

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Cargill
Fertilizer, Inc. for permanent
approval of self-service
wheeling to, from, and between
points within Tampa Electric
Company's service area.

DOCKET NO. 020898-EQ
ORDER NO. PSC-03-1256-AS-EQ
ISSUED: November 6, 2003

The following Commissioners participated in the disposition of
this matter:

BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER GRANTING JOINT MOTION TO APPROVE SETTLEMENT
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

On August 3, 2000, Cargill Fertilizer, Inc. (Cargill) petitioned this Commission for approval of an experimental program pursuant to Section 366.075, Florida Statutes, for the self-service wheeling of electricity between three locations within the service territory of Tampa Electric Company (TECO or utility). On August 7, 2000, TECO responded that it did not object to providing self-service wheeling to Cargill on an experimental basis.

By Order No. PSC-00-1596-TRF-EQ, issued September 6, 2000, and consummated by Order No. PSC-00-1808-CO-EQ, issued October 3, 2000, in Docket No. 001048-EQ, the pilot program was approved on an experimental basis. This Commission ordered that the experiment be initially limited to two years or until TECO's next full rate case, whichever came first, to prevent the experiment from continuing indefinitely, thereby becoming a "permanent" program. TECO was also ordered to provide quarterly reports that identify the costs and revenues associated with this experimental program, and advised that the approval of this experiment could be revisited at any time if there appeared to be an adverse financial or reliability impact

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to TECO's ratepayers. The docket was closed upon the issuance of the consummating order.

On August 16, 2002, Cargill filed a Petition for Permanent Approval of Self-Service Wheeling Program and Request for Expedited Treatment (Petition), along with a Motion to Continue Self-Service Wheeling of Waste Heat Cogenerated Power During Resolution of Petition for Permanent Approval. This docket was opened to process the Petition. Among other things, Cargill requested that the Petition be processed on an expedited basis due to the impending expiration of the pilot program and that it be afforded a hearing. By Order No. PSC-02-1451-PCO-EQ, issued October 21, 2002, we granted Cargill's request to continue the program on an interim basis, pending the resolution of its Petition, with the understanding that Cargill will indemnify the total negative impact on ratepayers during the interim period, if any, with a payment to flow through TECO's fuel adjustment clause. We also granted Cargill's request for expedited treatment and scheduled the matter directly for hearing.

Order No. PSC-02-1518-PCO-EQ, issued November 5, 2002, granted TECO's Motion to Hold the Procedural Schedule in Abeyance. The procedural schedule for this docket was temporarily suspended, including those dates pertaining to discovery. The parties were encouraged to proceed with mediation as soon as practicable after the Federal Energy Regulatory Commission (FERC) acted on TECO's tariff filing at the federal level. If the parties were unsuccessful in their attempts to mediate this matter, the discovery process would resume.

After FERC issued its ruling on TECO's federal tariff filing, the parties advised that they had attempted to settle the matter informally, albeit unsuccessfully. On February 24, 2003, the parties filed a Joint Motion to Hold the Procedural Schedule in Abeyance, in which they requested that the procedural schedule in this case be further abated for a reasonable period of time to enable the parties to allow time for further settlement discussions and mediation, if necessary. The Joint Motion was granted by Order No. PSC-03-0276-PCO-EQ, issued February 28, 2003, and a new hearing date was reserved in the event that a hearing would be needed after such settlement efforts were exhausted. A status conference with Commission staff was held on March 14, 2003, to discuss the

progress of the case, during which the parties agreed to continue informal settlement discussions before beginning formal mediation.

By Order No. PSC-03-0773-PCO-EQ, issued June 30, 2003, the parties were strongly encouraged to voluntarily avail themselves of the mediation program offered by this Commission in an effort to resolve this case. The parties were required to file a status report within ten days of the issuance date of the order, either jointly or separately, advising this Commission whether they have agreed to mediate this dispute on mutually acceptable terms. The order advised that if the parties were to fail to agree to mediate the dispute within the allotted time frame, this matter would be resolved through the formal hearing process.

Because the parties failed to agree to mediate this dispute on mutually acceptable terms, by Order No. PSC-03-0866-PCO-EQ, issued July 24, 2003, abeyance of the procedural schedule was lifted. The matter was definitively set for hearing on October 22, 2003, all then-outstanding discovery disputes were resolved, and the procedures governing the case were established.

