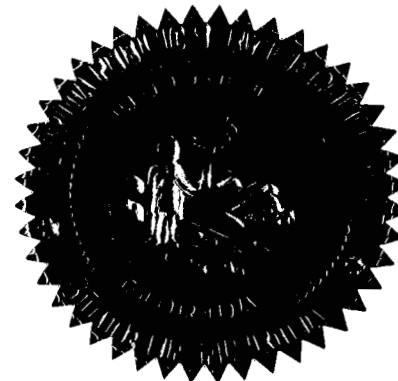


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060658-EI

In the Matter of:

PETITION ON BEHALF OF CITIZENS OF THE
STATE OF FLORIDA TO REQUIRE PROGRESS
ENERGY FLORIDA, INC. TO REFUND CUSTOMERS
\$143 MILLION.



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VOLUME 3

Pages 356 through 480

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. MCMURRIAN

DATE: Tuesday, April 3, 2007

TIME: Commenced at 9:37 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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WITNESSES

NAME:

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(Transcript follows in sequence from Volume 2.)

CHAIRMAN EDGAR: Good morning. I call this hearing to order.

First, since we established at the end of our proceedings last night that Mr. Burnett is not a basketball fan, Commissioner Carter, I know you must.

COMMISSIONER CARTER: Thank you, Madam Chairman. I just want to offer profound appreciation and congratulations to the Florida Gators, once again the national champions in basketball.

And, Madam Chairman, just as a footnote, I happened to notice that since the three of us have been on the Commission, the University of Florida won the national championship in football and two national championships in basketball, so what does that tell you?

CHAIRMAN EDGAR: Especially since we're all Noles, so.

COMMISSIONER CARTER: Thank you, Madam Chair.

CHAIRMAN EDGAR: Okay. We will get back to business. What I would like to ask is when we take our midmorning break, which will come at whatever seems to be sort of an appropriate time to do that to give us all a stretch about halfway through the morning, I'd like to ask the parties to get together and get with our staff and see if it is

1 possible to stipulate any of the witnesses. As I mentioned at
2 the end of the day yesterday, we have a number of witnesses to
3 go through, a lot of material to cover, we have two days to do
4 it. And so with that, let's just see at the break if there are
5 some things that we can do so that we can cover everything that
6 we need to cover, but do it in a way that makes sense and is
7 logical and some efficiency, if indeed it's possible to, to do
8 that.

9 And also again would ask that we work together to the
10 extent that we can and limit friendly cross and repetitive
11 cross. And, Mr. McGlothlin, if it's all right with you, I will
12 plan to take the suggestion of Mr. Twomey and on cross begin
13 with you and then proceed to the other parties.

14 Okay. Mr. Burnett, your witness.

15 MR. BURNETT: We call Mr. Pitcher, Al Pitcher.

16 ALBERT W. PITCHER

17 was called as a witness on behalf of Progress Energy Florida
18 and, having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WALLS:

21 Q Mr. Pitcher, will you please introduce yourself to
22 the Commission and provide your address?

23 A My name is Albert W. Pitcher. My address is 1715
24 Georgia Avenue, Northeast, St. Petersburg, Florida, and I
25 recently retired from Progress Energy Florida as Vice President

1 of Coal Procurement.

2 Q Have you filed prefiled direct testimony and exhibits
3 in this proceeding?

4 A I have.

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

6 A I do.

7 Q Do you have any changes to make to your prefiled
8 testimony and exhibits?

9 A I have no changes.

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 I would.

14 MR. WALLS: We request that the prefiled testimony of
15 Mr. Pitcher be moved into evidence as if it was read in the
16 record today.

17 CHAIRMAN EDGAR: The prefiled direct testimony will
18 be entered into the record as though read.

19

20

21

22

23

24

25

**IN RE: PETITION ON BEHALF OF CITIZENS OF THE
STATE OF FLORIDA TO REQUIRE PROGRESS ENERGY
FLORIDA, INC. TO REFUND CUSTOMERS \$143 MILLION**

FPSC DOCKET NO. 060658

DIRECT TESTIMONY OF

ALBERT W. PITCHER

I. INTRODUCTION AND QUALIFICATIONS

1 **Q. Please state your name and business address.**

2 **A.** My name is Albert W. Pitcher. My business address is: 1715 Georgia Avenue, NE,
3 St. Petersburg, Florida 33703-4320.

4
5 **Q. By whom are you employed and in what capacity?**

6 **A.** I recently retired as Vice President of Coal Procurement for Progress Fuels
7 Corporation (PFC). I am currently self-employed as a consultant.

8
9 **Q. Please describe your educational background and professional experience.**

10 **A.** I received a Bachelor of Business Administration Degree in Accounting from the
11 University of Cincinnati in 1971. I began my professional career with Arthur
12 Anderson and Company as a staff auditor. I was employed by Cincinnati Gas &
13 Electric Company in various auditing and accounting functions from 1972 until 1976.
14 I began my career with Florida Power Corporation (FPC), now known as Progress
15 Energy Florida ("PEF" or the "Company"), as a staff auditor in the Audit Services
16 Department in August of 1976. In 1977, I joined Electric Fuels Corporation (EFC),

1 then a wholly owned subsidiary of FPC, as Manager of Accounting. I served in this
2 capacity and that of EFC's Controller until 1984. At that time, I became Vice
3 President of Sales, charged with the responsibility for selling coal to utilities and
4 industrial customers in the Eastern United States, from both EFC's affiliated mining
5 operations and third-party resources. In September of 2002, following the change of
6 EFC's name to PFC, I assumed the position of Vice President of Coal Procurement.
7 In this capacity, I was responsible for the procurement and transportation of coal
8 delivered annually to PEF's Crystal River plant site. I retired from PFC December 1,
9 2005.

10 For ease of reference only, I will refer to both FPC and PEF as "PEF" and both
11 EFC and PFC as "PFC," although they were clearly different legal entities.

12

13 **II. PURPOSE AND SUMMARY OF TESTIMONY**

14

15 **Q. What is the purpose of your testimony?**

16 **A.** The purpose of my testimony is three-fold. First, I will explain the coal procurement
17 process and resulting decisions during my tenure as PFC's Vice President of Coal
18 Procurement and demonstrate that PFC and the Company acted reasonably and
19 prudently under the circumstances that existed at the time. In doing so, I will also
20 address the inaccurate statements of fact made about the coal procurement process and
21 decisions under my watch by Mr. Robert Sansom in his testimony on behalf of the
22 Office of Public Counsel and correct them. I will also further address the statements
23 and opinions first expressed by Mr. Sansom in his affidavit in last year's fuel recovery

1 docket and now in his testimony here regarding certain contracts that resulted from the
2 solicitations conducted by PFC on PEF's behalf in August-September 2004, again
3 demonstrating that PFC and the Company acted reasonably and prudently under the
4 circumstances.

5 Second, I will address Mr. Sansom's testimony regarding the synfuel
6 purchases by the Company and the misimpression created by Mr. Sansom's testimony
7 that the tax credits available to Progress Energy Inc. (Progress Energy) somehow
8 drove PEF's decisions to purchase synfuel for Crystal River Units 4 and 5 (CR4 and
9 CR5). PFC was the primary player in the synfuel industry and therefore was sought
10 out by others who wanted to enter the synfuel market for its expertise in all aspects of
11 the industry, from production through sales. It is hardly unusual, then, that when PEF
12 began to look at synfuel purchases, PFC or an affiliate of PFC may be involved in
13 some way in some of the synfuel transactions with PEF. As the Vice President of
14 Sales for PFC during most of the years that synfuel was purchased by PEF, however, I
15 know that synfuel was sold at a price below bituminous coal prices and was purchased
16 by utilities and industrial customers only on a contract or spot basis when the synfuel
17 was more economical than other bituminous coal products. Also, PEF was not the
18 largest or even close to the largest purchaser of synfuel during this period of time. As
19 a result, only a very small percentage of the tax credits available to Progress Energy
20 could have been generated by synfuel sales to PEF.

21 Finally, I will address a number of other statements made by Mr. Sansom that
22 are simply inaccurate or give a misleading impression of the coal procurement
23 practices and decisions by PFC and PEF when I served as PFC's Vice President of

1 Coal Procurement. In sum, PFC and PEF always employed reasonable and prudent
2 practices under the existing circumstances consistent with its policies and Commission
3 orders.

4
5 **Q. Are you sponsoring any exhibits with your testimony?**

6 **A.** Yes, I am sponsoring the following exhibits that were prepared by me or prepared
7 under my supervision and control, or they represent business records prepared at or
8 near the time of the events recorded in the records, which records it was a regular
9 practice for me or those who worked with me to keep to perform our responsibilities:

- 10 • Exhibit No. ____ (AWP-1), which is PFC's coal procurement policy in
11 effect when I assumed responsibilities for coal procurement for Crystal
12 River;
- 13 • Exhibit No. ____ (AWP-2), which are PFC's evaluation sheets for the bids
14 received in response to the July 3, 2003 Request for Proposals ("RFP") for
15 coal for CR4 and CR5;
- 16 • Exhibit No. ____ (AWP-3), which is my October 2, 2003 memorandum
17 explaining the results of the July 3, 2003 RFP and PFC's evaluation of that
18 RFP;
- 19 • Exhibit No. ____ (AWP-4), which is the April 12, 2004 RFP for coal for
20 CR4 and CR5;
- 21 • Exhibit No. ____ (AWP-5), which is the RFP bidder list indicating the
22 bidders who received the April 12, 2004 RFP and whether they responded;

- 1 • Exhibit No. _____ (AWP-6), which is my June 22, 2004 memorandum
2 explaining the April 12, 2004 RFP and PFC's evaluation of that RFP; and
3 • Exhibit No. _____ (AWP-7), which is the May 13, 2004 test report on the
4 Powder River Basin (PRB) sub bituminous and bituminous coals blend at
5 CR4 in late April 2004.

6 All of these exhibits are true and correct.

7
8 **Q. Please summarize your testimony.**

9 **A.** PFC consistently evaluated coals for CR4 and CR5 on a competitive basis during my
10 tenure as the Vice President for Coal Procurement. All coal procurement decisions
11 during this time period, from 2003 to 2005, were made based on competitive RFPs or
12 spot markets for the lowest cost coal consistent with the quality specifications required
13 for plant operations at CR4 and CR5. In each case, PFC acted reasonably and
14 prudently in its coal procurement decisions for CR4 and CR5.

15 I evaluated PRB beginning in 2003 when it became evident that PRB coals
16 might be economical for CR4 and CR5. In the July 2003 RFP solicitation, however,
17 foreign bituminous coals of the same or similar high quality coals historically burned
18 at CR4 and CR5 proved to be more economical. Because these import coals did not
19 present the same quality issues that would impact plant handling and performance as
20 the PRB coals, they further were the clear choice at the time for CR4 and CR5. I,
21 nevertheless, continued to follow PRB coal prices, and when they moved up at a
22 slower rate than domestic and foreign coals later in 2003, I sought to purchase some
23 PRB coal for a test burn at CR4 or CR5. This is standard industry practice when it

1 comes to evaluating different coals than those historically purchased and burned at a
2 coal plant, especially as was the case for CR4 and CR5, when the quality of the coal is
3 important to the historical base load energy production from the plant.

4 That test burn was conducted the same month as a subsequent RFP for future
5 coal needs at CR4 and CR5 in April 2004. Both the test burn report on the limited,
6 single ocean-barge test of a small blend of PRB and bituminous coal in April 2004,
7 and the results of the April 2004 RFP, where PRB coals were the most economical
8 coals on a delivered and evaluated or busbar cost basis, indicated that the further
9 evaluation of PRB coals was warranted to decide if the Company should shift from
10 bituminous compliance coals to PRB coals or a blend of bituminous compliance coals
11 and PRB coals. I understand that evaluation has been undertaken by the Company
12 following the 2004 test burn and 2004 RFP. In the meantime, while the Company's
13 evaluation of this type of significant coal switch was on-going, PFC continued to
14 purchase the lowest priced, high quality bituminous coal for CR4 and CR5 available
15 under existing market conditions.

16 PFC further purchased synfuel bituminous-based coals when they were the
17 lowest priced coals consistent with the quality specifications for CR4 and CR5.
18 Synfuels were always offered at or below bituminous compliance coal prices on the
19 market because available tax credits to the synfuel producers offset losses on the
20 production and sale of synfuel. As a result, the ratepayer benefited from such
21 purchases. Simply put, then, I sold synfuel to PFC for CR4 and CR5 when I was told
22 it was the lowest cost source under the current market conditions. At the same time I
23 was selling a lot more synfuel to other utilities and industrial customers. When I did

1 not make a synfuel sale for CR4 and CR5, which did occur, I simply sold the synfuel
2 to someone else. PEF was in no way the largest synfuel customer; it was not even
3 close.

4
5 **III. COAL PROCUREMENT FOR CR4 AND CR5: 2003-2005**

6
7 **Q. When did you assume the role of coal procurement for CR4 and CR5?**

8 **A.** I became Vice President of Procurement for PFC around September 2002 but the
9 decisions for the coal needed at the Crystal River coal units for 2002 and some of
10 2003 had already been made. I assumed the job with the responsibility for meeting the
11 coal requirements for CR1, CR2, CR4, and CR5 for the rest of 2003 and beyond.

12
13 **Q. Can you explain the process that you applied when determining what to do to
14 meet PEF's coal requirements for Crystal River?**

15 **A.** Yes. First, PEF provided me with the expected tons of coal that would be burned for
16 the year for both sets of coal units, CR1 and CR2, and CR4 and CR5. CR1 and CR2
17 burned a different type of higher sulfur coal (i.e., greater than 1.5 lbs./mmBtu SO₂ but
18 less than 2.1 lbs./MMBtu) than CR4 and CR5 which burned a low sulfur coal
19 sometimes referred to as compliance coal (i.e., 1.2 lbs/MMBtu SO₂ or less). Within
20 PFC and PEF we referred to the coal for CR1 and CR2 as "A" or Alpha coal and the
21 coal for CR4 and CR5 as "D" or Delta coal. The information on the tons of coal
22 required for CR1 and CR2 and CR4 and CR5 was typically provided in the fall of the

1 prior year. Additionally, updates on the projected burns were provided throughout the
2 year, generally quarterly.

3 Once I had the expected requirements for both the A and D coals, the next step
4 was to determine the tons of A and D coal currently under contract and whether those
5 contracts expired or had price reopeners the next year. If the contracts had price
6 reopeners, and depending on the terms of the contract, PFC might need to issue a
7 request for proposals (RFP) for the type of coal under the contract or initiate a review
8 of market prices for similar coal to negotiate the price for the next or remaining
9 contract term. Next we reviewed the projected inventory levels to determine if it was
10 necessary to either increase or decrease them depending upon various operational
11 considerations. The amount of coal under contract and any inventory increases or
12 decreases were netted against the expected coal requirements for the year, providing
13 the tons available for purchase.

14 The next step in the process was to determine whether an RFP or reliance on
15 the spot market was appropriate given the amount of coal tons needed and the current
16 and anticipated market conditions. As a general rule, a spot purchase was for a term
17 of a year or less and generally involved lower amounts of tons purchased than contract
18 purchases. Contract purchases were for a year or more and generally were for larger
19 tonnage. PFC and the Company favored a mixture of contract and spot purchases to
20 maintain some flexibility to respond to changes in coal market conditions. This policy
21 has been consistently followed by the Company since CR4 and CR5 came on line in
22 1982 and 1984, respectively, as evidenced by EFC's coal procurement policy attached
23 as Exhibit No. ___ (AWP-1).

1 A final consideration was whether the tons of coal already under contract were
 2 being provided to Crystal River by rail or by water and by what means, rail or water,
 3 the tons available for purchase could be provided. When I assumed the
 4 responsibilities for coal procurement for Crystal River, transportation by rail was
 5 generally cheaper than water so my practice was to maximize rail shipments. This
 6 remained the case until the CSX contract expired and had to be renegotiated in 2004,
 7 after which time under the new CSX contract, rail was actually more expensive than
 8 water transportation so we began to maximize water transportation of coal to Crystal
 9 River.

10 The practice of maximizing rail deliveries when it was the most economical
 11 means of coal delivery was consistent with a prior Commission order requiring the
 12 Company to maximize rail transportation. The ability to maximize rail shipments also
 13 depended on what type of coal was needed, where the mine was located, and the
 14 capabilities of providing coal by rail or water from that location.

15
 16 **A. THE JULY 2003 SOLICITATION.**

17
 18 **Q. When did you first issue an RFP for coal for Crystal River?**

19 **A. On July 3, 2003, I issued on PEF's behalf an RFP for A and D coal for Crystal River**
 20 **for one, two, and three year proposals.**

21

22 **Q. Why did PFC issue an RFP for coal for Crystal River on July 3, 2003?**

1 A. At the time, PFC had eight contracts with price reopeners and we were beginning to
2 review the coal needs for 2004 and beyond. Under the terms of the contracts, we
3 needed to determine the market prices for coal to re-negotiate the price and to
4 determine if we were going to extend the contracts. Five of these contracts were for D
5 coal and three were for A coal. Also, PFC wanted to determine if the market prices
6 justified contracts of one, two, or three years for coals for Crystal River.

7
8 **Q. What were the market conditions in 2003?**

9 A. The coal price market was very volatile. After the price spikes and tight supply with
10 virtually all types of coal in 2001, as well as most other fuels, coal prices had fallen in
11 2002 and production and coal supplies were improving. In 2003, then, it was unclear
12 whether coal prices were going to fall to price levels that existed prior to 2001,
13 stabilize around 2002 price levels, or again start to rise given the uncertainties
14 surrounding future production efficiencies and supply, demand, and world economic
15 issues.

16
17 **Q. What were your objectives in the July 3, 2003 RFP?**

18 A. The anticipated coal burn at Crystal River in 2004 was 2.2 million tons for CR1 and
19 CR2 and 3.9 million tons at CR4 and CR5 for a total of 6.1 million tons of coal. As I
20 have indicated, we had eight contracts with price re-openers in 2003, five D coal and
21 three A coal contracts, that we were contractually obligated to renegotiate. Together
22 with those renegotiations our purchase strategy was to eventually achieve a coal
23 supply of a 70-75% contract and 25-30% spot, if possible. Again, another objective

1 was to maximize our rail deliveries, which were 3.6 to 4.1 million tons a year under
2 PFC's contract with CSX.

3

4 **Q. What was the response to the July 3, 2003 RFP?**

5 **A.** We received a total of 42 bids from 21 domestic and foreign coal suppliers. With the
6 options under some of the bids the total count of different types of bids in response to
7 the RFP was 75 bids.

8

9 **Q. How did you evaluate the bids?**

10 **A.** We grouped the bids by (1) all bids together, (2) CR1 and CR2 bids, (3) CR4 and CR5
11 bids, (4) CR4 and CR5 bids segregated by rail and water, and (5) CR4 and CR5 bids
12 segregated by domestic and foreign coals. These groupings allowed us to review the
13 relative pricing between rail, water, domestic, foreign, CR4 and CR5, and CR1 and
14 CR2. Within each group of bids we also divided up the bids between single or multi-
15 year offers. We also reviewed various trade publications, regarding coal market
16 pricing, such as United Coal, Evolution, and Henwood Energy Services, which
17 provides prices for various qualities of coal for any given period of time, both
18 currently and prospectively. We will do this to see if the coal prices we are offered in
19 the bids are within a range of prices estimated for the market by the trade publications.

