitation, I would -- I asked for them to respond

15 with a price, a term, quantity, and received none of that.

16 Q But when they say we continue to pursue opportunities

17 that might fit your future coal requirements --

18 A Perhaps they are saying they want to stay on the bid

19 list for the next time.

20 Q But you disagree with my proposition, which is that

21 this conveys the view that the portfolio they described in the

22 first part of the paragraph does not conform or is not

23 acceptable to the utility? You disagree with that?

24 A Would you repeat that one more time, please? Your

25 question is confusing me somewhat.

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1 Q I'll try. I submit to you that when Kennecott says

2 on the one hand, here is what we have got, here is our

3 portfolio and describes it.

4 A Correct.

5 Q And then follows that with the sentence that says we

6 are continuing to look for opportunities that might fit your

7 coal requirements, that means that they are of the view that

8 for whatever reason, their current portfolio does not conform

9 to what the utility is looking for?

10 A No, I don't agree with you, sir. Because when we

11 sent the bid solicitation out, it said 8200. So, therefore, I

12 think they are saying they have a current portfolio, but they

13 are not offering it. And why they are not offering it, I have

14 no idea. They didn't send in a bid. They didn't send in a

15 tonnage. They didn't send in any kind of offer.

16 Q Turn to DMD-14, Page 2 -- well, Pages 1 and 2.

17 A Okay.

18 Q Would you identify this document?

19 A It was an interoffice memo from Mr. Dennis Edwards to

20 a Mr. Bernie Cumbie (phonetic).

21 Q And if you will, turn to Page 2 and read the first

22 sentence of the paragraph that falls below the summary of

23 costs?

24 A In addition to these costs, I believe we should

25 recognize that we will, in all likelihood, be using Powder

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1 River Basin coals at 4 and 5 by about 2000, my guess.

2 Q And when was this prepared?

3 A February 9th, 1998.

4 Q Please turn to Page 42 of your prefiled testimony.

5 A Yes, sir.

6 Q At Line 11, you say this data shows that TECO's

7 purchases of PRB coal were never the cheapest, and often one of

8 the most expensive coals that TECO purchased on a delivered

9 cost basis to the transfer facility. Do you see that line?

10 A Yes, I do.

11 Q If you know, what quality of bituminous coal was TECO

12 purchasing at the time?

13 A Well, TECO volume purchases for Gannon and Big Bend

14 at the transfer facility, so they would have bought low sulfur

15 and high sulfur coal. And during this time they also bought

16 this Powder River Basin coal for environmental purposes.

17 Q And you mentioned the high sulfur coal, that would be

18 from the Illinois Basin origin?

19 A Illinois Basin, Central Appalachian, numerous places.

20 Q Would you agree with me that high sulfur coal will be

21 priced differently than low sulfur Powder River Basin coal?

22 A Yes, sir, I have no objection to that. I'm just

23 saying that the Powder River Basin coal was bought for

24 environmental purposes, not for price.

25 Q You mentioned that TECO was buying both low sulfur

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1 and high sulfur coal for delivery to the terminal. What was

2 the destination of the low sulfur bituminous coal?

3 A Gannon.

4 Q Okay. At Page 38, Ms. Davis.

5 A Yes, sir.

6 Q In the middle of the page you say to my knowledge,

7 during the 1996 through 2002 time period we never received an

8 offer for a spot sale of subbituminous coal. To your

9 knowledge, did the company ever seek bids on spot basis from

10 subbituminous producers?

11 A I think because we were known to be out in the

12 industry -- by the industry to be out every month for spot

13 sales by the Archies (phonetic), the Peabodys, the Amaxes, by

14 the Rags, everybody knew we were out for coal. So, therefore,

15 we were always seeking bids from anyone who had coal, foreign,

16 subbituminous, or bituminous. It was industry knowledge.

17 Q But to your knowledge, did the company ever actively

18 solicit spot proposals from producers of Powder River Basin

19 coal?

20 A I would consider that actively, if you are out every

21 month seeking bids from all of those suppliers.

22 Q In your testimony you discuss some comparisons of the

23 delivered price of coals to TECO's terminal. In the course of

24 conducting RFPs, or in the course of preparing your testimony,

25 did you ever compare the delivered price of Powder River Basin

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1 coal delivered to Davant to the delivered price of CAPP coal,

2 or that is Central Appalachian coal, or synfuel to IMT?

3 A Yes, sir. I looked at TECO's purchases each month, I

4 looked at Gulf Power's purchases each month, and I looked at,

5 of course, Progress Fuels because I produced those reports.

6 Q Can you point to anyplace in your testimony where you

7 report or treat the comparison that I have just mentioned, the

8 delivered price of Powder River Basin coal to Davant on the one

9 hand, to the delivered price of Central Appalachian coal or

10 synfuel to IMT?