By Order No. PSC-03-0909-PCO-EQ, issued August 7, 2003, the controlling dates for filing testimony set forth in Order No. PSC-03-0866-PCO-EQ were modified to allow Cargill additional time to file testimony after receiving TECO's responses to Cargill's Second Set of Discovery Requests. Order No. PSC-03-0866-PCO-EQ was reaffirmed in all other respects.

On July 30, 2003, TECO filed a Motion for Clarification of Order No. PSC-03-0866-PCO-EQ, requesting clarification that the Order permits all parties to file rebuttal testimony in this case. Alternatively, TECO requested that its testimony not be due until 15 days after Cargill fully answers discovery propounded by TECO with regard to Cargill's direct testimony. In its response to the Motion, Cargill requested a ruling that clearly delineates that the burden of proving adverse impact on the general body of ratepayers rests with TECO. By Order No. PSC-03-0945-PCO-EQ, issued August 20, 2003, TECO was not permitted to file rebuttal testimony. Its alternative request for an extension of time to file its testimony was denied due to time constraints. Moreover, the Order ruled that the burden of proof in this case rests with Cargill.

On September 2, 2003, Cargill timely filed a Motion for Reconsideration of the portion of Order No. PSC-03-0945-PCO-EQ related to the burden of proof ruling, along with a Request for Oral Argument on the Motion. By Order No. PSC-03-1110-FOF-EQ, issued October 6, 2003, the motion was denied.

We have jurisdiction pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.051, Florida Statutes.

SETTLEMENT AGREEMENT

The hearing in this case convened as scheduled on October 22, 2003, at which time the parties advised that they have entered into a Settlement Agreement (Agreement) which resolves the disputed issues involved in this proceeding. On that same date, the parties filed a Joint Motion to Approve Settlement (Joint Motion), along with a copy of the Agreement, also dated October 22, 2003. Upon review and consideration, we found the Agreement to be a fair and reasonable resolution to the issues in dispute in this case. We therefore granted the Joint Motion and approved the Agreement in its entirety by bench decision on October 22, 2003, which obviated the need for an evidentiary hearing. A copy of the Joint Motion and Settlement Agreement is attached to this Order as Attachment A, and is incorporated herein by reference.

In the Joint Motion, the parties state that the Agreement resolves all issues between them in this matter in a reasonable manner without the time, expense and uncertainty of further litigation. The parties further request that this Commission relieve Cargill of any obligation under the corporate undertaking set out in Order No. PSC-02-1451-PCO-EQ, consistent with the Agreement.

The major elements contained in the Agreement are as follow:

According to the terms of the Agreement, at Cargill's request, TECO will purchase energy generated by Cargill's Riverview, Green Bay or Bartow qualifying facilities and sell an equivalent amount of either Exchange Optional Provision (EOP) energy or Maintenance Optional Provision (MOP) energy to Cargill, at prices as set forth in the Agreement. The Agreement includes provisions which address

impending avoidable and unavoidable service interruptions by TECO and planned and unplanned outages of Cargill's facilities.

The term of the Agreement is from the date of this Commission's approval thereof through December 31, 2007. Either party may terminate the Agreement effective as of January 1, 2008, by giving written notice of such termination to the other party by January 1, 2007. If no such notice of termination is provided by either party, the Agreement shall continue for successive one year terms unless and until it is terminated with one year's prior written notice by either party to the other party.

Also pursuant to the Agreement, Cargill shall be entitled to purchase EOP and/or MOP energy pursuant to the terms of the Agreement on or after January 1, 2004. From October 22, 2003, through December 31, 2003, the interim self-service wheeling authorized by this Commission shall continue. TECO has no obligation to prepare and file further quarterly reports unless Cargill self-service wheels a total in excess of 800 MWH during this period. If Cargill's self-service wheeling during this period does exceed 800 MWH, TECO shall prepare a report that calculates what, if any, indemnity obligation Cargill may owe for the period October 2002 through December 2003. If that report shows that Cargill owes money, Cargill will pay such money to TECO and TECO shall refund that money to the ratepayers through the Fuel Cost Recovery Clause. As of January 1, 2004, Cargill self-service wheeling shall terminate and TECO shall request that the Federal Energy Regulatory Commission terminate the Cargill Transmission Service Agreement.