20 In each grouping we looked at the top several bids, thus creating a "short list"
21 evaluation. There was no set limit on the number of bids that would be placed on a
22 "short list," rather it depended on the total amount of coal which was required for

1 purchase based upon the projected burns, required changes in inventory levels, and
2 contract expirations.

3 With respect to each bid, PFC evaluated it upon a delivered cost and evaluated
4 cost basis. The delivered cost included the commodity cost (\$/ton) offered by the
5 bidder and PFC's cost of transporting the coal to the Crystal River Plant. The
6 evaluated cost, also called the busbar analysis cost or total cost, compares the
7 characteristics of the coal offered in each bid against the coal specification standard
8 for either the CR4 and CR5 units or the CR1 and CR2 units. The standard coal
9 specification for the respective units is based on coal characteristics that provide
10 optimal efficient plant performance. The evaluated ("busbar" or "total") cost is used
11 because it provides a more complete picture of the bids submitted by incorporating
12 into the bid evaluation consideration of the quality of the coal offered. Because coals
13 have different heat input values, the delivered cost and evaluated cost are converted to
14 dollars per mmBtu so the bids can be evaluated on an equal basis with respect to the
15 Btu content of the coal.

16 PFC has typically ranked and purchased coal based on the lowest delivered
17 cost but that is because historically the quality of the coal at the lowest delivered cost
18 did not differ significantly from the quality expected under the standard specification
19 for coal for the respective units. More recently, however, PFC is seeing more
20 economical coal than before with quality characteristics that vary more from the
21 standard coal specifications, particularly for CR4 and CR5, thus, providing more
22 opportunity for the evaluated cost to have an impact on the evaluation of the bids.

23

Confidential

1 Q. What is the evaluated or busbar cost analysis?

2 A. The evaluated or busbar cost analysis is based on an Electric Power Research Institute
3 ("EPRI") Coal Quality Impact computer Model ("CQIM") that assesses the
4 performance of the coal in the boilers of CR1, CR2, CR4, and CR5. The EPRI CQIM
5 model was developed by Black & Veatch and is recognized as an industry standard for
6 coal procurement evaluations. The characteristics of the coal offered in the bid are
7 inputs into the model and the outputs are the model's assessment of the cost impacts to
8 the Company if coal with the quality characteristics of that coal is burned in the
9 respective units' boilers.

10 The model assessment of the cost impacts of variations in the quality of the
11 coal in the bid from the standard specification is a "black box" to PFC. The cost
12 impacts were developed by Black & Veatch based on industry standard cost impacts.
13 The coal quality characteristics considered in the model for bid evaluation purposes
14 are the ash, BTU, sulfur, moisture, and volatile content characteristics of the coal. The
15 evaluated cost output includes the delivered cost plus an assessment for variations
16 from the standard specification for ash [REDACTED], BTU [REDACTED]
17 [REDACTED], sulfur (based upon current SO2 allowance prices) below the
18 1.2lbs. SO2 maximum allowed for CR4 and CR5 and lower SO2 than the allowed
19 1.5lbs. SO2 to 2.1lbs. SO2 for CR1 and CR2, moisture [REDACTED], and
20 volatile content [REDACTED]. Another way to look at the evaluated or busbar
21 cost analysis is that it is a "paper" test burn of the coal in the units' boilers.
22

1 **Q. Have you ever rejected a bid based on a deviation from any of the specifications**
2 **set forth in the standard coal specification for CR4 and CR5?**

3 A. Yes. In response to the July 3, 2003 RFP we received two bids from Alpha for
4 compliance coal by rail to CR4 and CR5 with a 28% volatility characteristic, which
5 was significantly below the 31% volatility specification for CR4 and CR5 coal.
6 Volatility is an important coal characteristic because it can affect the flame stability of
7 the units. As a result of this significant deviation from the standard volatility
8 specification for CR4 and CR5 we eliminated the Alpha bids from further
9 consideration. This is reflected in the evaluations sheets for the July 3, 2003 RFP in
10 Exhibit No. ___ (AWP-2) at the page bearing bates number PEF-FUEL-004772.

11

12 **Q. Are there any other considerations in the bid evaluation besides the delivered**
13 **cost and evaluated cost?**

14 A. Yes, there are. Other important considerations include prior experience with the
15 bidder, whether the bidder is a broker or a coal producer, and prior experience with the
16 type of coal offered in the bid.

17 Prior experience with a bidder and whether the bidder is a broker or the actual
18 coal supplier is important in determining whether the bidder will reliably deliver the
19 coal offered in a timely manner and consistent with the quality of the coal offered.
20 Such experience is also important when there are contract negotiations and
21 renegotiations to form the basis to reliably deal with the bidder. If the prospective
22 supplier is a broker PFC will more carefully review the offer and evaluate the broker
23 but the bid will not be eliminated from consideration just because the offeror is a

1 broker; PFC has had very good experience with coal provided through carefully
2 selected brokers.

3 Finally, prior experience with the type of coal offered in the bid is important to
4 the plant operations. If there is a new supplier or a new type of coal or a coal from a
5 new mine, the plant operators are always wary of using that coal without first
6 conducting a test burn because of the uncertainties surrounding the effect of the coal
7 on the efficient operation of the plant and production of electric energy. These
8 considerations are not new to the July 2003 RFP evaluation, however, they have been
9 a factor in the coal evaluations for decades, see Exhibit ____ (AWP-1).

10
11 **Q. What were the results of your evaluation of the bids for coal for CR4 and CR5 in**
12 **the July 3, 2003 RFP?**

13 **A.** With respect to compliance coal available by rail, we reviewed 6 single year and 4
14 multi-year bids. The lowest single year bid was a price reopener on an existing
15 contract with AEP so the next lowest bidder on both the single and multi-year offers
16 was Koch Carbon at \$34.25/ton to \$34.50/ton on the single year and \$35.05/ton on the
17 multi-year offers. When I subsequently went to negotiate with Koch Carbon
18 requesting an offer of \$33.75/ton for 2004, however, Koch Carbon raised any number
19 of excuses, including a problem with PFC's credit, as to why Koch Carbon could not
20 offer that price or the coal at the prices in their bids. Koch wanted a parent guarantee
21 which the Company does not provide to any coal supplier. The real issue here was the
22 market was volatile and prices were moving up and they were looking for any excuse
23 not to honor their bid. After several fruitless discussions, I determined that Koch was

1 not going to meet its bid offers and decided to remove them from our active bidders
2 list because of their failure to stand behind their bids. Koch is a broker of coal. This
3 is an example where the lack of experience with a bidder proved problematic and
4 resulted in the elimination of the bidder because there was no assurance the bidder was
5 reliable.

6 As a result, I turned to the next lowest bidder, Dominion (because the Alpha
7 coal bids had been eliminated because of the volatility of the coal offered), and entered
8 into a one year contract for 120,000 tons of D coal by rail. Dominion is a major utility
9 in Virginia and has a non-regulated coal brokerage group. The coal was shipped from
10 an existing supplier's mine and was therefore known to be an excellent quality coal
11 from a known, reliable supplier.

12
13 **Q. Why did you call Koch Carbon and ask them for a better price?**

14 **A.** It is our typical practice to contact bidders on the "short list" and negotiate for a lower
15 price to get the best deal we could get for the Company and the customer. This is also
16 a standard practice in the industry so from a buyer's perspective you do not
17 necessarily expect that the bid price offered in response to an RFP is the best that the
18 supplier can or will do if the bidder makes the short list.

19
20 **Q. What about the remaining bids for compliance coal by water, what were the**
21 **results of your evaluation of those bids?**

22 **A.** The foreign or import compliance coals evaluated better than the domestic compliance
23 coals. This was expected because the market indications at the time suggested that

1 import compliance coal was very competitive. Guasare, a supplier of Venezuelan
2 compliance coal, tied for the second lowest bid on a delivered cost and a nearly
3 identical evaluated cost with Glencore, a Columbian compliance coal supplier on the
4 single year bid and Guasare was the second lowest bidder on the multi-year bid.
5 Because Guasare was both a current and previous supplier, had delivered excellent
6 quality coal in the past, and was the actual producer, where Glencore was a broker of
7 foreign coals with no previous history, we entered into discussions for a contract with
8 Guasare. This is an example where prior experience with a supplier was a factor in the
9 bid evaluation. We extended the single-year bid, which was lower in price to the
10 multi-year offer, into a two-year contract with Guasare for 250,000 and 150,000 tons,
11 respectively. We also entered into a contract based on the Guasare multi-year bid for
12 650,000 tons for 2004 and 2005 with a price reopener for 2006. As a result, import
13 compliance coal accounted for 43% of the water delivered coal in 2004 and 38% of
14 the water delivered coal in 2005 to Crystal River. Our bid evaluation sheets are
15 included in Exhibit No. ____ (AWP-2) and my October 2, 2003 memorandum, with
16 exhibits, explaining the results of the July 3, 2003 RFP and our evaluation of the bids
17 in response to that RFP is included in Exhibit No. ____ (AWP-3) to my testimony.

18

19 **Q. Does Mr. Sansom agree that the import coal purchases as a result of the July 3,**
20 **2003 RFP were economical?**

21 **A.** Yes, he does. At page 34, lines 19 to 21 of his testimony Mr. Sansom admits that we
22 made economical purchases of imported coal for 2003 and later years "under earlier
23 contracts, increasing our reliance on imported coal from 30% in 2003 to 48% in 2004

1 and 2005.” This is a reference to the Guasare contracts that were the result of the July
2 3, 2003 RFP.

3 Ironically, Mr. Sansom’s argument that PFC should have been purchasing PRB
4 coal conflicts with his statement that these import coal purchases were economical
5 purchases. Both import coals and PRB coals are only economical for CR4 and CR5
6 when delivered by water, and since Mr. Sansom would have PFC purchase these
7 import coals and PRB coals in the same time period, PFC could not deliver both by
8 water with the existing constraints on waterborne transportation to Crystal River. PFC
9 would, under Mr. Sansom’s argument, either have to purchase less PRB coals to
10 maintain the waterborne import coal shipments or displace the economical import
11 coals with higher priced CAPP coal by rail. Mr. Sansom does not account for either
12 possible impact in his testimony that I can see.

13

14 **Q. You mentioned that the import coal purchased was not the lowest import bid in**
15 **response to the July 3, 2003 RFP. Why didn’t you buy coal from the lowest**
16 **import bidder?**

17 **A.** The lowest import bidder on a delivered cost and an evaluated cost basis was the
18 Drummond Columbian coal for both the single and multi-year options. However, the
19 Drummond Columbian coal was a low Btu (11,700 Btu) and high moisture (14%) coal
20 and the plant operators at CR4 and CR5 were concerned with a potential de-rate of the
21 CR4 and CR5 units if they burned the Drummond coal. The plant operators wanted to
22 test the Drummond coal before any decision was made to purchase significant tons of
23 the Drummond coal.

1

2 **Q. What do you mean by a "de-rate" of the plant?**

3 **A.** A de-rate is a loss of load or the electric energy produced by the CR4 and CR5 units.

4 While I am not an engineer, I do know that the lower the Btu content per ton of coal
5 the less electric energy you obtain from burning that ton. Also, the higher the
6 moisture content, the more effort and heat that must be used to dry the coal to burn it
7 and if heat is being used to dry the coal it cannot be used to produce electric energy.

8 There are, of course, other characteristics about the quality of a particular coal besides
9 Btu and moisture content that can have an impact on the electrical energy output of a
10 coal unit.

11

12 **Q. Do you know why the plant operators at CR4 and CR5 were concerned about**
13 **"de-rates?"**

14 **A.** Yes. CR4 and CR5 are base load units on the Company's system that together
15 account for nearly half the base load energy production on PEF's generation system.
16 They routinely produce between 750 and 770 gross megawatts (MW) a piece even
17 though they are rated only for 665MW for each unit because the operators run them
18 very efficiently, generally in over-pressure operation, day in and day out and only
19 come off-line for maintenance. Because CR4 and CR5 are very efficient, base load
20 generators the quality of the coal burned there and the operational characteristics of
21 handling the coal for CR4 and CR5 are very important. The goal of the CR4 and CR5
22 units is to maintain the highly efficient operation of the units to generate between
23 750MW and 770MW gross on a regular basis. As a result, I had to take this

1 operational goal into account in making coal procurement decisions for CR4 and CR5.
2 Therefore, I did not purchase the Drummond import coal without testing it first. The
3 Drummond coal was subsequently tested successfully at the plant and we later entered
4 into contracts with Drummond for compliance coal.

5
6 **Q. Why did you need a test burn if the Drummond coal had evaluated the lowest on**
7 **both the delivered cost and evaluated cost basis?**

8 **A.** The evaluated cost or busbar cost analysis only provides an indication of how the coal
9 will burn in the boilers, based on the EPRI CQIM computer model. It is a useful tool
10 to eliminate coals from consideration if, even on an evaluated basis under the CQIM
11 cost assessment, their costs are significantly higher than the delivered cost and
12 evaluated costs of other coals being evaluated, but the model was not intended to and
13 cannot determine the actual cost impact of burning the coal at the plant. To make that
14 determination, a test burn or series of test burns will be required, depending on how
15 different the coal is from the type of coal typically burned at the plant and represented
16 in the standard specification. The process of conducting coal test burns is not an
17 unusual or atypical process when changes in the types of coal are being considered;
18 rather, this process is standard practice in the industry.

19
20 **Q. Is that why you indicated you were evaluating western coals separately for test**
21 **burn purposes only in your July 2003 RFP?**

22 **A.** Yes. The reference to western coals referred to sub bituminous coal from the Powder
23 River Basin (also called PRB coals). I knew that the CR4 and CR5 boilers were

1 designed for both bituminous and sub bituminous coal and that PFC had long included
2 sub bituminous coal specifications in its RFPs and PRB suppliers on its RFP bidder
3 lists so that the PRB suppliers received RFPs for coal for Crystal River. I also knew,
4 however, that the PRB coals had not previously been burned at CR4 and CR5 and that,
5 because of the characteristics of PRB coal, there would be a number of operational
6 concerns with handling and burning PRB coal.

7 These PRB coal characteristics include its lower Btu content and its higher
8 moisture content, as well as the fact that PRB is dustier than bituminous coal and
9 susceptible to spontaneous combustion. As a result, a buyer for a plant that
10 historically burned bituminous coal must buy more PRB tons to get the same Btu
11 output it currently obtains from bituminous coal both because of the lower Btu content
12 and higher moisture content of the PRB coal. The buyer must also invest in additional
13 capital and operational and maintenance improvements just to handle the PRB coal,
14 and must invest in maintenance improvements in the boiler as well for the PRB coal
15 because of higher slagging and other factors. These impacts are best determined by
16 test burns to see how the plant performs with the PRB coals.

17 Based on information available about the bituminous and sub bituminous coal
18 markets before and at the time I prepared the July 2003 RFP, I thought that the timing
19 might be right to consider western coals for a test burn at CR4 and CR5, if they proved
20 to be economical in response to the 2003 solicitation.

21
22 **Q. Did you purchase any PRB coal in response to the July 2003 RFP for test burn**
23 **purposes?**

1 A. No, I did not. While the PRB coal evaluated well on a delivered cost basis, the PRB
2 coal did not evaluate well on an evaluated cost basis against the import bituminous
3 compliance coals. The clear message from the bid responses to the July 2003 RFP
4 was that import coals were the most economical sources of coal for CR4 and CR5.
5 With the import coals, PFC was receiving the same type of high quality, high Btu
6 content, bituminous coal that had successfully been burned on a highly efficient and
7 productive basis historically at CR4 and CR5, thus allowing the units to continue to
8 produce MWs substantially above their rated capacity. If the import prices remained
9 this competitive after the July 2003 RFP there was no reason to look to a distinctly
10 different type of coal like the PRB coals for the CR4 and CR5 units.

11
12 **Q. Are you aware that Mr. Sansom claims the PRB coals were the lowest price coals**
13 **in response to the 2003 RFP and that PFC ignored them?**

14 A. Yes, but Mr. Sansom is looking only at the delivered cost numbers and ignoring the
15 evaluated cost numbers for the PRB coals. As I have indicated, the evaluated cost
16 numbers were important in the evaluation of the PRB coal because PRB was a new
17 type of coal and something that the plant had no prior experience with. The operators
18 at CR4 and CR5 had required a test burn for the Drummond coal even though it was a
19 bituminous coal and there generally are not significant differences in the
20 characteristics of bituminous coal. The operators, nevertheless, had no prior
21 experience with Drummond or its coal and were concerned about the impacts on the
22 plant of the lower Btu content and higher moisture content of the Drummond coal than
23 the bituminous coal they were used to burning. I fully expected the plant would have

1 greater concerns when considering a switch from bituminous compliance coal to the
2 sub bituminous compliance coals like PRB.

3

4 **Q. What about the western bituminous coal suppliers who responded to the July**
5 **2003 RFP, why did PFC not enter into a contract with those two potential**
6 **suppliers?**

7 **A.** PFC did not select the western bituminous coal suppliers who responded to the July
8 2003 RFP primarily because of concerns regarding reported rail delivery problems
9 with coal deliveries in the west. Coal market publications had included numerous
10 reports about delays in and the failure to deliver contracted for coal due to a lack of
11 rail capacity (cars and engineers) and rail congestion. These were significant concerns
12 at the time, as several buyers received late, reduced, or no shipments at all of coal as a
13 result of these problems. These problems continued to plague the western coal
14 markets from 2003 to 2005. As a result of the non-performance by the western
15 railroads, it was reported in the coal publications that buyers were re-entering the
16 volatile coal market at the time to ensure they maintained sufficient inventory levels. I
17 did not want PFC to be in the same position.

18

19 **Q. Now, turning to the domestic water bidders, did you end up making any**
20 **compliance coal purchases from domestic suppliers as a result of the July 3, 2003**
21 **RFP?**

1 A. No, I did not. As I have stated, the foreign compliance coals evaluated ahead of the
2 domestic compliance coals, so we entered into negotiations and ultimately contracts
3 with an import supplier.

4 We did, of course, evaluate the domestic compliance coals that were offered.
5 In that evaluation, even though we received single-year compliance coal bids from
6 domestic supplier by water, we concluded that none were competitive enough to place
7 on a short list for further consideration. However, we did place three multi-year
8 bidders, two bids from Infinity and one from Black Hawk for synfuel, on a short list
9 for follow up.

10 We contacted both suppliers to determine if they could improve their bid
11 prices. Infinity had offered their coal subject to prior sale and, when contacted,
12 Infinity had already sold the coal. I also called Black Hawk and tried to get them to
13 give me a better price. They rejected my attempt and noted that at the time they had
14 not secured a coal source but, even if they had, they indicated they had better
15 alternatives than selling the coal or synfuel to PFC at a price lower than what they had
16 originally bid.