11 A I know it's in my exhibits where I have charts that

12 we did on TECO. I don't have a comparison if that's what you

13 are asking for.

14 MR. McGLOTHLIN: That's what I'm asking for. Could I

15 have a moment to review my notes? (Pause.)

16 BY MR. McGLOTHLIN:

17 Q Ms. Davis, I believe you are in a position to answer

18 this question, so answer if you know. As Progress Fuels

19 Corporation in its capacity of procuring coal for Progress

20 Energy Florida evaluated bids submitted by producers of Powder

21 River Basin coal, say, in 2003/2004 RFPs, is it true that in

22 calculating the delivered price Progress Fuels Corporation

23 attributed to the producers of the Powder River Basin coal what

24 has been referred to as a market proxy transportation rate?

25 A Yes, sir, we did use a market proxy, the proxy that

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1 was approved by this Commission.

2 Q And is it true that in arriving at what has been

3 called an evaluated cost per million Btus, the Progress Fuels

4 Corporation ascribed to Powder River Basin coal some penalty

5 associated with expected impacts on boiler performance?

6 A They did a busbar analysis, yes, sir.

7 Q And during the busbar analysis, some quantification

8 of predicted boiler performance was used that served to

9 penalize or have a negative impact on the competitiveness of

10 Powder River Basin coal?

11 A Not only that coal, but any coal that would be

12 different.

13 Q That would be different than what?

14 A It could have been a new coal that we were buying

15 from Colorado, it could have been anything we do a busbar on

16 that we are not familiar with.

17 Q And that was done even though the Crystal River Units

18 4 and 5 were built with the assumption that they would be

19 designed to and would burn a blend consisting of 50 percent

20 Powder River Basin coal?

21 A I don't think the design had anything to do with it,

22 sir. They did a busbar on any coal they were not familiar

23 with.

24 MR. McGLOTHLIN: Those are all of my questions.

25 CHAIRMAN EDGAR: Thank you, Mr. McWhirter (sic).

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1 Mr. Brew.

2 MR. BREW: No questions.

3 CHAIRMAN EDGAR: Ms. Bradley.

4 MS. BRADLEY: No questions.

5 CHAIRMAN EDGAR: Questions from staff?

6 MR. YOUNG: Yes, Madam Chairman.

7 CROSS EXAMINATION

8 BY MR. YOUNG:

9 Q Ms. Davis, good afternoon.

10 A Hello.

11 Q I will see if I can get you out of here before -- in

12 20 minutes?

13 A Okay. Great.

14 Q Or less than that. In your prefiled testimony you

15 were Director of Regulatory and Administrative Services,

16 correct?

17 A Yes, sir, I was.

18 Q And that involved -- can you explain that? What does

19 a person who is Director of Regulatory and Administrative

20 Services do?

21 A Yes, sir. I had people under me who did contract

22 administration, who did analysis for the procurement of coal or

23 transportation, who did the reporting of the purchases of the

24 coal and transportation, not only to this Commission, but to

25 the FERC. I was responsible to come up and work with staff,

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1 Public Counsel, and FIPUG numerous times during the years, and

2 then annually, any questions that they might have in going over

3 what all we were buying. I also was over our central file

4 section, which is where we kept our records.

5 Q Okay. As Director of Regulatory and Administrative

6 Services you worked closely with Mr. Edwards?

7 A Yes, sir, I did.

8 Q And that is Mr. Dennis G. Edwards, who was VP of Coal

9 Procurement?

10 A Yes, sir.

11 Q As Vice-President of Coal Procurement, Mr. Edwards

12 was responsible for coal procurement for the whole -- for all

13 of Progress Energy Florida, correct?

14 A For coal procurement for Crystal River 1, 2, 4, and

15 5.

16 Q Okay. Thus, Mr. Edwards made the final decisions as

17 relates to coal procurement for 1, 2, 4, and 5, CR1, 2, 4, and

18 5?

19 A Mr. Edwards made those decisions in conjunction with

20 the folks at Florida Power Corporation at the time.

21 Q And you were -- in your prefiled testimony you stated

22 that you worked closely with Mr. Edwards?

23 A Yes, I did.

24 Q He frequently copied on communications with PFC

25 management concerning coal procurement and coal

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1 transportations?

2 A Yes, sir, I was.

3 Q As Director of Regulatory and Administrative Services

4 for Progress Fuel Cooperation, you never personally discussed

5 with other utilities the experience they had with burning PRB

6 coal in their respective plants, correct?

7 A Not with other utilities.

8 Q To your knowledge, do you know if Mr. Edwards ever

9 personally discussed with the other utilities the experience

10 they had with burning PRB coal in their respective plants?