Moreover, pursuant to the Agreement, upon our approval thereof, Cargill agrees to pay TECO \$27,000, which will cover the cost of any computer programming necessary to implement the Agreement and any indemnification obligation that Cargill may have pursuant to Order No. PSC-02-1451-PCO-EQ, except as provided in paragraph 11 of the Agreement, described above. Cargill agrees to dismiss this proceeding upon our approval of the Agreement in its entirety.

Because the Petition to Intervene in this proceeding filed on October 17, 2003, by the Southern Alliance for Clean Energy, Inc.,

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is rendered moot by our approval of the Agreement, it need not be ruled upon.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion to Approve Settlement filed October 22, 2003, is approved. It is further

ORDERED that the Settlement Agreement filed October 22, 2003, attached hereto as Attachment A, is approved in its entirety. It is further


ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that Attachment A attached hereto is incorporated herein by reference. It is further

ORDERED that the Southern Alliance for Clean Energy, Inc.'s Petition to Intervene filed October 17, 2003, is rendered moot by our approval of the Agreement as set forth herein, and therefore need not be ruled upon. It is further

ORDERED that Docket No. 020898-EI shall be closed.

By ORDER of the Florida Public Service Commission this 6th Day of November, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 21st day of October, 2003 by and between Tampa Electric Company (Tampa Electric), its successors and assigns and Cargill Fertilizer, Inc. (Cargill), its successors and assigns, (collectively, the Parties).

WHEREAS, Tampa Electric is a regulated public utility providing retail electric service to end users under the terms and conditions of tariffs and agreements approved by the Florida Public Service Commission (FPSC);

WHEREAS, Cargill is a retail customer of Tampa Electric that operates Qualifying Facilities (QF) that produce power for internal consumption and exports such power using the Tampa Electric Open Access Transmission Tariff (OATT);

WHEREAS, the Parties have a disputed proceeding before the FPSC denominated Docket No. 020898-EQ;

WHEREAS, Cargill has existing QF generation capacity and internal load at its Riverview facility in Hillsborough County, its Green Bay facility in Polk County and its Bartow facility in Polk County;

WHEREAS, Cargill wishes to have the benefit of energy produced by its existing QF facilities at the Riverview, Green Bay and Bartow sites to avoid interruption and the need to purchase optional provision power at any of these sites and to cover planned and unplanned maintenance outages of its QF and sulfuric acid production facilities at any of these sites;

WHEREAS, Tampa Electric is willing, for purposes of settlement and subject to FPSC approval, to purchase Cargill QF energy generated at Cargill's Riverview, Green Bay and Bartow sites, and simultaneously sell an equivalent amount of energy from its system resources to Cargill at the Riverview, Green Bay or Bartow sites, as directed by Cargill, in order to assist Cargill in avoiding service interruptions or the need to purchase optional provision power and to cover planned and unplanned maintenance outages;

WHEREAS, the Parties wish to amicably resolve the disputed issues involved in the above-referenced proceeding and to avoid the time and expense of further litigation and the uncertainties of such litigation;

NOW, THEREFORE, in consideration of the foregoing, said Parties do mutually agree as follows:

1. Pursuant to the terms and conditions set forth below, Tampa Electric, at Cargill's request, will purchase energy generated by Cargill's Riverview, Green Bay or Bartow QFs at \$1.00 per MWH and sell an equivalent amount of either Exchange Optional Provision ("EOP") energy or Maintenance Optional Provision ("MOP") energy to Cargill's Riverview, Green Bay or Bartow facilities as directed by Cargill.

EOP

2. EOP energy shall be available to Cargill during those periods when Cargill would otherwise be subject to interruption or the purchase of Optional

Provision Power pursuant to Tampa Electric rate schedules SBI-1, SBI-3 or any other successor rate schedule applied to service provided to Cargill's Riverview, Green Bay or Bartow facilities ("Applicable Tariffs"). The amount of EOP energy available to Cargill at any given time shall be equal to the amount of energy simultaneously tendered by Cargill for purchase by Tampa Electric from Cargill's Riverview, Green Bay or Bartow QF facilities. There shall be no limit on the amount of EOP energy that Cargill may purchase pursuant to the terms of this agreement.