17 After that response I called Central Coal, which originally was not on the short
18 list for domestic compliance coal by water because of its price, to see if Central Coal
19 might improve its bid. Central Coal could not improve its bid price. As a result, I
20 made no purchases of domestic coal or synfuel as a result of the July 3, 2003 RFP. I
21 have attached the bid evaluation sheets, including the short lists, to my testimony as
22 Exhibit No. ____ (AWP-2) and my memorandum summarizing the results of the bid
23 evaluation and the coal purchases made as Exhibit No. ____ (AWP-3). These exhibits

1 and my notes contained in them explain the evaluation process and decisions that were
2 made.

3

4 **Q. Have you read what Mr. Sansom had to say about your evaluation of the
5 domestic compliance coal bids in response to the July 3, 2003 RFP?**

6 **A.** Yes. Mr. Sansom, at pages 32 and 33 of his testimony, claims that the evaluation is an
7 “example of favoritism,” a “conflict of interest,” and was “imprudent.” As his sole
8 support he (1) asserts PFC did not act “promptly” enough to purchase the coal offered
9 by the lowest domestic supplier, (2) refers to the call made to Blackhawk to obtain a
10 lower bid price and the fact that Blackhawk had no coal under contract to supply at the
11 time, (3) claims that some unknown “July-September transaction” was not
12 consummated leading to purchases in 2004 at higher coal prices, and (4) speculates
13 that the prior purchaser of the lowest domestic bidder (Infinity) was a “non-regulated
14 PEF affiliate synfuel plant.”

15

16 **Q. Are Mr. Sansom’s assertions about the July 3, 2003 RFP evaluation accurate?**

17 **A.** No, they are not. First, Mr. Sansom claims that I did not act “promptly” to purchase
18 the coal offered by Infinity. Contrary to Mr. Sansom’s implication that I did not
19 contact Infinity by his assertion that I “instead” offered to purchase synfuel from
20 Blackhawk, I did follow up with Infinity by phone at the same time I followed up with
21 all of the short list compliance coal suppliers by water, both foreign and domestic.
22 These contacts took place within a couple of weeks of receiving the bids, evaluating

1 them, and creating the short lists. I did contact Infinity, I did so promptly, and I was
2 told Infinity no longer had the coal for sale.

3 Second, Mr. Sansom claims that my contact with Blackhawk was an “example
4 of favoritism” and a “conflict of interest.” He fails to note my contacts with other
5 bidders to get them to improve their bid prices, including Infinity, Central Coal, and
6 Guasare (the import supplier), none of whom are affiliated in any way with PFC. In
7 other words, I treated Blackhawk just like I treated all other bidders on the short list.
8 Moreover, Mr. Sansom fails to explain to the Commission that PFC did not make any
9 purchase from Blackhawk as a result of the July 3, 2003 RFP. All he suggests is that
10 it was somehow improper for Blackhawk to offer coal that Blackhawk had not yet
11 procured. Coal brokers occasionally do this and there is no practical difference
12 between this and offers made subject to prior sale to other buyers, which Mr. Sansom
13 concedes (at page 33, lines 1-2) is an “acceptable practice.” Either way, the supplier
14 does not have the coal to sell to the buyer. In fact, in my experience both on the sales
15 and purchasing sides of our business, buyers will accept a bid even though the broker
16 is “still lining up the coal.” This is even more acceptable in a market where coal is in
17 short supply and prices are very volatile. There is, then, no “favoritism” or “conflict
18 of interest” in treating Blackhawk the same way other short list suppliers are treated,
19 especially when no coal was purchased from Blackhawk in response to the July 2003
20 RFP.

21 Third, Mr. Sansom refers to some unknown, unconsummated “July-
22 September” transaction for compliance coal by water as a result of the July 2003 RFP
23 that he claims led to purchases in 2004 at higher prices. First, this statement ignores

1 the fact that PFC made significant compliance coal purchases by water from a foreign
2 supplier as a result of the July 3, 2003 RFP. These import purchases are the very same
3 purchases that Mr. Sansom admits at page 34, lines 19 to 21 of his testimony were
4 economical purchases for 2004 and 2005. Further, Mr. Sansom is relying on nothing
5 more than hindsight to suggest in his testimony now that further purchases as a result
6 of the July 2003 RFP would have avoided higher prices later in 2004. At the time of
7 the July 2003 RFP and RFP evaluation, the coal market was volatile and, unlike Mr.
8 Sansom, we did not have the benefit of knowing what the 2004 coal prices would be.

9 Finally, Mr. Sansom asserts that "it is even possible" that the Infinity coal was
10 bought by a "PEF affiliate synfuel plant" before PFC could purchase the coal in
11 response to Infinity's bid in response to the July 2003 RFP. This is rank speculation
12 on his part, I do not know who Infinity sold the coal to nor was Infinity obligated to
13 tell me. Infinity had offered the coal subject to prior sale which meant that Infinity
14 was free to sell the coal to anyone in the market who offered Infinity the best price for
15 it and purchased it before we called. That includes any synfuel plant, which by the
16 way, would have led to a lower market price for the coal because synfuel was typically
17 sold below the market price for bituminous compliance coal. However, Mr. Sansom
18 again misses the point that the water-borne import compliance coal bids were lower
19 than the domestic compliance coal bids, like Infinity's, in any event, and the import
20 coal is what PFC purchased.

21

1 Q. Was Mr. Sansom present for your phone call with Blackhawk, Infinity, or any
2 other supplier that you called in response to the bids submitted for the July 2003
3 RFP?

4 A. No, he was not present.

5
6 Q. Did Mr. Sansom provide the Commission with the July 3, 2003 bid evaluation
7 sheets and your October 2, 2003 memorandum and exhibits summarizing and
8 explaining the bid evaluation and reasons for the purchase decisions that were
9 made?

10 A. No, he did not, but I have done so. They are Exhibit No. ____ (AWP-2) and Exhibit
11 No. ____ (AWP-3) to my testimony.

12
13 Q. Is Mr. Sansom also suggesting that PFC should not have evaluated the
14 compliance coal bids based on the means, rail or water, by which the coal would
15 be delivered to Crystal River?

16 A. He may be, because he makes a point of saying that the bids were segregated between
17 rail and water, and domestic water (which he calls affiliates or ex-affiliates) and
18 import water deliveries, in the same paragraph on page 32 in which he accuses PFC of
19 engaging in "favoritism." However, there is nothing improper in this manner of
20 evaluating the bids for the following three reasons.

21 First, this type of evaluation of the bids must be undertaken because PFC does
22 have two means of coal delivery, rail and water, to Crystal River and, therefore, for

1 PFC to fully evaluate all potential bid responses PFC must consider the alternative
2 means of delivering coal to Crystal River.

3 Second, the Commission long ago recognized the propriety of the dual delivery
4 mechanism for Crystal River, stating in Order No. 15895 that “we acknowledge the
5 desirability of maintaining alternative transportation routes for the purpose of
6 increasing reliability and enhancing price competition.” Any suggestion that it is
7 improper to evaluate the bids in part based on the delivery mechanism is inconsistent
8 with the Commission’s prior order.

9 Third, the cost of transporting coal by water to Crystal River, domestic or
10 import, for all but one year of the period at issue in Mr. Sansom’s testimony has been
11 set at a market proxy price approved by the Commission and all parties to the
12 proceeding, including OPC. Regardless of whether the “affiliated” transportation
13 costs exceeded or fell below the market to the extent one existed at all, PFC was only
14 allowed to pass on to PEF’s customers the market proxy amount.

15 Finally, it is ironic that Mr. Sansom appears to take issue with the segregation
16 of the bids by rail and water and the evaluation of them based on their cost of delivery
17 according to the delivery mechanism because if there was no water delivery available
18 to Crystal River there would be no way for Mr. Sansom to urge the consideration of
19 PRB coals at Crystal River. The cost of delivering PRB coals to Crystal River by rail
20 is uneconomical on a delivered cost basis. Mr. Sansom agrees because he purports to
21 have all of the PRB coals he says PFC should have bought delivered by water barge to
22 Crystal River.

23

1 Q. With respect to the July 3, 2003 RFP, did you follow the same evaluation process
2 and analysis for the A coal bids that you did for the D coal bids?

3 A. Yes.

4

5 Q. Does Mr. Sansom dispute in his testimony PFC's evaluation process and analysis
6 with respect to the A coal bids in response to the July 3, 2003 RFP?

7 A. No, he does not.

8

9

B. THE APRIL 2004 SOLICITATION.

10

11 Q. When was the next solicitation you issued for coal for Crystal River?

12 A. In April 2004, PFC initiated on PEF's behalf an RFP for A and D coal for Crystal
13 River for one, two, and three years with delivery by rail or water. As before, the RFP
14 included specifications for both bituminous and sub bituminous coal and was sent to
15 all potential bidders on PFC's bidder list, including a number of PRB suppliers. PFC
16 received fourteen bids for CR1 and CR 2 (A coal) and twenty-three bids for CR4 and
17 CR5 (D coal). A copy of the April 12, 2004 RFP solicitation for CR4 and CR5 is
18 Exhibit No. ___ (AWP-4) to my testimony. A copy of the bidder list indicating the
19 bidders that received the April 12, 2004 RFP and whether they responded to the RFP
20 is Exhibit No. ___ (AWP-5) to my testimony.

21

22 Q. Did you follow the same bid evaluation process for the April 2004 RFP that you
23 did for the July 2003 RFP?

1 A. Yes, I did, and Mr. Sansom has conceded that PFC conducted a thorough solicitation
2 in 2004.

3

4 **Q. What were the results of the evaluations of the bids in response to the April 2004**
5 **RFP?**

6 A. PFC purchased 4.3 million tons of coal for both CR1 and CR2, and CR4 and CR5, as a
7 result of the solicitation. The resulting contracts were for two years (2005 and 2006)
8 and included three contracts each for suppliers of coal for CR1 and CR2 and CR4 and
9 CR5. The coals purchased were those the plants had burned in the past and had
10 historical experience with from both a handling and operational perspective. A copy
11 of my memorandum with exhibits explaining the April 12, 2004 RFP and PFC's
12 evaluation of that RFP is Exhibit No. ____ (AWP-6) to my testimony.

13

14 **Q. Did you receive bids from PRB suppliers in response to the April 2004 RFP?**

15 A. Yes, we did, however PFC did not purchase any PRB coal, even though the prices
16 offered by the PRB suppliers was lower than the prices offered by the bituminous
17 compliance coal suppliers on both a delivered cost and evaluated cost basis at this
18 time. The reason was that PEF was conducting a test burn of a small shipment of PRB
19 coal in a 15% blend with bituminous CAPP coal in April, roughly at the same time the
20 RFP was issued. The Company had just received the report of the results of that test
21 burn at the time of the evaluation of the bids in response to the April 2004 solicitation.
22 At the time, the Company had not completed its review of the test burn and the
23 Company was not permitted to burn sub bituminous coal under the environmental

1 permit in effect at that time. The results of the April 2004 solicitation confirmed,
2 however, that the PFC and PEF should continue to investigate the use of PRB coals at
3 CR4 and CR5.

4
5 **Q. Why did you purchase PRB coals for a test burn in April 2004?**

6 **A.** After the results of the July 2003 solicitation, I continued to follow the market prices
7 reported in the coal publications or on the spot market for bituminous compliance
8 coal, both domestic and import, and PRB coals. I noticed that bituminous coal prices
9 were rising faster than PRB coal prices. As a result, I believed the use of PRB coal in
10 a blend at Crystal River might prove to be economical in the future. For several
11 months preceding the purchase of the PRB coal, I had been speaking with various
12 suppliers of PRB coals. In most cases, because of delivery problems that I have
13 mentioned earlier in my testimony and the suppliers resulting inability to satisfy their
14 existing contractual commitments for PRB coals, the PRB suppliers were not able to
15 provide PFC with a test shipment for a test burn at CR4 and CR5. However,
16 ultimately, after numerous discussions over several months, one PRB coal supplier
17 was willing to "make room" for one unit train for a test shipment. We purchased
18 approximately 30,000 tons of PRB coal from Peabody for shipment by rail to the river.
19 The coal was then transported by river barge to International Marine Terminal (IMT)
20 and ocean barge to Crystal River. There were numerous delays in the shipment of the
21 PRB coal by rail, due to congestion and supply requirements for other coal purchasers
22 on the western rail lines, but I eventually received the shipment of PRB coal for an
23 April 2004 test burn.

1

2 **Q. Was the PRB test burn at CR4 and CR5 conducted in April 2004?**

3 **A.** Yes, it was. Test burns at CR4 and CR5 must be conducted during the “shoulder”
4 months, when the demand for energy placed on the system is generally lower due to
5 the weather. The “shoulder” months generally occur in the spring and fall when the
6 weather in Florida is more temperate. During “peak” months in the winter and
7 summer in Florida the CR4 and CR5 units are needed at full output to meet the
8 demands for energy. Accordingly, if we were unable to have the PRB blend test done
9 in April in all likelihood that test would have been pushed back to the fall, in late
10 October or November, or the next spring.

11

12 **Q. What were the results of the April 2004 test burn?**

13 **A.** The test results were promising although there were issues raised as a result of the test
14 burn. After discussions with the plant operating personnel, it was determined that a
15 target blend of 15% PRB with the remaining 85% a blend of bituminous coals, would
16 be used. The blending occurred at IMT in New Orleans. When the test blend was
17 shipped and used at the plant (CR4), the plant performed well at the 15% PRB blend
18 but suffered a de-rate when it was determined a higher blend (22%) than what was
19 planned occurred in a portion of the shipment. A copy of the test report is included
20 with my testimony at Exhibit No. ____ (AWP-7).

21

22 **Q. Have you read Mr. Sansom’s testimony regarding the 2004 test burn?**

23 **A.** Yes, I have.

1

2 **Q. Do you agree with it?**

3 **A.** No, I do not. The test was not "botched" as Mr. Sansom asserts. The test was
4 undertaken to see how the existing units, in this case CR4, handled a small blend of
5 PRB and bituminous coal without any changes to the unit. In other words, the
6 Company wanted to see not only how the unit operated with a PRB blend but also
7 what, if any, changes were needed in the operation of the unit to accommodate PRB.

8 It is further not true that PFC or the operators of the plant did not know that the
9 CR4 and CR5 boilers were designed to handle a blend of bituminous and sub
10 bituminous coals. We were very much aware that the design of the boilers
11 accommodated a blend of bituminous and sub bituminous coals and that is why we
12 proceeded with the April 2004 test burn without first checking with environmental on
13 the environmental permit. When we learned that the permit did not include sub
14 bituminous coal, the Company stopped the test, and reported this to DEP. I
15 understand the Company obtained a permit to conduct a subsequent test of a blend of
16 PRB and bituminous coal.

17 Also, it should be remembered that the April 2004 test was a preliminary look
18 at PRB, the test occurred only over two days, to see if the Company should pursue
19 PRB as an option at CR4 and CR5. As a result of this test, which I reported to
20 management at PEF, I understand that the Company continued to investigate the use
21 of PRB at CR4 and CR5 in 2005 and 2006.

22

23 **Q. By the way, did PFC also participate in the spot market from 2002 to 2005?**

1 A. Yes. PFC had a practice of regularly participating in spot purchases when market
2 conditions warranted such participation and PFC frequently maintained open positions
3 when market conditions appeared favorable to do so for spot purchases.
4

5 **Q. Was PFC's participation in the spot market well known?**

6 A. Yes. I frequently told bidders and potential bidders about our interest in spot
7 purchases when I was in charge of coal procurement for the Crystal River Plant and I
8 was certainly aware that PFC was a participant in the spot market when I was on the
9 sales side. Also, the purchases in the spot market are widely reported in various
10 widely read and recognized coal publications.
11

12 **Q. Did any PRB supplier ever participate in the spot market during your tenure
13 from 2002 to 2005?**

14 A. No. I never received any spot offers for PRB coal from any PRB supplier.
15

16 **C. SUBSEQUENT MARKET PURCHASES IN 2004**
17

18 **Q. Did you re-enter the coal market in August and September 2004 for additional
19 coal purchases for 2005 and 2006?**

20 A. Yes, I did.
21

22 **Q. Why did you re-enter the market so soon after the April 2004 solicitation was
23 completed?**

1 A. At the time of the completion of the April 2004 solicitation we had an open position
2 partly due to the availability of compliance bituminous coals as a result of that
3 solicitation and partly due to a desire to maintain some limited flexibility to respond to
4 market conditions should they grow more favorable to purchasers. From April to
5 September 2004, however, coal market pricing remained extremely strong, with coal
6 commodity prices increasing from \$45 to \$50 per ton to approximately \$60 to \$70 per
7 ton. This was indicative of a tight supply market brought about by, among other
8 factors, continued trucking issues in both Kentucky and West Virginia and continued
9 discussions regarding the difficulty of obtaining mining permits. Additionally, four
10 major utilities (Tennessee Valley Authority [TVA], South Carolina Electric & Gas,
11 South Carolina Public Service, and Constellation) had issued solicitations for coal.
12 PFC's open position had also expanded for water deliveries of coal to CR4 and CR5.
13 The most economical move under the existing Massey contract was to shift all of that
14 coal from water to rail, rather than maintaining an even split as originally envisioned,
15 because of changing economics on the delivery costs and because projected
16 inventories at IMT in 2005 for water delivery was growing because of delayed
17 deliveries of coal due to the 2004 hurricane season. In sum, PFC determined that
18 additional coal was needed by water for CR4 and CR5 and PFC was now competing
19 with a number of major utilities for a limited supply of coal in the same time frame.

20
21 **Q. Did PFC issue a formal RFP when it re-entered the market in August and**
22 **September 2004?**

1 A. No, it did not. PFC conducted an informal solicitation by contacting those suppliers
2 who were known to have bituminous compliance coal supplies as a result of PFC
3 having conducted the April 2004 formal RFP and continuing contacts in the industry.
4 PFC contacted five potential suppliers off its April 2004 RFP bidder list (PFC's
5 Marketing and Trading Division (PFC/M&T), Coal Marketing Company (CMC),
6 Guasare, Drummond, and Glencore) to determine their ability to supply water-
7 delivered coal and at what price. Only three other suppliers of waterborne coal for
8 CR4 and CR5 (Central Coal, Infinity, and Massey) had responded to PFC's April
9 2004 RFP and I knew from various discussions with these potential suppliers that
10 none of them had coal available.

11 I received six bids from three reliable suppliers. After the bids were evaluated,
12 PFC awarded contracts to the two lowest cost suppliers. PFC/M&T provided the
13 lowest bid and was awarded a two-year contract for 480,000 tons a year. The next
14 lowest bidder, CMC, was awarded a contract for 450,000 tons (150,000 tons in year
15 one and 300,000 tons in year two). CMC was a supplier of Columbian compliance
16 bituminous coal.

17

18 **Q. Why didn't PFC issue a formal RFP solicitation in August-September 2004?**

19 A. Under the prevailing market conditions at the time issuance of a formal RFP was not
20 practicable to ensure that PFC received the necessary quantities of coal it needed for
21 CR4 and CR5 and that it received the necessary quantities at an economical price. As
22 I have explained, coal prices were increasing, partly due to diminishing supplies
23 produced in that time frame, and four major utilities had entered the market with

1 formal solicitations competing for the same limited supply of compliance bituminous
2 coal.