11 A I was personally not present if he did that.

12 Q So that would be a no? That's a no?

13 A You're saying with other utilities?

14 Q Yes, ma'am.

15 A That would be a no. I have no knowledge of that.

16 Q Okay. Ms. Davis, you never did any research

17 concerning burning PRB coal in CR4 and 5, correct?

18 A No, sir, I did not.

19 Q To your knowledge, do you know if Mr. Edwards did any

20 research on the effects of burning PRB in 4 and 5 -- I mean,

21 PRB coal in Units 4 and 5?

22 A He looked at that coal quite often. He looked at it

23 many, many times.

24 Q Ms. Edwards -- Ms. Davis, have you ever heard the

25 term "derate" before?

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1 A Yes, sir.

2 Q What is your understanding of the term "derate?" In

3 a quick one to two-minute summary, what is your understanding

4 of the term "derate?"

5 A You would get less kilowatt hours out of the unit.

6 Q Have you ever personally discussed the potential

7 derate of CR4 and 5 as a result of using PRB coals?

8 A Yes, sir, I have, with Mr. Roy Potter.

9 Q Pardon me, can you repeat that?

10 A Yes, sir, I have, with Mr. Roy Potter.

11 Q Okay. Have you ever discussed it with Mr. Edwards?

12 A Not that I recall.

13 Q Now, dealing with the issues of bituminous coal, in

14 PFC's October 1998 and May 2001 RFP, the coal procurement for

15 CR4 and 5 had a minimum Btu content of 12,300, correct?

16 A Would you repeat that one more time, please?

17 Q In PFC's October 1998 RFP, and dealing with -- in May

18 of 2001, the coal procurement for CR4 and 5, the RFP stated

19 that they wanted 12,300 Btu minimum, correct?

20 A Can I look at that, please?

21 Q Yes, you may. If you can turn to DMD-3.

22 A Yes, sir. There it says it is a 12.3 minimum, that

23 economic analysis will be based on this value.

24 Q Okay. And in 1998, did you receive any bids from

25 foreign bituminous coal suppliers?

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1 A Do you know what exhibit that is under?

2 Q Just general knowledge. Did you receive any bids

3 from foreign bituminous coal suppliers?

4 A I think AMCI Export Corporation had a proposal in

5 1998, looking at my exhibit.

6 Q Strike that question, Ms. Davis. The 12,300

7 specification, how was that specification developed?

8 A As I stated in my deposition, I came with the company

9 in '84 and that's -- I believe that has been as long as I can

10 recall and before the specification on the bid solicitation

11 that was agreed to by Progress Fuels and Florida Power at some

12 point in time, if not at origin when the units were built.

13 Q Can you speak up? I can barely hear you. I'm sorry.

14 A Yes, sir. I said I know that the specification has

15 been there since I have been at Progress Fuels Corporation,

16 since 1984, and perhaps it was there even before, since the

17 units were built.

18 MR. YOUNG: Okay. If I can have one minute, Madam

19 Chairman. (Pause.)

20 BY MR. YOUNG:

21 Q Ms. Davis, if I can have you turn to DMD-9, submitted

22 with your prefiled testimony.

23 A Yes, sir.

24 Q Do you recognize your DMD-9?

25 A Yes, sir.

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1 Q What is DMD-9?

2 A DMD-9 are the letters that I have been copied on over

3 the years for the different correspondence that Mr. Dennis

4 Edwards would write up and put into the file. Co-offers,

5 contract options, there are different kind of interoffice memos

6 in here.

7 Q Okay. And at the bottom of Page DMD-9?

8 A Which page, there is 184?

9 Q I'm sorry, Page 167 of a 184-page document?

10 A 167, yes.

11 Q Okay. At the bottom of Page 167, do you see the

12 paragraph that says with the remaining water delivered D

13 requirements?

14 A Yes, sir.

15 Q The second sentence, can you please read that

16 sentence for me?

17 A As you can see from the attached schedule, the South

18 American bids were the most competitive. The Oxbow and AMCI

19 coals were low fusion and not suitable for Crystal River 4

20 and 5.

21 Q Can you continue reading on. I'm sorry.

22 A We have evaluated the busbar effects of the Drummond

23 and Glencore bids and have sent Drummond a draft agreement to

24 review. I expect to complete an agreement with one of these

25 suppliers.

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1 Q Based on that, do you know -- can you recall the

2 amount of coal that PFC purchased based on those RFPs and the

3 returned bids?

4 A Not right offhand.

5 Q If you can turn to DMD-19?

6 A Just a moment, please.

7 Q And specifically looking at Page 4 of 10 on DMD-19.

8 A Okay. What would you like me to look at?

9 Q Looking at the -- reviewing the chart that says plant

10 operator coal transactions annual formats.