3. Tampa Electric's Optional Provision service is provided where the utility may buy power from the market at the direction of the customer and pass through the cost of such purchased energy to serve interruptible load during periods when the company would otherwise interrupt such customers because of the lack of Tampa Electric system resources.
4. The total price that Cargill shall pay for EOP power shall be equal to the price paid by Tampa Electric to Cargill for energy simultaneously tendered by Cargill to Tampa Electric from Cargill's Riverview, Green Bay and Bartow facilities plus \$2.00 per MegaWattHour ("MWH") plus any applicable taxes and governmental fees. (See Attachment 1).
5. In the event that Tampa Electric notifies Cargill of an impending service interruption or need to purchase optional provision power pursuant to the Applicable Tariffs, and the stated probability of either event in such notice is 50% or greater and the predicted interruption or need to purchase optional provision power fails to materialize within the timeframe specified in the notice, then Cargill shall be permitted to purchase EOP energy during the predicted hours of interruption or optional provision purchases pursuant to the terms set forth in paragraph 4 above. To the extent Cargill has purchased sufficient EOP energy to meet the load that otherwise would be subject to interruption and optional provision purchases, it will not be subject to interruption or optional provision charges if the predicted interruption or need to purchase optional provision power materializes.
6. To the extent that Cargill has failed to tender for purchase by Tampa Electric an amount of energy that is equivalent on a real time basis to the amount of EOP energy that is needed to avoid interruption and additional optional provision energy is not available on the wholesale market, the service to any such Cargill designated delivery point will be completely interrupted and any energy tendered by Cargill during such periods will be purchased by Tampa Electric at its then current as-available energy cost pursuant to Tampa Electric rate schedule COG-1. Any energy tendered by Cargill for purchase by Tampa Electric in excess of the amount of EOP energy purchased by Cargill, will be purchased by Tampa Electric at its then current as-available energy cost pursuant to Tampa Electric rate schedule COG-1.
7. In the event that a service interruption or optional provision purchase occurs without prior notice from Tampa Electric or if the notice indicates the probability of interruption or optional provision purchase are both under 50%, and Cargill is exporting sufficient energy from its Riverview, Green Bay or Bartow QF facilities to qualify Cargill for the purchase of EOP energy pursuant to paragraph 2 above, then Cargill shall be deemed to have purchased EOP energy pursuant to paragraph 4 above without the requirement that Cargill shall have formally tendered such export energy to Tampa Electric.

MOP

8. Cargill shall be entitled to purchase up to 8,000 MWH per calendar year of MOP energy to cover planned and unplanned outages of its Riverview, Green Bay and Bartow QFs and sulfuric acid production facilities on the terms and conditions specified herein. The amount of MOP energy available to Cargill at any given time shall be equal to the amount of energy simultaneously tendered by Cargill for purchase by Tampa Electric from Cargill's Riverview, Green Bay or Bartow QF facilities.
9. For the first 4,000 MWH of MOP energy purchased by Cargill in each calendar year, Cargill shall pay a price equal to the price paid by Tampa Electric to Cargill for energy simultaneously tendered by Cargill to Tampa Electric from Cargill's Riverview, Green Bay or Bartow facilities plus \$6.00 per MWH. For the next 4000 MWH of MOP energy purchased by Cargill in each calendar year, Cargill shall pay a price equal to the price paid by Tampa Electric to Cargill for energy simultaneously tendered by Cargill to Tampa Electric from Cargill's Riverview, Green Bay or Bartow facilities plus \$7.00 per MWH. The price that Tampa Electric shall pay for such power simultaneously tendered by Cargill from its Riverview, Green Bay or Bartow facilities shall be \$1.00 per MWH. Any energy tendered by Cargill for purchase by Tampa Electric in excess of the amount of MOP energy purchased by Cargill, will be purchased by Tampa Electric at its then current as-available energy cost pursuant to Tampa Electric rate schedule COG-1. (See Attachment 1).

General

10. The term of this Settlement Agreement shall be from the date of approval by the FPSC through December 31, 2007. Either Party may terminate this agreement effective as of January 1, 2008 by giving written notice of such termination to the other party by January 1, 2007. If no such notice of termination is provided by either party, then this agreement shall continue for successive one year terms unless and until it is terminated with one year's prior written notice by either Party to the other Party. Notice of termination pursuant to this paragraph shall be provided to:

For Cargill:

Utility Superintendent
Cargill Fertilizer, Inc.
8813 Highway 41 South
Riverview, FL 33569-4865

For Tampa Electric:

Commercial & Industrial
Customer Service Mgr
Tampa Electric Company
PO Box 111
Tampa, FL 33601-0111