3 Under these circumstances, PFC concluded the best way to secure the most
4 inexpensive coal in the quantities needed was to quickly secure it before commitments
5 were made to the other utilities with outstanding solicitations. While the other four
6 utilities had entered the marketplace with their RFP's, the responses to those RFP's
7 were not due at the time PFC initiated its informal solicitation and evaluation. PFC
8 was able to move ahead of these formal RFP's with an informal solicitation because at
9 the time, due to the volatility of the coal market, almost all responses to RFP's were
10 offered "subject to prior sale," meaning as I have said previously, that the potential
11 suppliers were able to sell their coal to other potential buyers in the market. We
12 intended to enter the market and act quickly before the other four utilities had a chance
13 to respond. Once PFC informed a supplier of its desire to purchase, the supplier
14 would remove their bid from contention in the formal RFP's as a result of the "subject
15 to prior sales" clause in their offer. As a result, in this marketplace it was truly "first
16 come, first served."

17 If PFC had issued a formal RFP instead of conducting the informal solicitation
18 when it did, PFC would have stood in line behind these other four utilities and all of
19 them obviously would have completed their RFP solicitation and evaluation before
20 PFC was able to complete another formal solicitation and evaluation. PFC, then,
21 would have faced an even tighter supply of coal, necessarily resulting in even higher
22 prices than it ended up paying, or no coal at all to meet its needs for CR4 and CR5.
23 Conducting the informal solicitation for CR4 and CR5 when it did in August-

1 September 2004 was reasonable and prudent in light of the prevailing market
2 conditions.

3

4 **Q. How did PFC evaluate the bids received in response to the August-September**
5 **2004 informal solicitation?**

6 **A.** PFC used the same methodology that it used for all coal purchases. PFC evaluated the
7 bids based on both the delivered cost and evaluated cost to the Crystal River Plant.
8 PFC also followed its typical practice of comparing the commodity prices of coals
9 offered in the bids to the current market commodity prices reported in coal reports
10 widely recognized in the industry as reliable market price indicators to ensure that the
11 bid prices were consistent with prevailing market conditions when comparing the bids
12 to the other bids received.

13 PFC determined that the bid prices, including the PFC bid, were within a
14 reasonable range of market prices based on the published reports and other bids. This
15 comparison was done because of the lack of availability of coal in the market place.
16 The commodity price for the PFC/M&T bid (\$62/ton), was within a reasonable range
17 of market prices reported by United Power Inc. and Henwood Energy Services, Inc.,
18 which ranged from \$60.43/ton to \$62.96/ton. The delivered costs of the PFC bid was
19 \$3.15/MMBtu and was within a reasonable range of market prices based upon the
20 United Power and Henwood Energy commodity prices plus the estimated delivered
21 cost at \$3.09/MMBtu to \$3.19/MMBtu.

22 The CMC bid was compared to the other import coal offer which was provided
23 by Guasare. The CMC commodity price delivered into IMT was \$63.93/ton compared

1 to the Guasare commodity price of \$74.75/ton; the delivered CMC price was
2 \$3.18/MMBtu compared to the delivered Guasare price of \$3.32/MMBtu. Based on
3 the types of coals at issue in the informal solicitation, PFC further followed its usual
4 practice of purchasing known coals based upon the lowest delivered cost of the coals
5 offered. This demonstrated that the August-September 2004 solicitation resulted in
6 valid market prices.

7
8 **Q. Are you aware of Mr. Sansom's criticisms of the August-September 2004**
9 **informal solicitation?**

10 **A.** Yes, I am. Mr. Sansom criticizes PFC because (1) PFC did not conduct a formal RFP
11 solicitation; (2) PFC apparently did not contact every compliance coal supplier on its
12 admittedly "lengthy" bidder list; (3) PFC allegedly "sole-sourced" 480,000 tons for a
13 two-year contract to an affiliate that provided coal by water to Crystal River; (4) PFC
14 used published trade press prices to compare the bid prices received; and (5) PFC also
15 purchased 210,000 tons of coal for CR1 and CR2 by rail from its affiliate. Mr.
16 Sansom also claims PFC should have purchased PRB coal and not the coal purchased
17 from PFC/M&T.

18
19 **Q. Do you agree with them?**

20 **A.** No, I do not. Apparently, Mr. Sansom believes that the only means of purchasing coal
21 is through a formal RFP solicitation no matter what the market conditions are. This
22 rigid standard is unrealistic and impractical because it denies PFC (or any procuring
23 utility for that matter), the flexibility necessary to respond to changing market

1 conditions. By late summer and fall 2004 the coal market was highly volatile, there
2 were several utilities seeking significant tons from an ever tightening supply,
3 necessitating quick action by PFC to secure the necessary tons for CR4 and CR5. PFC
4 acted reasonably and prudently under those market conditions in ensuring that it was
5 among the "first to be served" in that market. Further, if Mr. Sansom's rigid standard
6 of formal solicitations prevailed today there would be no "Over the Counter Market"
7 (OTC) for coal which is clearly not the case in our industry today.

8 Mr. Sansom focuses on the purchase contract with PFC/M&T in August-
9 September but ignores the 450,000 tons purchased over the same two years from CMC
10 for high quality, import compliance bituminous coal. They were both made at the
11 same time, both provided coal by barge delivery into Crystal River, and both bid
12 prices compared favorably to market prices based on the recognized industry indices.
13 Notably, Mr. Sansom does not say that it is unreasonable or imprudent to compare bid
14 prices to such indices, rather, he argues simply that they are no substitute for formal
15 solicitations. Again, in a perfect world with perfect market conditions one could
16 always rely on formal RFP's but the world is not always perfect and market conditions
17 sometimes require a more flexible, rapid response to market circumstances than a
18 formal RFP provides. Those are the circumstances that PFC faced in August-
19 September 2004.

20 Mr. Sansom nowhere explains how the purchase of coal by rail for CR1 and
21 CR2, which is an entirely different type of coal from that purchased for CR4 and CR5,
22 renders the award of one of the contracts in response to the August-September 2004
23 informal solicitation imprudent. He simply asserts it with no basis whatsoever.

1 Finally, Mr. Sansom takes issue with statements I have made about the
2 anticipated impact if PFC issued a formal solicitation rather than conducting the
3 informal solicitation that it undertook in August-September 2004. He claims that the
4 trade press reports show that PEF was already in the market in August and September
5 2004 and, therefore, implies that the participants in the market were well aware of
6 PFC's intentions. This is misleading. The trade press reports included by Mr. Sansom
7 as an exhibit are both incomplete and, hence, not dated. One can tell, however, from
8 comparing the "Bids Due" entries on page 1 of 2 of Exhibit No. ____ (RS-25) that the
9 entry for Progress Energy for "Crystal River" has a "Bid Due" date of "5/12/04",
10 which was the earlier April 2004 solicitation. The second entry on that same page
11 refers to a "Progress Energy," "system-wide" solicitation, with a "Bids Due" date of
12 "6/30/04." This second entry is a solicitation for Progress Energy Carolinas, not for
13 PEF at Crystal River. It is this second entry that is repeated on page 2 of 2 of Exhibit
14 No. ____ (RS-25). Therefore, what Mr. Sansom has done in this exhibit is include an
15 earlier April 2004 RFP by PFC for PEF at Crystal River and a Progress Energy
16 Carolinas solicitation and claimed that they demonstrate that PFC would re-enter the
17 market months later, in August-September 2004, for more coal for Crystal River. The
18 exhibit clearly has nothing to do with the informal solicitation that PFC undertook in
19 August-September 2004.

20
21 **IV. SYNFUEL PRODUCTION AND SALES: 1999-2002**

22
23 **Q. Prior to assuming the position of Vice President for Coal Procurement for PFC,**
24 **were you employed on the sales side of PFC?**

1 A. Yes, I was, from 1984 until 2002. My job was to sell coal and later coal and synfuel
2 to utilities and industrial customers. As a result, PEF was but one potential customer
3 among many potential customers.
4

5 **Q. Did you respond to RFP's for coal for the Crystal River units?**

6 A. Yes, I did. I frequently participated by providing bids in response to PEF RFP's with
7 both coal and synfuel at various times over the years. In each case in which I
8 participated in an RFP on behalf of PFC/M&T, I was always treated just like any other
9 bidder. I also participated in the spot market with PEF by providing PFC on PEF's
10 behalf offers for spot purchases. Similarly, when I assumed the position of making
11 coal procurement decisions for PFC on PEF's behalf I treated PFC/M&T, when they
12 participated in the RFPs or spot market, just like any other bidder.

13 PFC/M&T sold synfuel from facilities in which PFC had a small equity
14 interest to PFC on behalf of PEF from 2000 to 2002. PEF, however, did not always
15 purchase coal or synfuel from PFC/M&T when it was offered, either in response to an
16 RFP or on the spot market.
17

18 **Q. Was it unusual for EFC/PFC affiliates to have handled synfuel sales for synfuel
19 producers in which an EFC/PFC affiliate held a minority equity participation?**

20 A. No, that should have been expected because EFC (PFC) was one of the first if not the
21 first entity to develop a successful synfuel production process and to set up efficient
22 production and marketing facilities. As a result, other participants in the industry
23 sought out EFC's (PFC's) expertise in the production and marketing of synfuel.

1 EFC/PFC was the primary, dominant market participant in the production and sale of
2 synfuel.

3
4 **Q. What made synfuel competitive to comparable bituminous compliance coal?**

5 **A.** Synfuel had a bituminous coal base so it was offered as an alternative coal product at a
6 price that was one to two dollars cheaper than the bituminous coal product on the
7 market. In fact, the sales pitch for synfuel was that "it burns like coal, handles like
8 coal, but is cheaper than coal so it will save you money."

9
10 **Q. Did the sale of synfuel to PFC for PEF benefit PEF's customers?**

11 **A.** Yes, it obviously did, because the synfuel product was sold at a discount to the market
12 price for bituminous compliance coal. So, as a result, the utility customer received a
13 similar bituminous coal-based product at a below market price. Synfuel producers
14 were able to sell synfuel at or below market prices because they obtained tax credits
15 that offset losses on the production and sale of synfuel.

16
17 **Q. Mr. Sansom creates the impression in his testimony and his exhibits that sales of
18 synfuel to PFC for PEF's Crystal River units were the primary source of synfuel
19 tax credits for Progress Energy. Is that accurate?**

20 **A.** No, it is not. Since I was involved in the sale of coal and synfuel from 2000 to 2002
21 (and coal before then) I know that PEF was one of PFC/M&T's smallest customers of
22 synfuel. There were a number of other major utilities, such as American Electric
23 Power (AEP), TVA, and Louisville Gas & Electric, that purchased substantially more

1 tons of synfuel on an annual basis than PEF ever did. These larger synfuel customers
2 had to account for the overwhelming majority of the tax credits generated from
3 synfuel sales because it is my understanding that the tax credits followed the sales.
4

5 **V. ADDITIONAL REBUTTAL POINTS**
6

7 **Q. Having read Mr. Sansom's testimony, are there any additional errors that you**
8 **see in his testimony?**

9 **A.** Yes, there are. First, Mr. Sansom argues at page 39, lines 10-16, of his testimony that
10 the shipment of PRB coals by rail to the McDuffie terminal in Mobile, Alabama and
11 then by Gulf barge to Crystal River was the most economic route for the shipment of
12 PRB coals to Crystal River. Second, at pages 46 and 47 of his testimony, Mr. Sansom
13 attempts to equate the transportation risks of moving PRB coals to the transportation
14 risks for Eastern bituminous coals. Both of these arguments are in error, based on
15 what little information Mr. Sansom has provided in his testimony to support them.
16

17 **Q. What is erroneous about his argument that the shipment of PRB coals by rail to**
18 **McDuffie and then by Gulf barge to Crystal River was the most economic means**
19 **to deliver PRB coals to Crystal River?**

20 **A.** In support of this argument he relies on two letter proposals from rail carriers, one
21 dated August 23, 2002 and the other dated May 8, 2003, for the delivery by rail of test
22 shipments to the McDuffie terminal, and his unsupported conclusion that the "post-test
23 burn" contract rail rates "usually" are not higher than the railroad's test burn rates

1 simply "because volumes are higher and the term is longer." The latter letter was
2 addressed to me and followed conversations that I had with the carrier. I know based
3 on those conversations that the rail price quoted in that letter was limited to a "test"
4 shipment as a means of encouraging PFC to look at PRB coals for the Crystal River
5 plants in the near future. I also know from those same conversations that the actual,
6 long-term contract price to haul PRB coal from the mine to the McDuffie terminal
7 would have been higher. This offer was a "Blue Light Special" offered by the rail
8 carrier. I was there, I had the conversations with the rail supplier, and I know this
9 offer was for test shipments only and would not translate into a later, favorable
10 contract rail price. Therefore, Mr. Sansom's conclusion is incorrect in this instance
11 and he offers nothing else to support his assertion that long-term contract rail rates
12 between these two locations are "usually" lower than test burn rates. In fact, Mr.
13 Sansom later concludes (at page 40) that it was the lack of "good data" that led him
14 not to rely on this method of transporting PRB coals to Crystal River in his damages
15 analysis.

16
17 **Q. What is erroneous about Mr. Sansom's attempts to equate the transportation**
18 **risks of PRB coals and Eastern bituminous coals?**

19 **A.** In my experience in the coal markets, primarily in the east, the reasons for delay on
20 the transportation of coals is highly dependent on the particular circumstances
21 involved in each occurrence. The delays that have occurred in my experience usually
22 could be explained by the situation of the particular supplier, the particular mine, the
23 particular locale, or other unique circumstances. I have found it difficult to generalize

1 about such risks in the eastern coal markets much less between eastern and western
2 coal markets. Mr. Sansom must face similar difficulties since his testimony on this
3 point is unsupported by any analytical, scientific study that he or someone else has
4 done to compare the transportation risks associated with PRB coals to the
5 transportation risks associated with eastern bituminous coals.

6

7

VI. CONCLUSION

8

9 **Q. Do you believe that PFC acted reasonably and prudently in the coal procurement**
10 **decisions that were made during your tenure as the Vice President of Coal**
11 **Procurement for PFC?**

12 **A.** Yes, I do. As I have explained in my testimony, PFC has always sought to obtain the
13 most economical coal for the Crystal River coal units given the market conditions that
14 PFC faced at the times these decisions had to be made between 2002 and 2005. In my
15 view, under the circumstances present at the time these decisions were made, PFC did
16 act reasonably and prudently.

17

18 **Q. Does this conclude your testimony?**

19 **A.** Yes.

20

1 BY MR. WALLS:

2 Q Mr. Pitcher, do you have a summary of your prefiled
3 testimony?

4 A I do.

5 Q Will you please summarize your prefiled testimony for
6 the Commission?

7 A I certainly will.

8 Madam Chairman, Commissioners, from 2003 to 2005 I
9 was responsible for purchasing coal. I followed the coal
10 procurement policies that were in place. I evaluated the need
11 for additional coal for CR1 and 2 and 4 and 5 based on
12 projected burn for the year, inventory levels and coal already
13 under contract. We favored a mixture of contract and spot
14 purchases.

15 I was responsible for two RFPs in July 2003 and
16 April 2004. I used our existing RFP form which included
17 specifications for both bituminous and sub-bituminous coals.
18 PRB suppliers and domestic and foreign bituminous coal
19 suppliers were on the bidder list and were sent RFPs. Our RFPs
20 expressed preferences for coal quality characteristic and
21 transportation means, but did not prohibit bids for coals or
22 transportation that differed from our preferences.

23 Under our RFP only coals in excess of 1.2 pounds
24 sulfur limit on compliance coals were excluded from
25 consideration. We evaluated coals that differed from our

1 specifications on an evaluated or bus bar cost analysis. We
2 used the EPRI coal quality impact computer model called CQIM.
3 This was a recognized industry standard. The coal quality
4 characteristics considered in the model were ash, BTU, sulfur,
5 moisture and volatility characteristics of the coal. This is
6 in effect a paper test burn. A coal had to pass this initial
7 evaluation to be considered for an actual test burn.

8 I understood that these units were baseload units and
9 were routinely producing between 750 and 770 megawatts. This
10 was the expected regular output. I had to take these -- I had
11 to take into account these operational goals when I made coal
12 procurement decisions.

13 Test burns were required of the lower BTU high
14 moisture Colombian coal offered in response to the July 2003
15 RFP and PRB coals. I received the PRB bids in response to both
16 RFPs. In July 2003, I indicated that we were interested in a
17 test burn of PRB coals, even though the PRB coals proved more
18 costly on an evaluated cost basis than the foreign bituminous
19 coals.

20 I ended up buying significant quantities of foreign
21 bituminous coals. I did not purchase any water-delivered
22 domestic compliance coals for CR4 and 5 as a result of the
23 July 2003 RFP.

24 I treated PFC's affiliate the same way I treated all
25 bidders. I called all of them to try to get them to improve

1 their prices, as was my common practice.

2 Prior to assuming the job of coal procurement, I was
3 on the sales side of PFC. I sold coals and synfuels to many
4 industrial customers and utilities including PFC for PEF. I
5 was treated just like any other bidder. Other utilities like
6 AEP and TVA were by far my largest customers, especially for
7 synfuels. Synfuels were attractive to coal customers because
8 the tax credits allowed synfuel producers to price synfuels
9 below market price for bituminous coals.

10 After the July 2003 RFP I tried to purchase PRB coals
11 for a test burn. Rail delays and congestion delayed the
12 purchase for that test burn until April 2004, the same month as
13 the second RFP was sent out. We obtained PRB coal which was
14 blended off-site for a 15 percent blend to see how the blend
15 would perform in the boilers. Because I knew the boilers could
16 accommodate PRB coals, they had always been in our RFPs, we
17 assumed we could proceed with the test burn. We did not check
18 with environmental. We learned we did not have a permit for
19 the test burn and we stopped it. Following this test, however,
20 I understand the company sought permit for further testing of
21 PRB coals.

22 No PRB coals were purchased in response to the
23 April 2004 RFP because the company was further evaluating
24 sub-bituminous coals. This evaluation process was disrupted by
25 the 2004 hurricane season, but I understand that it resumed in

1 2005. Thank you.

2 MR. WALLS: We tender Mr. Pitcher for
3 cross-examination.

4 CHAIRMAN EDGAR: Thank you.
5 Mr. McGlothlin.

6 CROSS EXAMINATION

7 BY MR. MCGLOTHLIN:

8 Q Mr. Pitcher, turn to Page 3 of your prefiled
9 testimony.

10 A Page 3?

11 Q Yes.

12 A I'm there.

13 Q At Line 13 you say, "As the Vice President of Sales
14 for PFC during most of the years that synfuel was purchased by
15 PEF, however, I know that synfuel was sold at a price below
16 bituminous coal prices and was purchased by utilities and
17 industrial customers only on a contract or spot basis when the
18 synfuel was more economical."