11 I'm sorry. I'm talking too loud.

12 Please take a second to review that document and

13 indicate any foreign coal that PFC might have purchased?

14 A For what years, sir?

15 Q For 1999.

16 A Yes, sir.

17 Q Isn't it true, Ms. Davis, that for 1999 PFC purchased

18 roughly 99,000 tons of foreign bituminous coal?

19 A Yes, sir.

20 Q And the foreign bituminous coal, based on the

21 1998 RFP solicitation, was the best coal available, correct?

22 A I don't know if it was the best. It says we have

23 evaluated the busbar effects of the Drummond and Glencore bids

24 and have sent Drummond a draft agreement to review. I expect

25 to complete an agreement with one of these suppliers. So I

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1 assume at this time Mr. Edwards expected for one of these

2 suppliers to sign a contract with us.

3 Q Okay. Looking at that -- focusing on Page 4 of

4 10 under the 1999 spot contract, spot purchase.

5 A Yes, sir.

6 Q The second purchase, Progress Fuel Corporation,

7 Diamond May coal, what was that -- what was that amount that

8 was purchased?

9 A 304 tons on a spot basis, 305 rounded, 305,000.

10 Q And isn't Progress Fuel Corporation an affiliate of

11 Progress Energy, Incorporated?

12 A Yes, sir.

13 Q So in 1999, you tested foreign bituminous coal, but

14 only purchased a hundred -- less than 100,000 tons, correct?

15 A In 1999 there was only 100,000 purchased. I have no

16 idea why Drummond and Mr. Edwards did not end up with an

17 agreement looking at this document.

18 Q Okay. So who would we ask to provide us more

19 information on that, Mr. Edwards?

20 A No, sir. I think we provided you the documents that

21 we have on the bid. I have no documents on why they decided

22 not to buy, and I don't believe there would be any or we would

23 have produced them.

24 Q Going back dealing with PRB coal, you never obtained

25 any studies or reports on the effects of burning PRB coal in

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1 CR4, burning PRB coal, correct?

2 A During the time frame of '96 to 2002?

3 Q Yes, ma'am.

4 A Not that I'm aware of.

5 Q You never reviewed any -- you never reviewed or

6 contacted any trade organizations requesting information

7 concerning burning PRB coal, correct?

8 A I'm not sure of that, sir, he could have. I did not.

9 Q And to the best of your knowledge, Mr. Edwards did

10 not either?

11 A To the best of my knowledge, I don't know.

12 Q So that is a no?

13 A No, sir, that is I don't know.

14 MR. YOUNG: Okay. No further questions, Madam

15 Chairman.

16 CHAIRMAN EDGAR: Exhibits? Oh, I'm sorry. It is

17 getting late. Redirect? I apologize.

18 MR. WALLS: Can I have just a moment?

19 CHAIRMAN EDGAR: You may.

20 MR. McWHIRTER: Before he starts, I had -- people my

21 age have to step out of the room occasionally, and I had to

22 step out, but I did have a couple of questions I would like to

23 ask, if that's satisfactory.

24 CHAIRMAN EDGAR: Mr. McWhirter.

25 MR. McWHIRTER: Thank you very much. I won't be

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1 long. He said it was three hours? No.

2 CROSS EXAMINATION

3 BY MR. McWHIRTER:

4 Q Ms. Davis, you have Exhibit 213 for identification

5 and 214, and there appears to be a significant difference in

6 the structure of the affiliates. But as I read the two, 213

7 relates only to the affiliates of Florida Progress Corporation

8 and down; whereas, 214 relates to -- it brings into play the

9 North Carolina affiliate, as well.

10 Am I correct in assuming that these affiliate

11 transactions were all in place in December of 2002 and didn't

12 suddenly spring forward between December 31st, 2002, and the

13 reporting date of March 31st, 2003? Was that question too long

14 and laborious? Would you like me to break it up?

15 A Some of these companies, and I don't have the numbers

16 of your exhibits, because mine are not numbered, but the

17 exhibit that says affiliate companies 2003, could have been

18 formed after the other exhibit that says waterborne

19 transportation audit. When this audit was done by the

20 Commission, these were the affiliates that were involved that

21 were for deliveries to Florida Power Corp. They are not

22 necessarily the same exhibits. And like I say, some of these

23 exhibits on the others could have been formed after the merger.

24 Q Well, I'm just trying to get a handle on it for my

25 own mind. Electronic Fuels (sic) and then the renamed Progress

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1 Fuels had subsidiaries that dealt in synfuel, and they had

2 mining companies that were subsidiaries to first Electronic

3 Fuels and then Progress Fuels, and they did business with one

4 another. Is that right?