11. Cargill shall be entitled to purchase EOP and/or MOP energy pursuant to the terms of this agreement on or after January 1, 2004. From the date of Commission approval of this Settlement Agreement through December 31, 2003, the interim self-service wheeling authorized by the Commission in Order No. PSC-00-1596-TRF-EQ shall continue. Tampa Electric has no obligation to prepare and file further quarterly reports unless Cargill self-service wheels a total in excess of 800 MWH over the months of October, November and December 2003. If Cargill's self-service wheeling

during this period does exceed 800 MWH, Tampa Electric shall prepare a report that calculate what, if any, indemnity obligation Cargill may owe for the period October 2002 through December 2003. If that report, prepared based on the methodology used by Tampa Electric for the self-service wheeling program, shows that Cargill owes money, such money will be paid by Cargill to Tampa Electric and Tampa Electric shall refund that money to the ratepayers through the Fuel Cost Recovery Clause. As of January 1, 2004, Cargill self-service wheeling shall terminate and Tampa Electric shall request that the Federal Energy Regulatory Commission terminate the Cargill Transmission Service Agreement ("TSA"). Cargill shall not oppose such a request.

12. Upon approval of this Settlement Agreement by the FPSC in its entirety, Cargill agrees to pay to Tampa Electric the sum of \$27,000, which will cover the cost of any computer programming necessary to implement this Settlement Agreement and any indemnification obligation that Cargill may have pursuant to Order No. PSC-02-1451-PCO-EQ, except as provide in paragraph 11 above.
13. Upon approval of this Settlement Agreement in its entirety, Cargill agrees to dismiss the above-referenced proceeding on the terms set forth herein. The Parties waive no arguments or rights by virtue of entering into this Settlement Agreement. The Parties reserve the right to take any positions or make any argument on these matters if this Settlement Agreement is not accepted by the FPSC in its entirety. The Parties further reserve the right to take any position and make any arguments in any future dockets. This Settlement Agreement shall not be read as an admission by any Party in regard to the matters at issue in this docket and shall have no precedential significance in any other proceeding or in any other context. Except to the extent necessary to win approval of this Settlement agreement by the FPSC, the parties hereto shall not disclose the nature or content of settlement discussions or non-public information exchanged among the parties leading to this settlement. Cargill shall not request self-service wheeling in Tampa Electric's service territory to be effective prior to January 1, 2008.
14. The Parties shall support and defend this Settlement Agreement as to any challenge.
15. The Parties will present this Settlement Agreement to the FPSC for approval as quickly as possible. If the Settlement Agreement is not approved by the FPSC in its entirety through a final non-appealable order, the Parties agree that this matter shall be set for hearing as soon as practicable pursuant to the FPSC's schedule and that this Settlement Agreement shall cease to be of any force or effect.

DATED this 22ND day of October 2003.

TAMPA ELECTRIC COMPANY

By: Deirdre A. Brown
Deirdre A. Brown
Vice President of Regulatory Affairs

CARGILL FERTILIZER, INC.

By: Roger Fernandez
Roger Fernandez
Utilities Superintendent

ATTACHMENT 1

Example 1 -- EOP

Cargill sells 10 MWH EOP to Tampa Electric

Tampa Electric pays Cargill: 10 MWH x \$1/MWH = \$10.00

Tampa Electric at the same time sells 10 MWH EOP to Cargill:

Cargill pays Tampa Electric: 10 MWH x \$1/MWH = \$10.00

Plus \$2/MWH 10 MWH x \$2/MWH = \$20.00

Total Cargill payment \$30.00

Example 2 --MOP

Cargill sells 10 MWH MOP to Tampa Electric

Tampa Electric pays Cargill: 10 MWH x \$1.00/MWH = \$10.00

Tampa Electric at the same time sells 10 MWH MOP to Cargill

Cargill pays Tampa Electric: 10 MWH x \$1/MWH = \$10.00

Plus \$6/MWH (for 1st 4,000 MWH portion)
10 MWH x \$6/MWH = \$60.00

Total Cargill payment \$70.00

Example 3 -- MOP

Cargill sells 10 MWH MOP to Tampa Electric (above the 1st 4,000 MWH)

Tampa Electric pays Cargill: 10 MWH x \$1/MWH = \$10.00

Tampa Electric at the same time sells 10 MWH MOP to Cargill.

Cargill pays Tampa Electric: 10 MWH x \$1/MWH = \$10.00

Plus \$7/MWH (for 2nd 4,000 MWH portion)
10 MWH x \$7/MWH = \$70.00

Total Cargill payment \$80.00