19 Were you in the room yesterday?

20 A I was.

21 Q Did you hear a conversation concerning what was
22 described as a \$4 spread between the price paid for feedstock
23 and the price of the produced synfuel?

24 A I just -- I heard it mentioned. Yes.

25 Q Are you familiar with, with the term of spread

1 between the feedstock and synfuel price?

2 A I know that we discounted our synfuel off of the
3 bituminous coals. I wasn't involved in the accounting aspects
4 as far as computation of the spread, so I'd have to say that --
5 you know, I know Ms. Davis answered that question yesterday as
6 to what the spread was.

7 Q Okay.

8 A And I believe that probably answers it.

9 Q Well, if I recall correctly, the testimony was that
10 the price paid for the feedstock is higher than the price
11 charged for the synfuel itself; is that correct?

12 MR. WALLS: Objection. Mischaracterization of
13 testimony.

14 MR. MCGLOTHLIN: What's, what's mischaracterized
15 about that?

16 MR. WALLS: I believe that's exactly contrary to what
17 Ms. Davis testified. I thought she testified it was lower.

18 BY MR. MCGLOTHLIN:

19 Q Well, Mr. Pitcher, which is higher, the price paid
20 for the feedstock or the price charged for the synfuel?

21 A When we purchased the feedstock -- when we marketed
22 our synfuels, we were able to discount that coal, that synfuel
23 product in relationship to the bituminous coal market. So if
24 indeed it was reduced, it was below, the price was below the
25 cost of the feedstock, the company, the synfuel company would

1 indeed take a loss on the sale of the product.

2 Q Yes. If you're -- if you know, is that typically the
3 case?

4 A I'm sorry. Say that again, please.

5 Q If you know, is that typically the case in terms of
6 the economics of the synfuel business?

7 A I think that's how the synfuel sales and products
8 work. Absolutely.

9 Q So more is paid for the feedstock than is charged for
10 the synfuel; correct?

11 A Repeat that one more time for me.

12 Q The price paid to acquire the feedstock is a higher
13 dollar amount than the price charged for the synfuel.

14 A I believe that that's the case.

15 Q All right. And if that is typical of the situation,
16 how does the producer of the synfuel make money?

17 A Well, I think it all rolls into the tax credit issue
18 that there are tax credits associated with synfuel.

19 Q And how are those tax credits received and allocated
20 among the parties that are involved in the transaction?

21 MR. WALLS: Objection. Lack of foundation.

22 BY MR. McGLOTHLIN:

23 Q If you know, Mr. Pitcher.

24 A I do not know.

25 Q Turn, if you would, to what has been marked as AWP-3,

1 Page 2 of 2.

2 A 2 of -- this is like --

3 Q 2 of 12. I'm sorry.

4 A Oh, okay. All right. I'm there.

5 Q Under the paragraph captioned Explanation, you
6 describe the participation of Black Hawk/Calla.

7 A Excuse me. There's explanations on a couple of
8 paragraphs. Could you tell me where you are?

9 Q Well, you're right. This is the second of the three
10 explanations.

11 A Under what heading is it?

12 Q Domestic water.

13 A Okay. I'm there. Thank you.

14 Q And you describe the participation of Black
15 Hawk/Calla in this particular solicitation, do you not?

16 A Yes, I do. Uh-huh.

17 Q And if I understand it correctly, in this situation
18 Black Hawk submitted a bid without first having acquired a
19 source of coal to supply to the bid; is that correct?

20 A If you'd give me a moment, let me look here.

21 That's correct.

22 Q And I'm referring to the sentence that says, "Due to
23 intense market activity, Black Hawk/Calla could not obtain a
24 coal source for their bid." Do you see that statement?

25 A I do.

1 Q Now Black Hawk was referred to yesterday. If I
2 understand correctly, Progress Fuels Corporation has an
3 ownership interest in the Black Hawk entity; is that correct?

4 A Black Hawk was the marketing agent for the synfuel
5 off the Kanawha River.

6 Q Yes. And does Progress Fuels Corporation have an
7 ownership interest in Black Hawk?

8 A I don't know the exact ownership of Black Hawk. I
9 know that there was a 10 percent interest in the synfuel
10 facilities on the Kanawha River. I don't know exactly how,
11 what the percentage of ownership was for Black Hawk.

12 Q I see. If a bidder submits a bid without having a
13 source of coal either owned or controlled, is that known at the
14 time you receive a bid?

15 A Repeat that one more time for me, please.

16 Q In this situation Black Hawk submitted a bid;
17 correct?

18 A That's correct.

19 Q And at the time Black Hawk submitted a bid to the RFP
20 it neither owned nor controlled a source of supply with which
21 to honor a bid should it be awarded a contract; correct?

22 A I think most brokers, if they're brokers in the coal
23 industry, they're not going to own or control that coal.
24 They're going to be sourcing that coal.

25 Q If they don't own or control the coal, how do they

1 know quantities and price to bid?

2 A You know, I don't know how the brokers, this
3 particular, how they were working at this time. I know that
4 they were working on an arrangement in order to provide coal.
5 I think what, what's important here is that during this time
6 the market was in great flux, very volatile. We were looking
7 for a coal supply. And to me if a coal supplier had the
8 opportunity to put a coal supply and offer it to us at a
9 competitive price, which they did because they made the short
10 list, I don't know the ins and outs of what they did in order
11 to put that together, but they would have been held to that
12 price. I've had that in the past with another supplier where
13 we allowed them to put a mine together, and, and they turned
14 out to be one of our best rail suppliers. So I don't see that
15 as a problem.

16 Q Well, I'm trying to ascertain how it is fair to other
17 bidders and good business for the entity conducting the RFP to
18 entertain a bid by an entity that has no source of coal and no
19 ability to honor a contract, if awarded. For instance, at what
20 point in time would you as the conductor of an RFP learn or
21 know that a particular bid has no source of supply?

22 A I think that's a real important point,
23 Mr. McGlothlin. Once we realized that this was not going to
24 come to fruition, we purchased no domestic water coal on that
25 RFP from anyone. So we simply walked away from the bid and we

1 proceeded with the low-cost suppliers, which happened to be the
2 import coal suppliers.

3 Q At what point in the RFP process did that occur? At
4 what point during the RFP process did you become aware that
5 Black Hawk had no supply with which to back up its bid?

6 A Well, the bid was issued in July, and it was during
7 the August 2003 time frame.

8 Q Did you ask the bidder to demonstrate a supply or did
9 the bidder contact you and say, look, we issued, we submitted a
10 bid but it looks like we won't be able to honor it?

11 A Well, if you look at what's occurring in the
12 marketplace today, and our bid list, our bid responses show
13 that there are various brokers that offer coal that they
14 indicate is unspecified. And when it comes time to sign on the
15 dotted line for that coal source, we will know what that source
16 is. And it's not just Progress Fuels, it's many others. I've
17 got Koch Carbon. There are a lot of other brokers, and they
18 will -- in the marketplace today the people are brokering coals
19 in and they'll say their source is unspecified. They're
20 committing themselves to live up to a price, a tonnage and a
21 specification. You have to take on the basis of the reputation
22 of that company, which we do. If they do not come up with the
23 source, cannot tell us what the specific source is by the time
24 it's time to finalize the deal, then we wouldn't do the deal.

25 Q If a bidder indicates the source is unspecified, does

1 that indicate to you necessarily that there is no source of
2 supply or does it perhaps indicate that the bidder, for
3 whatever reason, does not wish to disclose its source until
4 it's time to sign on the dotted line?

5 A I think that there's all kinds of reasons why they
6 wouldn't -- would have it unspecified. I think it would be
7 each individual case you'd have to make that decision.

8 Q Is there any point in the RFP processes that you
9 conducted at which you would inform the bidders either show
10 that you can deliver or you're disqualified from further
11 consideration?

12 A I think as we go through the RFP evaluation
13 process -- and, once again, given this time frame and the
14 condition of the market, we acted very quickly, we called the
15 suppliers all within a, within a week's period of time, we
16 would have, this would have been a very quick process. This
17 was not a lengthy, drawn-out process. So the answer to your
18 question, we would have found that out very quickly in this RFP
19 process.

20 Q Now in this particular RFP process, at the same time
21 Black Hawk submitted a bid without its source of supply you
22 received a firm bid from Infinity that did have a source of
23 supply, did you not?

24 A They did.

25 Q And did you award a contract to Infinity in this

1 situation?

2 A I did not.

3 Q And was that because Black Hawk occupied its place in
4 the, in the RFP queue without having a firm source?

5 A No. I actually contacted all the suppliers.
6 Infinity I called first, and Infinity's coal was offered
7 subject to prior sale. The coal was sold, had already been
8 sold, it was no longer available, and I moved to the number two
9 spot. They had actually occupied on the domestic side, water
10 side number one and number three. And I went to call them,
11 tried to -- actually called them to beat them down on price and
12 they told me that the coal was sold.

13 Q And was that before or after you learned that Black
14 Hawk had no source of supply?

15 A Repeat that again, please.

16 Q You said that you were told by Infinity that the coal
17 had been sold to another purchaser.

18 A Yes, sir.

19 Q Did you learn that before or after you were informed
20 by Black Hawk that Black Hawk had no source of supply?

21 A Well, as I said, I called Infinity first, and then I
22 called PFC and found out the conditions of what they were, what
23 they were putting the coal source together. So I called
24 Infinity first because they were the cheapest on the water
25 domestic side.

1 Q When Black Hawk or, as you describe it, a broker
2 submits a bid without a source of supply and ultimately does
3 provide a source, does the broker make a profit on the
4 transaction?

5 A I'm sorry. Say that again, please.

6 Q I think you said that Black Hawk -- using Black Hawk
7 as an example, I think you described Black Hawk as a broker.
8 When Black Hawk submits a bid without having a source of supply
9 and then by the time the evaluation is conducted and Black Hawk
10 is a winner, was able to show a source, does, does Black Hawk
11 then make a profit on the transaction from the entity with whom
12 it deals?

13 A I don't know the relationship between their, the
14 entity and their putting the coal together, but I would assume
15 everybody is in business to make money.

16 Q Yes. I would assume that too.

17 Would it be better for the ratepayers for, for
18 Progress Fuels Corporation to deal directly with the source as
19 opposed to having a broker with a profit margin involved in the
20 transaction?

21 A I think brokers have become a position in our coal
22 industry. You know, we're singling out Progress Fuels here,
23 but we have Koch Carbon, we have multiple other brokers, and
24 those people have the ability to go out and source coals,
25 expend the money necessary to take positions on coals. And

1 that's why many times these brokers show an unsolicited or, I'm
2 sorry, an unspecified amount. They've got a lot of coal
3 they've already purchased. They've taken, excuse me, they've
4 taken positions on these coals. And so, you know, it's just
5 not unusual.

6 Q Well, I think you've described an example of a
7 situation in which the, the bid may say unspecified at the same
8 time the broker has taken positions and has potential sources
9 for the bid it has submitted; is that correct?

10 A They do, yes.

11 Q I'll refer you now to AWP-3, Page 1 of 12.

12 A Okay. I'm there.

13 Q In the third paragraph, at the end of the third
14 paragraph you say, "The western coals will be evaluated
15 separately and used for test burn purposes only." Do you see
16 that?

17 A I do.

18 Q Now turn to Page, excuse me, 11 of 12.

19 A I'm there.

20 Q And this is captioned July '03 Solicitation of
21 Western Coals; correct?

22 A Yes.

23 Q I'm looking at the one, two, three, fourth column
24 from the left, and does that represent the total tons that were
25 offered for sale by the, by the western participants in the

1 '03 RFP?

2 A Yes, it does.

3 Q And these are expressed in thousands, are they not?

4 A That's correct.

5 Q So, for instance, AEP Number 3 offered
6 1,500,000 tons?

7 A Yes. That's correct.

8 Q As did other bidders. And some are in the
9 500,000-ton range; correct?

10 A Yes, sir. That's correct.

11 Q Isn't that an unusually large quantity to be bid for
12 a test burn?

13 A I don't know. I guess the suppliers offered what
14 they thought they could sell. We issued this RFP simply as an
15 RFP. The suppliers were free to submit the number of tons that
16 they wanted to submit.

17 Q I see. So the western producers were not informed
18 anywhere in the RFP documents that they were being considered
19 only for test burn purposes.

20 A We have always had the sub-bituminous specifications
21 in our bid solicitations, so this was no different than any
22 other. This is a -- you know, I wouldn't -- it would be no
23 different than if I had a Central Appalachian coal or a foreign
24 coal that had never been used at the plant and needed to be
25 tested. I wouldn't inform those suppliers that, oh, by the

1 way, I'm out for an RFP, but I would also -- we're going to be
2 testing your coal. It simply was an RFP listing the amount and
3 quantities and specifications that we needed.

4 Q And the western producers were not notified that you
5 were intending to use their submissions only for test burn
6 information purposes.

7 A As neither were the Central Appalachian or the
8 foreign suppliers.

9 Q Okay. It'll take me a moment to find my next
10 reference, if you don't mind.

11 Looking again at Page 11 of 12, you have a column
12 called the Cash Cost in Dollars Per Million Btus, do you not?

13 A Yes.

14 Q And that includes both the commodity cost of the coal
15 itself and the transportation cost?

16 A Yes, it does.

17 Q And in quantifying the transportation costs of the
18 western coals, did you incorporate what has been referred to as
19 the market proxy rate?

20 A Yes.

21 Q So that is reflected in the value per million Btus
22 that's shown under cash cost, is it not?

23 A Yes, it would be.

24 Q And looking at the top entry for Kennecott/Spring
25 Creek, that cash cost is \$1.98 in change, is that correct, per

1 million Btus?

2 A The number one Kennecott?

3 Q Yes.

4 A Yes, that's correct, on a delivered basis.

5 Q And on an evaluated and utilized basis it's \$2.06, is
6 it not?

7 A Yes.

8 Q And isn't it true that even on an evaluated basis,
9 taking into account the transportation costs that you
10 attributed to it, this is more economical than the foreign coal
11 that was purchased?

12 A No, I don't believe that's true at all.

13 Q If you'll look at AWP-3, Page 2 of 12.

14 A Okay.

15 Q Page 1 and 2. I see descriptions of coals that
16 priced out as 2.12 and change, 2.13 and change.

17 A Yes.

18 Q 2.12 in change. Do you see that?

19 A Yes. That's correct.

20 Q And those are the ones who were awarded contracts,
21 were they not?

22 A Yes, they were.

23 If I may clarify, the, you know, the PRB coals, we
24 were interested in testing them, and the current situation with
25 the railroads and the, the congestion that existed in the

1 western railroads would have prohibited us from purchasing any
2 kind of quantity of PRB coals. It would have allowed us to
3 test coals, which indeed we did at a later date. But in no way
4 would I have purchased large quantities of Powder River Basin
5 coal to put the plant at jeopardy to not have a coal supply.
6 We were able to support the coal supply with a very high
7 quality imported coal.

8 Q Just so the record is clear, sir, the reference, my
9 reference was to the Kennecott/Spring Creek bid, and that is
10 for Powder River Basin sub-bituminous coal, is it not?

11 A It is.

12 Q And I think we established, recognizing your caveats
13 about other considerations, we established that as it priced
14 out in this particular RFP, including the market proxy
15 transportation rate and including the impact of the evaluation
16 that was done to take into account all the factors you deemed
17 important, the Powder River Basin coal in this particular
18 instance was cheaper on an evaluated basis than the foreign
19 coal that received the contract.

20 A I think that our policy for purchasing coals --

21 Q First, can you answer yes or no before you add?

22 A The answer is that the, the PRB coals were less, were
23 less expensive. But we do not always look at the low cost. We
24 want to look at reliability. That's the most important thing
25 for a baseload plant. PRB -- it was written throughout the

1 coal industry publications that during this time frame the
2 Powder River Basin was unable to deliver coal to their existing
3 customers. We could not jeopardize a baseload plant by
4 purchasing a coal that, number one, we did not know how it
5 would react in the boilers, and, number two, the railroads were
6 unable to deliver and fulfill contracts to their existing
7 customers. So I went with a coal supply that I knew from a
8 previous supplier that would be reliable. Price is not always
9 the indicator.

10 Q And at the time you were unaware that there was a
11 prohibition against burning in the form of a limitation in
12 environmental permits; correct?

13 A Say that again, please.

14 Q At the time you performed this evaluation, you were
15 not aware of any prohibition against the use of this Powder
16 River Basin coal in the form of limited environmental permits;
17 is that correct?

18 A No. I think, as I've said in my testimony, we tested
19 it in April of 2004.

20 You have to excuse me. I've got a little sinus
21 problem today.

22 Q You have provided with this exhibit your report to
23 Mr. Gates on the results of the RFP process?

24 A Yes, sir.

25 Q Who is Mr. Gates?

1 A He was over the Crystal River coal facility.

2 Q And that begins on Page 1 of 12; is that correct?

3 A Yes, it does.

4 Q Can you point to anyplace in your report, in your
5 analysis to Mr. Gates where you mentioned congestion of rails
6 as a consideration in your evaluation of Powder River Basin
7 coal?

8 A I think those conversations were taken place, we had
9 had them prior to that, and these coals -- once again, this
10 was, this bid was issued in July of 2003, and when we took a
11 look at the PRB coals, we were in the middle of the heat of the
12 summer and the plant -- we were not going to be entertaining
13 any test shipments on any coals until after the, we got into
14 the shoulder months. So conversations we had may not
15 necessarily be reflected in this letter, but they were
16 certainly discussed.

17 Q Well, in your answer you referred to the preference
18 for a particular season for conducting a test burn. But my
19 question was whether anywhere in this, in this document you
20 refer to a potential congestion of rail suppliers as a
21 consideration in the evaluation of Powder River Basin. It's
22 not there, is it?

23 A It was taken -- it was done verbally. It's not in
24 this letter.

25 Q It was done verbally. Would you agree that the

1 purpose of this particular document was to explain the
2 rationale for purchasing the coal that you chose?

3 A Well, I think the rationale of this letter was to
4 provide him a report with what we were buying and talk to him
5 about it. But this was also conducted in several face-to-face
6 meetings prior to this letter.

7 Q Yes. And the rationale for the Powder River Basin
8 coal was that you were going to look at that for test purposes
9 only; correct?

10 A Say that again.

11 Q The rationale expressed in this report on the results
12 and the outcome of the RFP process applicable to Powder River
13 Basin coal was that you were going to look at that for test
14 purposes only; correct?

15 A And that's what the attachments to the letter say.

16 Q And that's all they say; correct? Nothing in here
17 about rail problems.

18 A I'm saying, as I've said before, we've talked about
19 that -- we met with them. We sat down with them and talked to
20 them. It was not in this letter because this letter was to
21 tell and inform the plant personnel what we purchased, not what
22 we didn't purchase.

23 Q Can you identify any specific congestion problems
24 that occurred with respect to delivery of Powder River Basin
25 coal in 2003 or 2004?

1 A Oh, I think, I think, Mr. McGlothlin, that the coal
2 publications were covered over. Anyone that was in this
3 business was fully aware of the problems in the west with the
4 railroad. I don't think citing a specific example -- the coal
5 publications were covered over with articles about Southern
6 Company not being able to get their coals, various other people
7 not being able to get their coals. This was not new news to
8 anyone in the coal industry.