5 A Electric Fuels Corporation did business with some of

6 their subsidiaries which we looked at during cost plus and also

7 during the 2002 Commission hearings quite extensively.

8 Q Well, did the subsidiaries sell fuel to Progress

9 Fuels or did they just -- Progress Fuels acted as an

10 intermediary to acquire fuel for the benefit of the utility

11 company?

12 A Per the Commission ruling, we had a bid process. And

13 they would bid with other suppliers to deliver, to sell coal to

14 Progress Fuels. And that fuel that was purchased by Progress

15 Fuels, through the bids solicitation process, was then

16 delivered to Crystal River 4 and 5 and sold to Florida Power

17 Corporation.

18 Q Well, did Progress Fuels and its predecessor,

19 Electronic Fuels, did it act as broker or did it buy the fuel

20 and then resell it to the utility?

21 A It bought the fuel from the Kentucky Mays or the

22 Powell Mountains or any other supplier through the bid

23 solicitation process set up by this Commission.

24 Q Can you explain why it is beneficial to the consumers

25 to have an operation where subsidiaries sell to a subsidiary

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1 and that subsidiary sells to the utility as opposed to just the

2 Progress Fuels acting as an intermediary and making the

3 contacts with the sellers?

4 A Mr. McWhirter, if you recall, back in 1976 Electric

5 Fuels was formed as a subsidiary of Florida Power Corporation.

6 Q Right.

7 A And this Commission at that time approved a contract

8 between Florida Power Corporation and Electric Fuels. So it

9 was sometime later when the other subsidiaries were formed,

10 many years later. And they, like other suppliers, would sell

11 coal through the bid solicitation process to Electric Fuels.

12 Q Well, it seems to be a fairly complex structure, and

13 I'm trying to determine why it's in the best interest of

14 consumers to have subsidiaries selling to one another. And I

15 don't want to use the word daisy chain, but selling and then

16 ultimately the utility buying from subsidiaries after the fuel

17 has been resold many times. Why can't these subsidiaries

18 just -- why can't Progress Fuels or its predecessor act as an

19 agent for the sales?

20 MR. WALLS: Object; argumentative and speculative.

21 Assumes facts not in evidence.

22 A Sir, the coal was sold at cost.

23 Q Well, what is this four dollars --

24 A If electric Fuels bought the coal at $25, they sold

25 it to Florida Power for $25.

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1 Q I see. So whatever Progress Fuels pays to the

2 subsidiary, that same price without any markup is passed

3 through to the utility company. Is that what you are saying?

4 A Yes, sir, I am.

5 Q You are not saying that?

6 A Yes, sir, I'm saying that.

7 Q Oh, you are saying that?

8 A Yes, sir.

9 Q Well, can you explain to me why the structure was set

10 up that way? What is the benefit of it?

11 A Again, sir, the original structure was set up in

12 1976. Electric Fuels in 1984-'85 went out and got into other

13 coal mining operations, and when they would -- they would bid

14 like anyone else if Electric Fuels was going out to by some

15 coal. And it was a contract that the Commission approved that

16 costs would be passed on.

17 Q Did these mining companies and synfuel companies know

18 what the bids were for other purchasers before they made their

19 bid?

20 A No, sir, and that has been looked at by the

21 Commission several times.

22 Q And they are all made simultaneously, and there is a

23 Chinese wall between Progress and --

24 A There is definitely a Chinese wall.

25 Q Beg your pardon?

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1 A There is a Chinese wall. The bids come in, they are

2 in a sealed envelope, they are all opened at the same time.

3 This staff themselves set up a quite extensive procedure that

4 we had to follow.

5 Q Well, although the fuel cost has no markup, as I

6 understand it, the parent company makes a capital investment

7 and pays administrative costs for the operations of these

8 companies, is that correct?

9 A There was a return on equity on some rail cars, and

10 there was the administrative cost that was passed on just like

11 it would have been in a base rates.

12 Q I'm sorry, I didn't quite catch that. You say that

13 Progress --

14 A There was some equity on the rail cars that a return

15 was earned on for the investment in the rail cars that Electric

16 Fuels had made, and the administrative cost was no more than

17 the administrative would have been if it was in base rates at

18 the utility level.

19 Q So are you saying that what happens is they pay the

20 cost that's bid for the fuel, but in addition to that they also

21 pay for administrative cost plus a return on the investment and

22 assets?

23 A 55 percent net of long-term assets.

24 Q I see. So, how is that administrative cost and

25 return on assets treated in the fuel filings that Progress

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1 Energy makes with this Commission?

2 A It is no longer treated that way, sir. I know they

3 changed it since I have not been involved, and I'm not sure how

4 it's handled today.