9 Q But my question relates to the specific time frame of
10 '03 and '04.

11 A I'm telling you the specific time frame of '02 and
12 '03, '03 and '04 there were problems with the western
13 railroads.

14 Q But as you sit here today, you cannot be more
15 specific than that, can you?

16 A Other than to tell you that it was in all the
17 publications associated with our industry.

18 Q And those problems didn't make it into your report on
19 the outcome of the RFP, even though the Powder River Basin coal
20 evaluated as the cheapest of the, of the coals that were
21 submitted.

22 A I think I've answered that. I've told you that
23 they -- I discussed it verbally with Mr. Gates and the entire
24 plant staff. I think I've answered that for you.

25 Q Looking again at Page 11 of 12, there's a column

1 captioned Cash Cost Dollars Per Million Btus, and then the last
2 column on the right, Evaluated and Utilized Costs. Do you see
3 that?

4 A Yes, sir, I do.

5 Q And using again the Kennecott/Spring Creek as an
6 example, the evaluated and utilized cost per million Btus is
7 higher than the cash cost, is it not?

8 A Yes, it is.

9 Q And that's because, as I understand it, you use a
10 computer program that, that anticipates and quantifies in some
11 way the predicted impact of the coal on the boiler operation,
12 among other things?

13 A I understand that that's -- I mean, we have a model
14 that we run and I understand that that's what it does.

15 Q Yes. And if I understand it correctly, a computer
16 program assumes in this paper test burn, as you describe it,
17 that the coal that is the subject of the analysis is the only
18 coal in the boiler; is that correct?

19 A Each of the coals would be -- are looked at. They're
20 on a standalone basis. That's correct.

21 Q So in this particular example, the, the evaluated
22 utilized cost is the result of an analysis that assumed that
23 100 percent Kennecott/Spring Creek Powder River Basin coal was
24 being fired in the boiler.

25 A Yes. If I -- that's correct. If I may, you know, in

1 my summary I said that, you know, this is but one step in the
2 purchasing process. This gives you an indication of how you
3 think a particular coal will work in your boiler, whether it's
4 PRB coal, import coal or Central App coals.

5 Q Yes.

6 A That takes you to the next step. So you have to go
7 to the next step in order to do that. You may do it in a blend
8 and those, the effects may be different than are shown on this
9 piece of paper because that model is just exactly what it is,
10 it's a piece of paper. You won't know until you do an actual
11 test burn as to how the various blends work in the boiler.

12 Q And if that's the case, isn't it true that the
13 delivered cost is, is more significant than the evaluated cost
14 because you have to do the test burn before you know the
15 impact?

16 A No, I don't think so at all. I think that this is a
17 good indication of the evaluated to let you know can I
18 eliminate a coal, can I not eliminate a coal, is there specific
19 problems, do I have to sit down with our technical people and
20 talk to them about just what, okay, tell me what this means?
21 If you look at the Kennecott, you're correct, it's 2.06 a
22 million. If you look below it, because the middle one, the
23 second one there is a Colorado coal, the rest of them are 2.25,
24 they're very high priced. Okay. That right away, when I
25 compared that with the import coals of 2.13, that would tell me

1 on an evaluated basis that really the PRB coals were going to
2 be more expensive. And so it just was a flag and that's
3 exactly what it is. So it will lead us to the next step.

4 Q The import coals are bituminous, are they not?

5 A They are, yes, sir.

6 Q And they would not be blended, would they?

7 A I'm sorry. Say again.

8 Q They typically would not be blended before being
9 fired in the boiler?

10 A No, that's not true, sir.

11 Q Oh. How are they blended?

12 A Say again, please.

13 Q How are they blended?

14 A We blend our coals in -- the water-delivered coals
15 are blended in New Orleans and we bring multiple coals
16 together. We have Central App coals, the import coals, and
17 actually routinely those coals are blended.

18 Q All right. And are they all bituminous coals?

19 A They are. That's correct.

20 Q Okay. So if you were making that comparison between
21 using Kennecott/Spring Creek or any other Powder River Basin
22 coals and compared them to, for instance, the import coals as
23 you just mentioned, would you take into account the fact that
24 the Powder River Basin coal would be blended with bituminous
25 coal and would have different properties in the boiler than the

1 straight PRB coal?

2 A I don't think any of the coals as they are evaluated
3 are evaluated on any other basis other than a standalone basis.
4 They give you an indication as to what that coal will do in the
5 boiler, it will raise flags possibly that you need to talk to
6 your technical people. The next step is an actual test burn
7 where these blends will take place.

8 Q And to the extent that the impact on the boiler is
9 overstated because of the assumption that 100 percent PRB coal
10 is being utilized, that would also overstate the evaluated cost
11 in terms of dollars per million Btus, would it not?

12 A But as I said, I think these are all indicators. You
13 know, the model is exactly what it is, it's a model. You know,
14 it's something that's been developed. I don't think you know
15 how coal acts until you put it in a boiler.

16 So when you look at these things, it's going to give
17 me an indication -- you know, you get the difference between
18 the delivered cost and the evaluated cost. If there's a
19 difference, you could have that with the Central App coals as
20 well or the import coals. You know, you're going to move to
21 the next level. I guess this is not the decision. This is not
22 the final decision.

23 Q I understand. But my question relates to a comment
24 you made a few moments ago. If I understood you correctly, I
25 think I heard you say that you would look to the evaluated

1 utilized costs which carry with them the assumption that
2 100 percent Powder River Basin coal is going to be fired in the
3 boiler, and compare that value in dollars per million Btus with
4 the evaluated cost of the imported coals, for example, which
5 are going to be either fired by themselves or blended with
6 other bituminous coals, and determine that based on this
7 comparison PRB would appear to be more expensive. Did you not
8 say that?

9 A And what I've also said to you was, is that these are
10 indicators. I don't know that that is -- you know, I don't
11 believe that you can say that this model can predict exactly
12 what these cost figures represent. I believe that you have to
13 do an actual test. So you would, you would take a look at
14 this, both the import coals and the Central App coals and the
15 Powder River Basin coals, and you would move to the next step,
16 excuse me, the next step, the next level. It's not a black or
17 white situation.

18 Q Using again the example of the Kennecott/Spring Creek
19 bid, which I think we agreed priced out on an evaluated basis
20 to be slightly cheaper than the imported coal that was awarded
21 the contract, even though this price incorporates both a market
22 proxy and whatever the computer program, assuming 100 percent
23 PRB added to the cost. If you assume for purposes of this
24 question that Progress Energy had conducted a test burn of the
25 50/50 blend of bituminous and sub-bituminous coals for which

1 the unit was designed, that the test burn had been satisfactory
2 and that was in place, and assume also that the environmental
3 permits allowed the use of such a blend and that was in place,
4 which coal would have won this RFP?

5 MR. WALLS: Objection. Vague and ambiguous and
6 assumes facts not in evidence.

7 MR. McGLOTHLIN: They're assumptions. It's a
8 hypothetical.

9 MR. WALLS: Same objection.

10 CHAIRMAN EDGAR: Mr. McGlothlin, it seems like we're
11 covering the same material a little bit. Can -- pose it as a
12 hypothetical, but let's try to move it along, please.

13 BY MR. McGLOTHLIN:

14 Q If you will assume for the purpose of the question,
15 understanding that these are assumptions and hypotheticals,
16 assume that the test burn had been done and it turned out
17 satisfactorily, and assume that there was no limitation in the
18 environmental permits, under those assumptions would you have
19 pursued the Kennecott/Spring Creek coal as the most economical
20 available?

21 A I don't think I can make that assumption for you,
22 Mr. McGlothlin.

23 Q Why can't you?

24 A Say again, please.

25 Q Why can't you make the assumption?

1 A Well, because I'm not really sure what, how these
2 coals would react, as I said. And as a result of this RFP, we
3 did take a look and move forward with the procurement of Powder
4 River Basin coal. This price indicator is what sent us on the
5 path of taking a look, watching the market, and in April 2004
6 we tested Powder River Basin coal. It was the results of this
7 RFP that gave me the indication that, okay, I think Powder
8 River Basin coal is probably going to be competitive for us.
9 Let's take a look at it, let's watch the market, let's get out
10 of the heavy burn months, let's get into the shoulder months,
11 and let's purchase some coal and let's try it, which I did.

12 Q I'll move on.

13 (Pause.)

14 I'm going to distribute a document for the purposes
15 of the next question.

16 CHAIRMAN EDGAR: I'm sorry, Mr. McGlothlin, for
17 purposes of what?

18 MR. MCGLOTHLIN: Of the next question.

19 CHAIRMAN EDGAR: Do we need to mark that?

20 MR. MCGLOTHLIN: Yes. And the short title can be
21 that on the cover, which is PFC Marmet Synfuel Contract.

22 CHAIRMAN EDGAR: Okay. And I show this as 216.

23 (Exhibit 216 marked for identification.)

24 BY MR. MCGLOTHLIN:

25 Q Mr. Pitcher, I believe in your summary you indicated

1 at one point you were involved in the sales activities of
2 Progress Fuels Corporation, did you not?

3 A That's correct.

4 Q And in that capacity you had occasion to execute a
5 contract in which on behalf of Progress Fuels Corporation you
6 were the seller and Mr. Edwards was the buyer on behalf of
7 Progress; is that correct?

8 A As well as many other utilities, yes.

9 Q Yes. Now this particular contract is between
10 Progress Fuels Corporation and Marmet Synfuel. If you know,
11 were the offices -- were your offices and Mr. Edwards' offices
12 in the same building?

13 A They were.

14 MR. McGLOTHLIN: The next document is captioned
15 PFC/KRT Synfuel Offer.

16 CHAIRMAN EDGAR: Thank you. 217.

17 (Exhibit 217 marked for identification.)

18 BY MR. McGLOTHLIN:

19 Q The document marked 217, Mr. Pitcher, is captioned
20 Kanawha River Terminals addressed to Mr. Dennis Edwards and has
21 your signature. What was your capacity when you wrote this
22 offer?

23 A Vice President of Sales.

24 Q Vice President of Sales for Progress Fuels
25 Corporation?

1 A That's correct.

2 Q But on the signature block your signature is below
3 Black Hawk Synfuel, LLC, as agent for New River Synfuel. Were
4 you also either an officer or -- of another entity at that
5 point?

6 A I was an officer on a lot of the companies that we
7 had. Black Hawk Synfuel may have been one of them, signing as
8 for agent. Uh-huh.

9 Q Okay. So in this particular example, while you were
10 Vice President of Sales, you were also representing New River
11 Synfuel through Black Hawk; is that correct?

12 A That's correct.

13 Q The next document is captioned PFC/Marmet Contract
14 3/15/02.

15 CHAIRMAN EDGAR: 218.

16 (Exhibit 218 marked for identification.)

17 BY MR. MCGLOTHLIN:

18 Q Mr. Pitcher, Exhibit 218 is a letter on the
19 letterhead of Electric Fuels Corporation from Dennis Edwards to
20 you in your capacity as Vice President of Sales. And what was
21 Mr. Edwards' capacity in this particular correspondence?

22 A He was Vice President of CSX and Barge Coal
23 Procurement.

24 Q This is my last document. It's captioned PFC/PFC
25 Contract 9/11/03.

1 CHAIRMAN EDGAR: 219.

2 MR. McGLOTHLIN: Let me have just a second, please,
3 Madam Chairman.

4 CHAIRMAN EDGAR: Yes.

5 MR. McGLOTHLIN: We're going to withdraw this
6 particular document and replace it with another. There was a
7 mistake in the paper shuffling here. I'm sorry.

8 MR. WALLS: May I ask, is this next one going to be
9 219 then?

10 MR. McGLOTHLIN: Yes. That's my intent.

11 CHAIRMAN EDGAR: I was just thinking that through
12 myself, Mr. McGlothlin. So this previously --

13 MR. McGLOTHLIN: I wish to withdraw that. It was a
14 mistake.

15 CHAIRMAN EDGAR: Okay. So we will set it aside, not
16 to be admitted later. Correct, Mr. McGlothlin?

17 MR. McGLOTHLIN: Correct.

18 CHAIRMAN EDGAR: Okay. Okay. So we will have a new
19 Number 219. Thank you. And, Mr. McGlothlin, PFC/PFC Contract
20 11/17/04?

21 MR. McGLOTHLIN: Correct.

22 CHAIRMAN EDGAR: Okay.

23 (Exhibit 219 marked for identification.)

24 BY MR. McGLOTHLIN:

25 Q Mr. Pitcher, the document that has been labeled

1 Exhibit 219 and captioned Agreement for the Sale and Purchase
2 of Coal has you in the role of the purchaser this time, does it
3 not?

4 A Yes.

5 Q And is Mr. Weintraub on the other side of the table
6 from you on this one as the seller?

7 A Let me find the signature block here.

8 I'm not sure whose signature that is. You can tell
9 me who signed it.

10 Q Well, we can, we can --

11 A I really can't, I can't read the signature.

12 Q All right. We can confirm that later. But
13 nonetheless this is a contract between Progress Fuels
14 Corporation as purchaser and Progress Fuels Corporation as
15 seller; correct?

16 A That's correct.

17 MR. MCGLOTHLIN: Well, to clarify that last part,
18 we're going to do one more so that there's no confusion on the
19 record.

20 CHAIRMAN EDGAR: We do not want confusion.

21 MR. MCGLOTHLIN: This one is captioned PFC/PFC Agent
22 Contract 1/04/05.

23 CHAIRMAN EDGAR: Okay. So this will be 220.

24 (Exhibit 220 marked for identification.)

25

1 BY MR. McGLOTHLIN:

2 Q Mr. Pitcher, Exhibit 220 is an Assignment and
3 Assumption Agreement between Progress Fuels Corporation and
4 Diamond May Coal Company. Do you have that before you?

5 A I do.

6 Q And is that your signature on the second page?

7 A That is my signature.

8 Q And what was your capacity as you executed this
9 particular document?

10 A Vice President of Coal Procurement and
11 Transportation.

12 Q And if you'll look at the front page, you'll see
13 Mr. Weintraub's signature there.

14 A I do.

15 Q And what was his capacity in this regard?

16 A Listed as Vice President.

17 Q For Diamond May?

18 A For Diamond May, yes, sir. That's correct.

19 Q All right. And without asking you to be a
20 handwriting expert, does that appear to be the same individual
21 who signed the earlier document I gave you?

22 A Well, if you say it is, yeah. I guess it looks like
23 it.

24 Q Okay. Now as you signed this particular document as
25 Vice President of Coal Procurement and Transportation, where,

1 where was your office at the time?

2 A In, in St. Petersburg, Florida.

3 Q And what about Mr. Weintraub, where was his office at
4 the time?

5 A Raleigh, North Carolina.

6 Q And Mr. Verardi?

7 A Sorito (phonetic), West Virginia.

8 MR. McGLOTHLIN: Okay. I think I just have one more
9 question.

10 Madam Chairman, I just realized that the next
11 question does involve at least potentially something that's
12 been marked as confidential. I propose to handle it this way.
13 I don't intend to make this an exhibit. I would propose to
14 provide it to counsel for Progress Energy and to the witness
15 only, and then my questions will not -- it is not necessary
16 that I get into the confidential aspects for purposes of my
17 questions and they will be able to refer to the document.

18 CHAIRMAN EDGAR: Any objections? Ms. Bennett?

19 MS. BENNETT: It's outside of what we normally do,
20 but I think it will protect the confidentiality and that's what
21 our procedures are set for.

22 BY MR. McGLOTHLIN:

23 Q Mr. Pitcher, when you're ready, after you've had a
24 moment to become familiar with the document, I'll ask you to
25 identify by reference to the parties and the date on the front

1 of the contract.

2 A It's an Agreement for Sale and Purchase of Coal
3 between Progress Fuels Corporation and Progress Fuels
4 Corporation on its own behalf as agent for Diamond May Coal
5 Company, Kanawha River Terminals, Kentucky May Coal Company and
6 Powell Mountain Coal Company.

7 Q Now in answers to earlier questions I heard you say
8 that before you executed a contract, you would pin down the
9 source of the coal to be provided by the bidding party or the
10 selling party. Do you recall that?

11 A Yes, sir.

12 Q Can you identify the source of coal that backs this
13 particular contract?

14 A This coal was to be shipped from Diamond May Coal
15 Company. The reason why the others are listed is to provide a
16 safety net for the purchaser of coal that in case something
17 were to happen at Diamond May Coal Company, they would be able
18 to fulfill their contract obligations.

19 Q So, but is there a particular source that is
20 identified as the, as the source for the contract to be
21 fulfilled?

22 A I know that this coal was shipped from Diamond May
23 Coal Company and I believe it was bid originally as that. I'd
24 have to go back and check, but I believe it was bid from
25 Diamond May Coal Company. They executed the contract for the

1 reasons I described to you.

2 Q Okay. Did Progress Fuels Corporation's coal
3 producing affiliates have reserves of coal that they either
4 owned or produced on the Kanawha River?

5 A Owning coal on the Kanawha River, is that what you're
6 saying?

7 Q Yes.

8 A They may have, they may have brought coal in there
9 from sources that they owned, but I don't know about any coal
10 that they would have owned other than purchased coals.

11 MR. MCGLOTHLIN: Those are all my questions. And I
12 do not want to make this an exhibit.

13 CHAIRMAN EDGAR: Thank you, Mr. McGlothlin.
14 Commissioner Carter.

15 COMMISSIONER CARTER: Thank you, Madam Chair.

16 Mr. Pitcher, I've just got three questions just for
17 clarification. Just kind of help me to understand this. How
18 do you arrive at what type and the cost of coal that's used by
19 Progress Energy in terms of what's most economical? I think
20 that was kind of the context of the line, one line of questions
21 that you went through. Can you kind of walk me through that in
22 terms of how you determine what's most economical?

23 THE WITNESS: I think the -- you take the starting
24 point is you have certain specifications of coal that we know
25 that from experience of operating those units for 20 plus years

1 that they operate on a fairly -- you know, they're able to
2 generate the megawatts they want to generate. But we go out
3 and we have a preferred specification in our, in our RFPs.
4 That is simply all it is, it's a preferred specification.
5 Suppliers are, are free to offer any coals that they want and
6 we can take a look at them, and that's one of the reasons, as
7 we explained, that the model gives you an idea, and that's all
8 it does, it gives you an idea of how those coals will operate
9 in the boilers. But those spreadsheets will lay them out on a
10 delivered cost basis, which is a cost of the commodity and the
11 cost of the transportation, the evaluated cost, and take into
12 consideration various characteristics of the coal. So how
13 we -- we know that there's a preferred specification that we
14 like, but we take a look at any coal and the low-price coals
15 are what we buy.

16 So it's, it's pretty much, it's really not a real
17 complicated process in that we -- suppliers can offer whatever
18 they want to offer, we'll evaluate them, and if they look
19 attractive, we will test burn them if we've never used them
20 before. And then the plant makes the final decision, hey, that
21 coal works real well or it doesn't work well.

22 COMMISSIONER CARTER: Madam Chairman, I know I had
23 three, but this is just a follow-up for this question, so this
24 doesn't count against my other two.

25 THE WITNESS: Did I answer your question?

1 COMMISSIONER CARTER: Could you just give me the
2 components of what you look at? I know -- I mean, I've got the
3 exhibits here before me. But I think you said you look at the
4 specs, specifications, which is one component. That's the
5 computer model that you look through. Second, you look at the
6 transportation costs, that's another component of it. Then you
7 look at the test burn, whether or not it's combined or not.
8 And then what was the -- I missed the last one that you went --
9 so in essence what I'm trying to get, what's the bottom line?
10 How do you get to the bottom line?

11 THE WITNESS: You get to the bottom line by the least
12 expensive product and that's really what you're going to buy.
13 You take a look at, as we've discussed, the Btus, the ash, the
14 sulfur, the various chemical components of the coal, you're
15 going to take the transportation costs. You're going to take
16 also into consideration not just the cost of the product
17 delivered to the plant or how it handles in the plant, but
18 you're going to take a look at the reputation of the supplier
19 you're dealing with. I think we want to make sure we're
20 dealing with very reliable people. And so there is a component
21 outside the cost components. So you've got the chemical
22 composition, you've got the transportation components, you've
23 got the economic components. And then you've got what history
24 have you had with those, those particular suppliers, if any?
25 And how you get to the bottom line is really a combination of

1 all of those, but it really distills down to the one main
2 thing: Let's take a look at the least-cost product that will
3 continue to allow the Crystal River Units 4 and 5 to generate
4 the baseload coal megawatts that they have been generating.
5 And all in all it's going to be the low-price supplier.

6 There are reasons why you may not buy the low-price
7 coal for various reasons, and one of them may be just
8 reputation of a coal supplier. You have a lot of people who
9 submit bids to you.

10 COMMISSIONER CARTER: Okay. This is my second
11 question, Madam Chairman.

12 What is the -- and I wrote these down to be sure, I
13 mean, so I could remember those in the context as the
14 discussion was going on earlier. What's the typical life
15 cycle, in essence the length of time in the purchase of coal
16 for plant operations for a two-year time frame? Let's say
17 you've got two years of operation of a plant. What is the
18 typical life cycle of the purchase, the process you go through,
19 the purchasing process? If you're going to buy coal for two
20 years of operation, what is the length of time in that process
21 that you go through to determine that? I mean, how far out do
22 you have to go? You told me about all these components that go
23 into it, but how far out do you have to go in order to buy
24 enough to operate for two years?

25 THE WITNESS: I think we take a look on an annual

1 basis, we try to maintain a portfolio of both spot purchases,
2 midterm contracts and longer term contracts.

3 COMMISSIONER CARTER: Excuse me, Madam Chair. This
4 is not -- this is a follow-up. It's not part of my question.
5 You said spot purchases, midterm and long-term.

6 THE WITNESS: Yes, sir.

7 COMMISSIONER CARTER: Now what does that mean?

8 THE WITNESS: Spot purchases will be something that
9 will be a purchase for less than a year.

10 COMMISSIONER CARTER: Okay.

11 THE WITNESS: Midterm, you know, in today's -- this
12 varies with the marketplace as it, as it changes because, you
13 know, many years ago ten-year contracts were fairly common.
14 Today five years is about as long out as you're going to go,
15 and you're going to have reopeners to protect both the buyer
16 and the seller. So I think if you take a look at less than a
17 year, say maybe one to three and then three to five years.

18 COMMISSIONER CARTER: Okay. So that would be -- so
19 it would take you, what, about maybe a year or so to buy enough
20 for two years?

21 THE WITNESS: No. I think these RFPs take place very
22 quickly. This particular one that Mr. McGlothlin was
23 questioning me on was issued in July of '03, and we completed
24 the purchases pretty much by September of the same year. So
25 you're going to do this pretty quickly. The suppliers want to,

1 they want to know an answer to, hey, I'm offering you a product
2 at a particular price. And that also changes as the
3 marketplace is volatile. You need to react pretty quickly in
4 the marketplace that we're operating in the '03 and '04 time
5 frame, you needed to evaluate, contact the supplier, make the
6 purchase. If you didn't, you'd lose the coal.

7 COMMISSIONER CARTER: And as a sub to that, Madam
8 Chair, you were actually buying for the '03, '04.

9 THE WITNESS: You were buying for -- in this case we
10 issued in '03. We were buying for '04, '05.

11 COMMISSIONER CARTER: Thank you. And then my final
12 question, Madam Chair, is that how transparent is the bidding
13 and the contracting process between parent utilities and their
14 affiliate companies? I mean, how transparent -- I mean, we had
15 a lot of discussion on that, I mean, just within the last day
16 or so. But how transparent is that process in terms of the
17 bidding and the contracting between a parent utility and its
18 affiliate companies?

19 THE WITNESS: The -- excuse me. Having been on both
20 sides, the sales and the purchasing, I was treated like, when I
21 was on the sales side, by the Progress Fuels people who were
22 purchasing for the utility, I was treated just like I was any
23 other coal supplier. I submitted bids. I did not know the,
24 the other bids that they got in. So there is no discussions
25 between we as the unregulated side of the business, me as a

1 seller in that case, and the other bids that they get in.

2 On the purchasing side, when I was dealing with
3 people within our own company, they were required to submit
4 bids exactly the same as any other coal supplier. We treated
5 them just like any other coal supplier. Their bids came in,
6 they were in sealed bids, they were opened by my administrative
7 assistant, they were recorded, they were evaluated and
8 contracts were negotiated. And the negotiations were just as
9 difficult with them, if not more difficult than with most Gulf
10 suppliers. So it was, it was, you know, it was treated
11 just the same -- they were separate companies. We were buying
12 on a regulated side when I moved over to that position, but,
13 you know, the purchases that were made by us from affiliates
14 were, were miniscule in relationship to, well, if they were
15 buying from other companies. And then, likewise, when I went
16 on the sales side, Progress Fuels was, for the utility was by
17 far my smallest customer. I mean, just hands down there was no
18 comparison. I sold very little coal or synfuel to these people
19 when I was on the sales side. So there's a Chinese wall and
20 that wall exists and it's very thick.

21 COMMISSIONER CARTER: Thank you, Madam Chair.

22 CHAIRMAN EDGAR: Mr. Twomey? I don't know what that
23 means.

24 Mr. McWhirter.

25 CROSS EXAMINATION

1 BY MR. McWHIRTER:

2 Q Good morning, Mr. Pitcher.

3 A Good morning.

4 Q I understand from the resume in the early part of
5 your testimony that you are an accountant by education and
6 trade?

7 A Among many other things, yes.

8 Q And when you got out of school, you went to work for
9 Arthur Anderson Company as a staff accountant for a few years.

10 A That's correct.

11 Q And then you went with Cincinnati, and from there you
12 went to Florida Power Corporation in 1976; is that correct?

13 A Yes, sir, that is.

14 Q When was Electric Fuels Corporation created?

15 A They were created in 1976.

16 Q And so with the creation of that entity you left
17 Florida Power and became the Manager of Accounting Services for
18 Electric Fuels Corporation?

19 A They were already formed and I was working for
20 Florida Power Corporation and had an opportunity to move over.
21 But it was -- I didn't move, I didn't come over to Electric
22 Fuels, at that time it was Electric Fuels Corporation, until
23 1977.

24 Q All right. Yes. That's correct. In '77.

25 Tell me, how was Electric Fuels Corporation

1 capitalized?

2 A I, I have no idea.

3 Q Did it have debt capital and equity capital?

4 A As I said to you, I'm -- that's not, that's not in
5 my, my area. I was on the accounting side, I was not on the
6 treasury side.

7 Q I see. As an accountant, the Manager of Accounting
8 for EFC, you don't have -- did you have knowledge of the
9 operating expenses of EFC?

10 A In 1977 and '78? That's a long time ago. Yeah, I
11 was in that position for about eight years. I've been at it
12 about 20 years, so.

13 Q I don't want to press you too much. I know how hard
14 it is to go back in your memory. But I was just trying to
15 figure out how the structure works in the relationship
16 between -- I presume EFC is an unregulated entity; is that
17 correct?

18 A I believe it is, yes.

19 Q Uh-huh. And I presume that it has employees?

20 A It did have employees, yes.

21 Q And what kind of equipment does EF -- did EFC own?

22 A Could you be more specific? I worked for that
23 company from 1977 until I retired in '05, so that company
24 started out very small and it grew. So could you be a little
25 more specific?

1 Q Did EFC own land?

2 A I mean land. It owned coal mines.

3 Q Uh-huh. It owned coal mines or subsidiaries of EFC
4 owned coal mines.

5 A Yes, sir. That's correct.

6 Q I see. And how about this transfer station on the
7 Mississippi River, did EFC have any ownership interest in that?

8 A It was a partnership. Yes, sir.

9 Q I see. And the money to buy those things came from
10 somewhere. Can you tell me where that money came from?

11 A I mean, I'm sure it came from many sources. I'm sure
12 Electric Fuels had debt and equity. And, again, once again, I
13 wasn't involved in the treasury function for how they were --

14 Q EFC is not a public company, is it? It's a wholly
15 owned subsidiary of an electric holding company?

16 A Yes, sir.

17 Q Now these are very simple questions because I have a
18 very simple mind. But you put out bids and coal companies
19 respond to those bids. And you're not just an agent for the
20 utility company, you actually buy the coal and then you resale
21 it to the utility company. Is that the way it works?

22 A The contract that we had with the utility was for
23 supply of all coal and transportation needs. There was an
24 arrangement, and I believe it was discussed by Ms. Davis
25 yesterday, of how we, how we operated.

1 Q But the contract with the utility, I presume, takes
2 care of the operating expenses and the return on the investment
3 of the EFC corporation and then the, the other corporations
4 that followed in its track; is that correct?

5 A You know, what I'm saying is Ms. Davis, I think,
6 answered a lot of these accounting questions. I've been out of
7 accounting for over 20 years.

8 Q Oh, I see.

9 A I really -- I spent the last 20 years in sales and
10 purchasing.

11 Q But this is a pretty elemental question, and I would
12 think that perhaps even after 30 years you would remember it.

13 Isn't it necessary when EFC buys coal, in order to
14 sell it to the utility it would have to mark it up, mark up the
15 price somewhat in order to cover your own operating expenses?

16 MR. WALLS: Objection, lack of foundation, assumes
17 facts not in evidence.

18 MR. McWHIRTER: Well, I'm trying to ascertain facts.

19 CHAIRMAN EDGAR: Maybe you can stick with the facts
20 that are in evidence because we have many of those. Mr. --
21 let's try again.

22 BY MR. McWHIRTER:

23 Q All right. Do you know whether, when Florida Power
24 Corporation bought coal from EFC, whether it paid the exact
25 same price that EFC paid for that coal when it purchased it

1 from subsidiary mines and from other purveyors?

2 A The contract between Progress Fuels and the utility
3 laid out exactly how costs were to be passed through. I am not
4 familiar and could not respond to that question for you. I
5 believe Ms. Davis handled a lot of the accounting questions
6 yesterday and that was really the purpose of having her here.

7 MR. McWHIRTER: I tender the witness, Madam Chairman.

8 CHAIRMAN EDGAR: Thank you. And, Mr. Twomey, I was
9 unclear. Were you saying no questions for this witness?

10 MR. TWOMEY: No, I wasn't. I wanted to see if
11 Mr. McWhirter wanted to go first. I was trying to defer to my
12 seniors, of which there are far fewer every year, in the room.

13 CHAIRMAN EDGAR: Mr. Twomey, would you like to
14 question this witness at this time?

15 MR. TWOMEY: Pardon me?

16 CHAIRMAN EDGAR: Would you like to cross this witness
17 at this time?

18 MR. TWOMEY: I would. Yes.

19 CHAIRMAN EDGAR: Okay.

20 CROSS EXAMINATION

21 BY MR. TWOMEY:

22 Q Good morning, Mr. Pitcher.

23 A Good morning.

24 Q I want to follow on from my esteemed colleague,
25 Mr. McWhirter.

1 You, as you told him, you joined Florida Power
2 Corporation in 1976 as a staff auditor; correct?

3 A Yes, that's correct.

4 Q And then you moved rather rapidly over to, to
5 Electric Fuels Corporation initially as Manager of Accounting;
6 right?

7 A Yes, sir.

8 Q Okay. And according to your prefiled direct
9 testimony, you served as Manager of Accounting and then
10 Controller for EFC for the next seven years or thereabouts.

11 A That's correct.

12 Q Okay. During your initial seven years at Electric
13 Fuels Corporation holding the offices of Manager of Accounting
14 and Controller, did you hold, did you simultaneously hold any
15 other offices or titles within, within the company or any
16 affiliated companies?

17 A I did hold other positions. I don't recall exactly
18 what, what other positions would have been in some of the
19 affiliates.

20 Q Let me be clear. You're saying that during your
21 initial seven years at Electric Fuels Corporation you held
22 other offices and/or titles in affiliate companies.

23 A I'm saying that I may have held titles in other
24 companies. I'm unaware right now, my memory doesn't serve me
25 of exactly what companies that might be. I don't recall.

1 Q Yes, sir. What I'm trying to ask you if you recall

2 --

3 A I'm sorry.

4 Q -- and I'm not trying to be difficult, do you recall
5 whether you had other offices, irrespective of if you remember
6 what they were or not?

7 A I'm sorry. Let me answer the question as I don't
8 recall.

9 Q Okay. Fair enough.

10 Now according to your prefiled direct testimony, from
11 nineteen eighty -- starting in 1984 you became Vice President
12 of Sales; correct?

13 MR. BURNETT: Madam Chairman, if I could object.
14 We'll stipulate that Mr. Pitcher's resume is accurate. This is
15 fascinating, the history of his employment, but we have a lot
16 of stuff to cover. At the risk of being repetitive, I object.

17 MR. TWOMEY: Madam Chair, the -- if I hadn't been
18 interrupted, I was going to immediately ask him a follow along
19 question about what other offices that he held during the next,
20 what I count as 18 years. I don't think I'm wasting a bunch of
21 time by asking him to, to --

22 CHAIRMAN EDGAR: Mr. Twomey, you know as well I do
23 the amount of time that we have. And if this is the way you
24 choose to use it, then you may do so. So let's move through
25 the questions.

1 MR. TWOMEY: I will. Thank you.

2 BY MR. TWOMEY:

3 Q Did you hear my question?

4 A I did hear your question. I believe we submitted --
5 it was requested in part of this process or these proceedings
6 as to what offices I held, and I believe that was submitted to
7 all parties.

8 Q Well, I don't recall. I'm not suggesting you
9 haven't. I just don't recall seeing it.

10 The -- from 1984 to 2002 when you were Vice President
11 of Sales did you hold other offices and titles in the
12 affiliated companies?

13 A As I said, I did. And that list was submitted to the
14 parties in this proceeding.

15 Q Okay. The -- how many did you hold?

16 A I believe the list would, would speak for itself.
17 I'm sorry. We submitted it. It was very lengthy.

18 Q It was a very lengthy list of offices and titles?

19 A I don't know the number of positions I held.

20 Q Now the -- when you were Vice President of Sales for
21 Electric Fuels, you were responsible, your primary
22 responsibility, was it not, was for selling coal to other
23 utilities and industrial companies; is that correct?

24 A Yes, sir. That's correct.

25 Q Okay. And, and where did you obtain that coal that

1 you would sell to the other utilities and third parties?

2 A We had mining operations in Eastern Kentucky.

3 Q And did you sell -- that is Electric Fuels had
4 affiliate mines; right?

5 A Say that again, please.

6 Q That is -- were those affiliate mines you're speaking
7 to?

8 A Yes. That's correct.

9 Q And did you also sell coals from third-party mines or
10 just affiliates?

11 A No. From third-party as well. We had -- I had a
12 brokerage operation as well.

13 Q Okay. And did you have a fiduciary obligation to
14 Electric Fuels Corporation to maximize profits to it in those
15 sales?

16 MR. WALLS: Objection, calls for a legal conclusion.

17 CHAIRMAN EDGAR: Mr. Twomey, will you rephrase?

18 MR. TWOMEY: Madam Chair, I don't think it calls for
19 a legal conclusion. Mr. Pitcher has been an officer in, by his
20 own admission, numerous corporations. To suggest that officers
21 aren't aware of whether or not they have a fiduciary obligation
22 I think is farfetched. And if Mr. Pitcher doesn't know what a
23 fiduciary obligation is, I would suggest that he could say so.

24 CHAIRMAN EDGAR: Mr. Twomey, does that mean you will
25 not rephrase your question?

1 BY MR. TWOMEY:

2 Q Mr. Pitcher, do you understand what a fiduciary
3 obligation is?

4 A I do.

5 Q And during the course of your 18 years as Vice
6 President of Sales, did you consider that you had a fiduciary
7 obligation to Electric Fuels Corporation to maximize the
8 profits to it through the sales that you made to other
9 utilities or to third parties?

10 A I think everybody is in business to make money. I
11 sold coal hopefully at a profit and, I mean, that was our job.

12 Q Yes, sir. Now during that period someone else, I
13 assume -- isn't it correct that someone else in Electric Fuels
14 Corporation had a responsibility for obtaining the full coal
15 requirements for Florida Power Corporation and then Progress
16 Energy?

17 A Yes, sir. That's correct.

18 Q Okay. And to your knowledge didn't they have a
19 fiduciary responsibility to the utility to obtain coals at the
20 least cost, given the specifications?

21 A They did.

22 Q Okay. Now what I want to understand, if you know, is
23 as between the Electric Fuels obligation to provide the
24 least-cost fuels to the parent corporation utility and your
25 obligation to maximize profits as the vice president for

1 selling to other utilities and industrial customers, who
2 decided who got what coal? That is to say, if you had access
3 to one ton of coal either from your affiliate corporation or
4 from a third-party mine and you thought you could make a bigger
5 profit for Electric Fuels by selling it to a third party as
6 opposed to selling it to the utility, who decided between the
7 situations?

8 MR. WALLS: I'm going to object that it assumes facts
9 not in evidence, but go ahead.

10 THE WITNESS: As Vice President of Sales, I would
11 submit bids to anyone who was out for an RFP or who was looking
12 for coal. You know, the question would be -- I don't think it
13 entered into whether Progress Fuels, Electric Fuels purchased
14 it from me or they purchased it from somebody else. If I was
15 the low-price supplier, I guess they'd buy it from me. My job
16 was to go out and sell the mining, excuse me, sell the product
17 that was being mined from our mining operations. It didn't
18 matter who I sold it to.

19 BY MR. TWOMEY:

20 Q Now in September of 2002 you shifted, as I understand
21 your description here of your positions, from selling for EFC
22 outside coals to assuming the position of Vice President for
23 Coal Procurement, which involved meeting the utility's coal
24 needs; is that correct?

25 A Yes, sir. That's correct.

1 Q And you stayed in that position until you retired.

2 A I did.

3 Q Okay. Now do you have the -- I'm going to ask you
4 just a couple of questions, I'll be brief -- the exhibits that
5 Mr. McGlothlin handed out? For example, what's been identified
6 as Exhibit 217.