5 Q You are not sure how it is treated?

6 A Not today, sir. It's different today.

7 Q With respect to tax credits, who gets the benefit of

8 the tax credits when synfuel is sold to the utility company?

9 A It depends, sir. Like for Black Hawk, we have a

10 10 percent ownership, so 10 percent of those tax credits would

11 come to Progress Energy Corporation on a consolidated basis.

12 Q Do any portion of those tax credits flow through to

13 the subsidiary electric utility or do they all go to the parent

14 company?

15 A We file a consolidated return, so it's at the

16 consolidated level.

17 Q You file a consolidated return?

18 A Yes, sir.

19 Q Are you familiar with the accounting procedure that

20 the utility uses with this Commission when it reports the

21 income tax that it has paid on its revenues?

22 A No, sir, I'm not.

23 Q All right. That would be something I would ask

24 Mr. Portuondo?

25 A Yes, sir. That would have to be a utility question.

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1 Q When these subsidiaries sell to Progress Fuels, are

2 the prices open for review by the public or are those prices

3 confidential?

4 A Prices are filed with the Commission under a two-year

5 confidentiality agreement, which FIPUG and the Office of Public

6 Counsel can request to see.

7 Q So there is a bid process, and are you telling me

8 that all the bids are submitted simultaneously to Progress

9 Fuels by all the bidders on a day certain?

10 A No, sir. When we have an RFP, the RFP goes out, and

11 you have two to four weeks, normally around four weeks, to

12 respond to the RFP. And the secretary collects all of those

13 RFPs and keeps them in a sealed envelope at which time she

14 would open them when the date on the RFP has come to fruition.

15 Q Under the procedure used by Progress Fuels, does it

16 have to accept the lowest bid submitted that meets the RFP

17 criteria or can it accept any of the bids submitted?

18 A No, sir. We follow the Commission guidelines on what

19 we accept. They've set up guidelines that if we do not choose

20 the lowest delivered price, that we need to look overall at

21 other things that would affect it, like, is the supplier

22 reliable, you know.

23 Q In the previous questions that were asked to you,

24 you -- and in your testimony you say that you sent out RFPs to

25 90 different companies, including Kennecott that dealt

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1 exclusively in Powder River coal. From your studies, did you

2 notice a marked difference in the price of Powder River coal as

3 Mr. Sansom has testified to at some point in time from the

4 Central Appalachian coal that was available to you?

5 A The price of the coal itself on a stand-alone basis

6 is less than the price on a stand-alone basis of foreign or

7 CAPP coal.

8 Q You were aware of the significant price differential

9 that has been testified to earlier today?

10 A There is a large differential in the price, there is

11 a large differential in the Btu, but that is not the only point

12 you would consider. You have to consider transportation and

13 the supplier, what kind of reserves they have. There is a lot

14 of things that you would consider before you would make a

15 selection.

16 Q Well, the bottom line is what has been referred to as

17 the busbar cost of producing electricity out of the fuel that

18 you purchase, is that right?

19 A If you look at the busbar price on the solicitation

20 that we did have, it is at the same as the CAPP coal.

21 Q So those analyses went on. But as I understand it,

22 there was a problem with the railroads up until about 2002 and

23 2003, and that problem was resolved which reduced the

24 transportation cost significantly. Are you aware of that?

25 A I am aware that during the time I was involved,

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1 '96 to 2002, which most of the time that I was involved there

2 was a problem with the railroad, but I did not have the details

3 on it.

4 Q Were you aware of the impact that might have on the

5 busbar cost?

6 A Well, transportation, number one, if you can't get it

7 or if it is high, it would naturally have an effect on the

8 price.

9 Q Did you make any extraordinary effort to go out and

10 solicit the Powder River coal at that time, or just send out

11 your normal RFP?

12 A Well, the RFP went out to over 100 people, and in

13 some cases 135 people, so I didn't make any extraordinary

14 efforts for any one individual out of that 135 people.

15 Q Now, on Page 40 of your testimony, you indicate that

16 all the records reflecting details of evaluations before --

17 well, for the 1996 to 2002 time period have all been discarded,

18 is that correct?

19 A The records have been discarded according to the

20 record retention period, yes, sir.

21 Q I' m sorry. Would you say that again?

22 A The records have been destroyed, yes, sir, in

23 accordance with the record retention policy that Progress Fuels

24 has.

25 Q Is there any way that we can determine what your

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1 evaluation showed during that time period?

2 A I gave you the evaluation for 1998 and 2001 and '96.

3 What records I have, I gave you evaluations. They were

4 produced in discovery.