7 A I didn't write the numbers down on these pages as
8 they handed them to me, so I --

9 Q I can identify them. 217, sir, was, the title of it
10 is Cross-Examination Exhibit PFC/KRT Synfuel Offer 5/01/02.

11 A I have it now, Mr. Twomey.

12 Q Okay. Now this letter is dated May 1st of 2002. But
13 you didn't start as the Vice President of Coal Procurement
14 until September 2002, so you would have been in your, in your
15 outside sales position; is that correct?

16 A Yes. That's correct.

17 Q Okay. And yet, as pointed out by Mr. McGlothlin, you
18 signed here as for Black Hawk Synfuel; correct?

19 A Yes. That's correct.

20 Q As agent for New River Synfuel, LLC, and Marmet
21 Synfuel, LLC, further as agent for Calla Synfuel, LLC; is that
22 correct?

23 A Yes. That's what the signature block says.

24 Q Okay. Now notwithstanding this other discovery
25 response, how many, if you know, how many simultaneous hats,

1 corporate hats did you wear for Electric Fuels Corporation and
2 its various affiliates at the time that you wrote this letter?

3 A As I had indicated earlier, we submitted a list some
4 time specific, and I don't know what the request was for,
5 listing all of the positions that I had held. I do not recall.

6 Q Just to be clear, are you saying that, that as of the
7 date of this letter when you were signing as agent and so forth
8 you don't recall what corporate offices you held for
9 affiliates?

10 A No, sir. Mr. Twomey, what I'm saying is that in this
11 proceeding we provided a list of all the positions that I held
12 to all of the parties in this proceeding. I do not have
13 committed to memory all those companies.

14 Q Yes, sir. And, and what I'm, what I'm trying to ask
15 you is that, notwithstanding that, I don't care about the
16 letter, the list of positions you submitted, I think it is fair
17 to ask you whether you remember at the time of this letter how
18 many other corporate hats you wore for affiliates in addition
19 to holding your coal sales position for Electric Fuels
20 Corporation. I think the question is fair. I also think it's
21 fair if you don't remember, that's fine.

22 A I'm answering to you that it's on that list that was
23 submitted. I do not remember and do not have it recalled to
24 memory.

25 Q Okay. Now going back to what you understood as your

1 fiduciary obligation, when you were dealing as an agent for
2 these other corporations, did you, did you ever have a problem
3 understanding in whose best interest you were operating at any
4 given point in time?

5 A Could you rephrase that for me, please?

6 Q I can try and repeat it.

7 The, the -- when you were negotiating a contract or
8 acting as an agent for a given affiliate, did you ever have any
9 confusion about whose best interest you were operating in?

10 A I don't think there'd be any, any confusion at all.
11 When I'm offering coal from a particular affiliate and if that
12 coal was successful, then I would be negotiating on behalf of
13 that affiliate.

14 Q Okay. Exhibit, what was identified as Exhibit 218,
15 Cross-Examination Exhibit Number PFC/Marmet Contract 3/15/02 --

16 A One second please.

17 I have it.

18 Q Okay. Mr. McGlothlin illustrated that is a letter to
19 you as Vice President of Sales, Marmet Synfuel, LLC, as agent
20 for Calla Synfuel, LLC, to your office in St. Petersburg from
21 Mr. Edwards; correct?

22 A Yes. That's correct.

23 Q Now there it's clear whose interest you're operating
24 in; is that correct?

25 A I think, as it was in the other letter, if I'm

1 operating as a salesman, I'm operating on their behalf. If I'm
2 operating as a purchaser, I'm operating on their behalf.

3 Q The -- may I ask you to look at Exhibit 219,
4 Mr. Pitcher, which is the agreement for the sale and purchase
5 of coal?

6 A One second, please.

7 I have it.

8 Q Okay. Again, who are the parties to that agreement?

9 A I'm signing for Progress Fuels Corporation, and I
10 believe we determined that Mr. Weintraub's signature is on this
11 and he's operating as Progress Fuels Corporation for the
12 various mining operations and, the various mining operations
13 they have.

14 Q But you're both, you're both, you're both at that
15 time working for Progress Energy; right?

16 A I think we always worked for Progress Energy, just at
17 different companies.

18 Q But in this, in this particular document whose best
19 interests are you operating under or for? Who are you
20 negotiating for?

21 A I'm negotiating for the ratepayers of Florida. The
22 reason why I would sign this contract is that they would have
23 been a low cost bidder. This is no different than if I had had
24 a contract with Massey Coal Company or any other coal company.
25 If Progress Fuels' operations were competitive and I obviously

1 reached a point of negotiating a contract with them, then I'm
2 negotiating on behalf of the ratepayers of Florida Power
3 Corporation.

4 Q But you don't have a fiduciary obligation to them, do
5 you?

6 A As --

7 Q As a corporate officer.

8 A I'm sorry. I don't understand that question.

9 Q Well, you said you understood what a fiduciary
10 obligation was as a, as a corporate officer; correct?

11 A Yes.

12 Q And that is you have an obligation to, to maximize
13 the profits, if you will, for your corporate employer; right?

14 A I'm signing this, this contract as Vice President of
15 Coal Procurement and I'm purchasing coal on behalf of Florida
16 Power Corporation for the ratepayers of Florida. So my
17 fiduciary responsibility is that I want to buy the lowest cost
18 coal. I assume that if this contract is being negotiated, it
19 was one of the lowest priced coals. So my fiduciary
20 responsibility is to the ratepayers of Florida Power
21 Corporation.

22 Q But you're working for Electric Fuels Corporation.

23 A Well, we have a contract with -- Electric Fuels
24 Corporation became Progress Fuels Corporation. Okay? The name
25 was changed.

1 Q Yes, sir.

2 A And we have a contract with Florida Power Corporation
3 to provide their coal. That's what was being done in this
4 document.

5 Q And, again, at this particular, at the time of this
6 contract do you recall how many other offices you held?

7 A My answer would be the same as I've given you two or
8 three other times. I do not recall. It was in a list that was
9 submitted as part of these proceedings.

10 MR. TWOMEY: Thank you. That's all.

11 CHAIRMAN EDGAR: Thank you, Mr. Twomey.

12 Mr. Brew.

13 MR. BREW: Thank you.

14 CROSS EXAMINATION

15 BY MR. BREW:

16 Q Good morning, Mr. Pitcher.

17 A Good morning.

18 Q Mr. Pitcher, can I refer you to Page 5 of your
19 prefiled?

20 A Yes. Just a minute, please.

21 CHAIRMAN EDGAR: Mr. Pitcher, we have been going for
22 a while. Would you like a break?

23 THE WITNESS: I'm in good shape, if everybody else
24 is.

25 MR. BREW: I won't be long.

1 CHAIRMAN EDGAR: Okay.

2 BY MR. BREW:

3 Q Do you have it?

4 A I do, yes.

5 Q Could you look to the bottom of the page? The last
6 lines say you sought to purchase some PRB coal for the test
7 burn.

8 A I see that sentence, yes.

9 Q Did you order it or ask for it? Do you have
10 authority to order the test burn and the purchase?

11 A I have, I have the authority to purchase coal and I
12 have -- this was done in conjunction with discussions with
13 plant personnel. I wouldn't act alone to conduct a test burn.

14 Q Who -- so you requested that a test burn be done?

15 A As I said, I was discussing with the plant -- the
16 process is that I come up with low-price coals. We talk about
17 coals, let's say, we've never used before, whether they're PRB,
18 Central App or import coals. And I talk to the plant about
19 those coals and say, hey, here are the coals we've got. I
20 think they're competitive, they are competitive. Let's talk
21 about testing them. What do you think about it? We did that
22 with the PRB coals, we did that with the Colombian import coal,
23 which was, the Drummond coal which was an eleven-three coal.
24 They said, we'll test it but we're not going to test it right
25 now because we don't know how it'll react in the boiler. So a

1 test is -- you know, the plant is the final say on that. I
2 have authority to purchase the coal. I certainly wouldn't
3 purchase it unless they told me they would be willing to do a
4 test.

5 Q So the final say on it was the plant manager?

6 A I'm telling you that the final say would be the
7 plant. I don't know who necessarily at the plant would be. I
8 dealt with several people there. I certainly would think the
9 plant manager would be, would be part of that process.

10 Q Okay. And when the test burn was conducted, do you
11 know if the manager over at CR3 was consulted?

12 A I don't know at the time. No, I do not know.

13 Q Do you know if the manager over at CR3 expressed any
14 concerns regarding the PRB coal being brought onsite for the
15 test burn?

16 A I know that I was at a meeting at Crystal River
17 talking about bringing in PRB coals and a lot of other coals
18 because they're talking about scrubbing the plants, and the
19 nuclear people expressed concerns associated with bringing in
20 PRB coal. Yes.

21 Q But you brought it in nonetheless?

22 A I did bring it --

23 Q For the test burn.

24 A Well, I brought in a 10 percent blend. You've got to
25 remember we used 4,000 tons. That plant burns

1 4.2 million tons. I burned 4,000 tons in one Gulf vessel. So
2 I don't think that was something that was jeopardizing the
3 nuclear plant.

4 Q So you're saying that the nuclear folks expressed
5 concern back in '04.

6 A I don't remember exactly when that meeting took
7 place. There were meetings out there where we were talking
8 about, about the switching of various coals, but I do know that
9 the nuclear people were involved in those meetings.

10 Q And that was before the test burn was conducted?

11 A I believe that was before the test burn was, was
12 conducted.

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

14 CHAIRMAN EDGAR: Ms. Bradley, no questions?

15 Are there questions from staff?

16 MR. YOUNG: Yes, ma'am. I'm sorry. Just a few,
17 Madam Chairman.

18 CROSS EXAMINATION

19 BY MR. YOUNG:

20 Q Good morning, Mr. Pitcher.

21 A Good morning.

22 Q Taking up from backwards, Mr. Twomey asked you about
23 your corporate positions; correct?

24 A That's correct.

25 Q You referred to a list provided in discovery;

1 correct?

2 A I did.

3 Q Okay. Can you identify -- can you please provide a
4 late-filed hearing exhibit with this information as it relates
5 to your resume?

6 MR. WALLS: Sure. We will do so. In fact, it was a
7 late-filed exhibit to his deposition.

8 MR. YOUNG: Madam Chairman, if you can, if you can
9 ask counsel to provide the exhibit number for that.

10 MR. WALLS: We'll try to find it.

11 BY MR. YOUNG:

12 Q Okay. Mr. Pitcher, in May 2004 for the coal
13 procurement for CR4 and 5, the Btu content was twelve thousand
14 three; correct?

15 A Say that again, please.

16 Q In May 2004 in the RFP for the coal procurement of
17 CR4 and 5, the Btu content for bituminous coal was twelve
18 thousand three; correct?

19 A Do you mean what was requested or --

20 Q What was required? Twelve thousand three; correct?

21 A It wasn't required. There's not a requirement. When
22 we listed our RFP, and I believe I mentioned that earlier, on
23 our specification sheets we showed 12,300. That's a preferred
24 specification. And I believe there's an asterisk associated
25 with that that says that economic evaluation will be conducted

1 on that Btu level. We do not reject any bid that is submitted
2 to us, no matter what the Btu is. That's a preferred
3 specification.

4 Q And how was that specification developed?

5 A That specification was developed over time knowing,
6 realizing that that's kind of the level at which, and I think I
7 mentioned this earlier, that the plant operates and able to
8 continue generating 750 to 770 megawatts. So it allows it to
9 operate at that level. But that doesn't mean we would not take
10 in coals that are less than twelve thousand three. As an
11 example, we purchased Drummond coal, almost 2 million tons of
12 Drummond coal that does eleven-seven Btu.

13 Q Okay. Now you mentioned Drummond coal. If I can
14 refer you to Page 19, at the end of Page 19 and Page 21 of your
15 prefiled direct testimony.

16 A All right.

17 Q And specifically Page 20 at the end of Line 2, the
18 last sentence, can you read that for me, please?

19 A Wait a minute. You said 19 and 21 and now you're
20 saying 20.

21 Q 19 and 20. We're looking at the top of Page 20.

22 A Oh, top of Page 20. Line -- which line, please?

23 Q Line 2, the last sentence beginning with, "The
24 Drummond coal."

25 A "Therefore, I did not purchase the Drummond import

1 without first, without testing it first. The Drummond was
2 subsequently tested, tested successfully at the plant and we
3 later entered into contracts with Drummond for compliance
4 coal."

5 Q In what year did you enter into a contract with
6 Drummond for compliance coal?

7 A I believe we had two agreements. One would have been
8 in '04, '03 and '04, I believe it was.

9 Q '03 and '04?

10 A Yeah. I'd have to look at the -- give me a moment
11 here and let me see if I can, I can find it for you. I've got
12 the document right here, rather than going from memory for you.

13 Q Just in the abundance of time --

14 A I'm sorry?

15 Q Subject to check, in the abundance of time, subject
16 to check, '03?

17 A No, I do not think. I think it was in the '04 time
18 frame. Because '03, the Drummond coal was submitted and it was
19 the lowest-priced coal that we received. We did not purchase
20 it in '03. But shortly after that -- once again, the bid, the
21 '03 bid came in in July and we were in the middle of -- first
22 of all, we were in the middle of hurricane season, we were in
23 the middle of heat, and the plant was not going to test any new
24 coal certainly. And so it was postponed until the shoulder
25 months. We purchased that at a later date. I believe it would

1 have been in -- we were testing it for, in the '04 time frame.
2 And the contract that we eventually signed with them was for
3 '05 and '06.

4 Q Okay. Now picking up from Commissioner Carter's
5 questions, you talked about the blind bid process; correct?

6 A Yes, sir.

7 Q And you stated that when bids come in, it's blind and
8 your secretary, your administrative assistant entered those
9 bids into a database; correct?

10 A No, that's not what I said. What I said was she
11 opened them and recorded them.

12 Q Okay. In 2003, subject to check, would you agree
13 that Progress Fuels Corporation or Progress Energy Florida
14 purchased 70 to 80 percent of their bituminous coal from their
15 affiliates, subject to check?

16 A Subject to check, if you say that's the number. I've
17 never known that number to be that high at all.

18 Q Okay. In 2004, 65 percent, subject to check?

19 A I -- subject to check, I don't think that number is
20 correct.

21 Q Okay. And in 2005, 60, 70 percent, subject to check?

22 A I can't address 2005. I relinquished my position.
23 Mr. Weintraub assumed the position for 2005.

24 Q So Mr. Weintraub would be the person to ask for 2005?

25 A That's correct.

1 MR. YOUNG: Okay. No further questions, Madam
2 Chairman.

3 CHAIRMAN EDGAR: Thank you.

4 Mr. Walls.

5 MR. WALLS: I'll be very brief hopefully.

6 REDIRECT EXAMINATION

7 BY MR. WALLS:

8 Q Mr. Pitcher, you were asked some questions by
9 Commissioner Carter about the transparency of the relationships
10 in PFC. Do you know if the relationship of PFC and its
11 affiliates was disclosed to the PSC?

12 A Oh, absolutely.

13 Q And how do you know that?

14 A We had meetings that we sat in with the PSC staff.
15 And I know there were hearings -- there have been hearings on
16 affiliates since the '80s.

17 Q And I believe you were asked questions about
18 congestion in rail by Mr. McGlothlin in the '03 time period.

19 When you went out to purchase PRB coals for a test
20 burn, what time period were you looking to purchase those coals
21 for that test burn?

22 A Originally we were looking to purchase it in the
23 '03 time frame, but the rail congestion in the west was not
24 allowing suppliers to deliver to the customers that they had,
25 and eventually was able to get Peabody to deliver in April of

1 2004, March 2004.

2 Q And one final question. You were asked a number of
3 questions about the Kennecott/Spring Creek bid on the July 2003
4 solicitation at AWP-3, Page 12 of 12, by Mr. McGlothlin. Do
5 you recall that?

6 A I did. If I could get to it, please, so I can --
7 yes.

8 Q If you would look in the third column over, Origin,
9 what does that mean?

10 A That's where the coal is coming from.

11 Q Okay. Does it say PRB there for Kennecott in that
12 first line?

13 A No, it does not.

14 Q It says Spring Creek; right?

15 A It says Spring Creek.

16 Q Are you familiar with Spring Creek?

17 A No. I was not familiar with those operations at the
18 time. I believe that's an operation out of Colorado.

19 Q Okay. If you look over at the Btu content 9,350, do
20 you see that?

21 A I do see that.

22 Q Is that a range of Btu content for PRB coals?

23 A No, that's not.

24 MR. WALLS: No further questions.

25 CHAIRMAN EDGAR: All right. Let's take up the

1 exhibits. Mr. Walls, Exhibits 54 through 60?

2 MR. WALLS: Yes. We would move Mr. Pitcher's
3 Exhibits 54 through 60 in evidence.

4 CHAIRMAN EDGAR: Exhibits 54 through 60 will be moved
5 into the record.

6 (Exhibits 54 through 60 marked for identification and
7 admitted into the record.)

8 And Mr. McGlothlin.

9 MR. MCGLOTHLIN: I move 216 through 220, I believe it
10 is.

11 MR. WALLS: No objection.

12 CHAIRMAN EDGAR: No objection. Okay. Seeing no
13 objection, Exhibits -- hang on -- 216, 217, 218, 219 and 220
14 will be entered into the record.

15 (Exhibits 216 through 220 admitted into the record.)

16 I had said we would take a break midmorning. We have
17 gone beyond midmorning but we'll take a short break. Before we
18 do that, the witness is excused.

19 MS. HOLLEY: Excuse me, Chairman. Sorry.

20 CHAIRMAN EDGAR: Yes, Ms. Holley.

21 MS. HOLLEY: We need to identify the late-filed
22 exhibit that we requested.

23 CHAIRMAN EDGAR: Thank you. That Mr. Young had
24 asked. Do you have that number, Mr. Walls, for us? Are we
25 still working on it?

1 MS. HOLLEY: We can just identify it as Late-Filed
2 Exhibit 20, excuse me, 221, and they can just provide it to us
3 at a time certain, the conclusion of the hearing.

4 CHAIRMAN EDGAR: Okay. 221. And resumé?
5 Late-filed.

6 (Late-filed Exhibit 221 identified for the record.)

7 CHAIRMAN EDGAR: Okay. The witness is excused,
8 except, Mr. Walls, did you have further comment?

9 MR. WALLS: Yes. May he be dismissed from the
10 proceeding?

11 CHAIRMAN EDGAR: He may be.

12 MR. WALLS: Thank you.

13 CHAIRMAN EDGAR: Thank you. Okay. Let's come back
14 at 12:00. We will go for a while and then we will take a lunch
15 break. As I asked earlier, I would again ask that all of the
16 parties get with our staff and let's see if there are witnesses
17 that could perhaps be stipulated or if there are other things
18 that we can do to accommodate us moving through the information
19 that we have to do. Thank you all. We will come back at
20 12:00.

21 (Recess taken.)

22 (Transcript continues in sequence with Volume 4.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 12th day of April, 2007.

Linda Boles
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FPSC Official Commission Reporter
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