5 Q But all the other records have been destroyed?

6 A Prior to '96?

7 Q No, between 2006 -- '96 and 2002.

8 A I have given you all the records that we have, sir,

9 through discovery that you have requested.

10 MR. McWHIRTER: I have no further questions, and I

11 appreciate you accommodating me.

12 CHAIRMAN EDGAR: Thank you, Mr. McWhirter.

13 And now, Mr. Walls, redirect.

14 MR. WALLS: I will try to be very brief.

15 REDIRECT EXAMINATION

16 BY MR. WALLS:

17 Q Working backwards, Ms. Davis, you were asked some

18 questions by Mr. McWhirter, and if you first look at the

19 reference on Page 40 regarding the records of PEF, I believe he

20 phrased the question as all the records were destroyed. If you

21 look at Line 7, what does your answer say?

22 A No, some were discarded well prior to the

23 commencement of this proceeding.

24 Q And have you, in fact, attached a number of documents

25 regarding the evaluations and Mr. Edwards' review process of

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1 coals during the '96 to 2002 period in your exhibits?

2 A Yes, sir.

3 MR. McGLOTHLIN: Object to leading the witness on

4 redirect.

5 THE WITNESS: I think I said that to Mr. McWhirter a

6 few moments ago. I produced documents for '96, '98 and 2001.

7 BY MR. WALLS:

8 Q I believe you were also asked some questions by

9 Mr. McWhirter about the return that EFC received. Can you

10 explain on whose assets did EFC get authorization to get a

11 return on?

12 A This Commission authorized us to earn 55 percent

13 return on long-term assets invested in capital for the delivery

14 of coal to Crystal River, and there were numerous hearings on

15 that.

16 Q And I believe you were asked a number of questions by

17 staff regarding the evaluation of PRB coals, and you were asked

18 if you had any discussions with Mr. Edwards regarding derates.

19 And you identified that you had discussions with Mr. Roy

20 Potter. Who was Roy Potter?

21 A He was a manager of technical services. He was over

22 all of our lab. He did all of the quality analysis for all the

23 coal that went into Crystal River.

24 Q And what were your discussions, if you recall, with

25 him regarding the characteristics of PRB coals?

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1 A We would discuss at times, I would ask him about PRB

2 coal, because he was very highly thought of in the analysis.

3 And I would ask him why -- you know, why would we have a

4 derate? And he would go over about the quality of the coal was

5 much lower than what we normally burned, and it would have a

6 derate on the boilers.

7 Q I believe Mr. McGlothlin asked you a question about

8 Mr. Edwards' 2003 compliance coal cost document that you

9 attached as DMD-15?

10 A Just a moment, please. Yes, sir.

11 Q And I believe he asked you questions about

12 Mr. Edwards' evaluation of Powder River Basin and referred you

13 to the McDuffie terminal. Do you see that?

14 A Yes, sir.

15 Q Do you recall those questions?

16 A Yes, sir.

17 Q Are you aware of any differences between the McDuffie

18 terminal and the terminal in IMT?

19 A Yes. McDuffie is a state terminal, and I know we

20 have looked at it a number of times, and there was a lot of

21 things that we could get at IMT that we couldn't do at

22 McDuffie. McDuffie was very busy. They didn't offer -- or

23 they didn't offer priority berthing, which is real important to

24 us.

25 Q And why is priority berthing important to you?

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1 A For demurrage purposes. When a vessel comes in, we

2 need to get it in and get it out. We have demurrage at IMT.

3 We have demurrage on Dixie. You need to coordinate that. So

4 you need to get your vessel in and out. Of course, the quicker

5 you can get it, get the Dixie vessels out to Crystal River the

6 more coal you can deliver to Crystal River.

7 Q And what is demurrage, can you explain that?

8 A It is a charge for the ship waiting over a specific

9 amount of time.

10 Q Ms. Davis, you were asked a question about a document

11 which has been marked 215. It was the proposed agenda for New

12 River Synfuel LLC, March 14, 2005, agenda. Do you recall that?

13 A Yes, sir.

14 Q And can you tell the Commission whether that meeting

15 on March 14th, 2005, had anything at all to do with Crystal

16 River Units 4 and 5?

17 A Absolutely nothing.

18 Q I also believe you were asked questions about whether

19 when you evaluated PRB coals and other coals, whether you

20 applied the waterborne market proxy. Do you recall those

21 questions?

22 A Yes, sir, we did.

23 Q And what was your understanding of the development of

24 the waterborne market proxy?

25 A Back in 1992, the Commission wanted us to go on a --

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1 us and TECO to go on a proxy rather than a cost basis for

2 transportation. And they developed the waterborne market proxy

3 for domestic coal, and then sometime later we were buying

4 foreign coal again, and they developed a market proxy for

5 foreign coal or distressed coal that would come into IMT.

6 Q And are PRB coals domestic coals?

7 A Yes, sir.

8 Q Now, when they developed this waterborne market proxy

9 for foreign coals, how was that developed?

10 A What we did at the time, we worked with staff and

11 mostly Office of Public Counsel. And what we did, is we came

12 up with the cost of the IMT and Dixie charges as a percent of

13 the total domestic charges and used that percent.

14 Q And was that use of the applicable portions of the

15 waterborne market proxy to foreign coal shipments approved by

16 the Commission?

17 MR. McGLOTHLIN: I'm going to object to the leading

18 of the witness on redirect.

19 CHAIRMAN EDGAR: Can you rephrase?

20 MR. WALLS: Yes.

21 BY MR. WALLS:

22 Q Was that a use of certain portions of the waterborne

23 proxy?

24 A Yes, sir.

25 Q And was that approved by the Commission?

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1 A Yes, sir.

2 Q When the waterborne market proxy applied, what

3 happened if PFC's waterborne transportation costs were actually

4 higher than the market?

5 A Then we would lose money.

6 Q And was that a risk to PFC at the time the waterborne

7 market proxy was developed?

8 A Yes. We all discussed that during our numerous

9 meetings that we had, staff, Public Counsel, and ourselves, and

10 the Commissioners during the hearings.

11 Q Were there any domestic or foreign coals purchased by

12 PFC from 1996 to 2003 that the waterborne market proxy was not

13 applied to as the transportation costs?

14 A No, sir, it was applied, or a portion of it was

15 applied in all cases.

16 MR. WALLS: That's all the questions I have.

17 CHAIRMAN EDGAR: Now let's take up the exhibits.

18 MR. WALLS: Yes. I would like to move in evidence

19 DMD-1 through DMD 20, which are Exhibits 34 through 53.

20 MR. McGLOTHLIN: I move 213, 214 and 215.

21 CHAIRMAN EDGAR: Okay. Let's go ahead and enter

22 Exhibits 34 through 53.

23 (Exhibits 34 through 53 admitted into the record.)

24 CHAIRMAN EDGAR: And, Mr. Walls, any objections to

25 Exhibits 213, 214 and 215?

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1 MR. WALLS: No objections.

2 CHAIRMAN EDGAR: Okay. Those exhibits will then also

3 be entered into the record.

4 (Exhibits 213, 214, and 215 entered into evidence.)

5 CHAIRMAN EDGAR: The witness is excused. Thank you.

6 MR. BURNETT: Madam Chairman, may she be dismissed

7 from the proceeding?

8 CHAIRMAN EDGAR: She may.

9 MR. BURNETT: Thank you.

10 CHAIRMAN EDGAR: Okay. To state the obvious, we have

11 covered in one day opening statements and three witnesses. We

12 have approximately 18 witnesses to go in two days. So put your

13 seat belts on, and we will see if we can move through it

14 tomorrow at a little brisker pace. We will begin tomorrow at

15 9:30, and we look forward to seeing you all then. We are on

16 break until tomorrow morning.

17 MR. BURNETT: Madam Chairman, I'm sorry, I know you

18 hit the gavel and --

19 CHAIRMAN EDGAR: I did. Mr. Burnett.

20 MR. BURNETT: At the risk of our wrath, would you

21 consider 8:30?

22 CHAIRMAN EDGAR: Mr. Burnett, I would consider it,

23 and I rarely have wrath, but, no, we will begin at 9:30.

24 MR. BURNETT: Yes, ma'am. Thank you.

25 CHAIRMAN EDGAR: We are done for the day. Thank you.

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1 (The hearing adjourned at 5:38 p.m.)

2 (Transcript continues in sequence with Volume 3.)

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2 STATE OF FLORIDA )

3 : CERTIFICATE OF REPORTER

4 COUNTY OF LEON )

5

I, JANE FAUROT, RPR, Chief, Office of Hearing

6 Reporter Services, FPSC Division of Commission Clerk and

Administrative Services, do hereby certify that the foregoing

7 proceeding was heard at the time and place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically

reported the said proceedings; that the same has been

9 transcribed under my direct supervision; and that this

transcript constitutes a true transcription of my notes of said

10 proceedings.

11 I FURTHER CERTIFY that I am not a relative, employee,

attorney or counsel of any of the parties, nor am I a relative

12 or employee of any of the parties' attorney or counsel

connected with the action, nor am I financially interested in

13 the action.

14 DATED THIS 12th DAY OF APRIL, 2007.

15

16 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JANE FAUROT, RPR

17 Official FPSC Hearings Reporter

FPSC Division of Commission Clerk and

18 Administrative Services

(850) 413-6732

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