

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of long-term fuel supply and transportation contracts for Hines Unit 4 and additional system supply and transportation, by Progress Energy Florida, Inc.

DOCKET NO. 041414-EI
ORDER NO. PSC-05-0441-PHO-EI
ISSUED: April 25, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 18, 2005, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES

GARY L. SASSO, ESQUIRE, and JAMES MICHAEL WALLS, ESQUIRE, and JOHN T. BURNETT, ESQUIRE, Carlton Fields P.A., 4221 West Boy Scout Blvd., Tampa, Florida 32607-5736 and R. ALEXANDER GLENN, ESQUIRE and JAMES A. MCGEE, ESQUIRE, Progress Energy Service Company, LLC, 100 Central Avenue, St. Petersburg, Florida 33701
On behalf of Progress Energy Florida, Inc. (PEF).

DAVID LYLES CRUTHIRDS, ESQUIRE, 4302 Cheena Drive, Houston, Texas 77096
On behalf of BG LNG Services, LLC (BG).

PATRICIA A. CHRISTENSEN, ESQUIRE, Associate Public Counsel, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

ADRIENNE E. VINING, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

04012 APR 25 05

FPSC-COMMISSION CLERK

II. CASE BACKGROUND

This proceeding commenced on December 20, 2004, when Progress Energy Florida, Inc. (PEF) filed a petition requesting approval of its long-term fuel supply and transportation contracts that will meet the fuel requirements for Hines Unit 4 and add additional system supply and transportation to the utility's natural gas portfolio. PEF requested a finding that entering into these agreements at this time is a reasonable and prudent action by the utility to maintain a reliable and adequate fuel supply over the long term, and that recovery of costs pursuant to the agreement would be permitted subject to a finding of reasonableness and prudence at the time the expenses are presented for cost recovery. An administrative hearing was scheduled for April 29, 2005, to address PEF's petition.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes. This hearing will be governed by said Chapter and Chapters 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the

Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Robert F. Caldwell	PEF	1, 2, 3, 4, 5
Pamela R. Murphy	PEF	1, 2, 3, 4, 5
Bruce H. Hughes	PEF	2, 3, 4, 5
Samuel S. Waters	PEF	2, 4, 5

VIII. BASIC POSITIONS

PEF: PEF requests the Commission to approve its long-term fuel supply and transportation contracts that will meet the fuel supply requirement for Hines Unit 4 and add additional system supply and transportation to the Company's natural gas portfolio. Specifically, PEF has contracted with BG LNG Services, LLC ("BG") for regasified LNG supply purchased out of the existing Elba Island regasification terminal near Savannah, Georgia. PEF has also contracted with Southern Natural for firm transportation of the gas supply through an expansion of its existing pipeline system (the "Cypress project") to be built from Elba Island

to a point of interconnection with the Florida Gas Transmission (“FGT”) pipeline (hereinafter the agreements are collectively referred to as “BG/Cypress/FGT”). The BG/Cypress/FGT contracts provide that regulatory approval by the Commission is needed by June 15, 2005. Commission approval is thus essential for the pipeline expansion to proceed on schedule.

The BG/Cypress/FGT contracts are the most cost-effective option for supplying natural gas to the Hines 4 generating unit, considering all price and non-price factors. PEF considered four criteria when evaluating the differing options: certainty of the project’s success, economics, operational flexibility, and supply diversity. Regarding certainty of the project’s success, the BG/Cypress/FGT contracts are the most likely to be completed because the Elba Island facility already exists, and much of the route where the expansion will take place has already been surveyed. By contrast, other options available to PEF contain too many contingencies to ensure completion. Concerning economics, PEF’s proposed contracts are competitive and the most cost-effective option for PEF’s ratepayers. These contracts also provide operational flexibility in that the additional pipeline infrastructure will allow PEF to serve other existing and potential plants in its fleet. Finally, the BG/Cypress/FGT contracts provide supply diversity, because the natural gas will be geographically supplied from the east coast of the United States. Currently, all of PEF’s natural gas for Florida is supplied from the Mobile Bay/Destin area in the Gulf of Mexico. These contracts provide an additional geographic source of natural gas, which will decrease the likelihood that forces of nature, like hurricanes, will affect both sources at the same time.

The BG/Cypress/FGT contracts will also serve the public interest. These contracts provide another source of natural gas into Florida, which allows PEF to ensure a more constant supply. Both PEF’s customers and the state in general will benefit from this increased availability. If approved, Florida will no longer be solely dependent on natural gas supplied from the Gulf of Mexico and will no longer be dependent on natural gas supply subject to significant hurricane disruptions. Rather, Florida would have access to a liquefied natural gas supply from major producing areas in the Atlantic Basin. This will increase security and diversity of natural gas supply, which again benefits all consumers within the State.

PEF believes it has demonstrated that these contracts, taken collectively, represent a reasonable, prudent, and cost-effective choice that provides PEF’s customers the best overall gas supply and transportation option for Hines 4 and other system needs. The contracts at issue also enhance diversity of fuel supply for PEF while maintaining system reliability and performance. Therefore, PEF believes it is prudent for the Commission to pre-approve the BG/Cypress/FGT contracts at issue.

BG: BG supports Progress Energy's request for a Commission determination that entering into the long-term supply and transportation agreements are reasonable, prudent actions designed to maintain reliable and adequate long-term fuel supplies for PEF's Hines Unit 4, and other facilities located in Florida.

OPC: Office of Public Counsel has no position at this time as to whether the Commission should grant Progress' Petition. However, OPC reserves the right to amend its positions based on the evidence adduced at hearing. OPC has concerns that Progress by seeking approval of these contracts may be looking for pre-approval of the fuel costs associated with these contracts which have been traditionally addressed as part of the annual fuel clause proceedings. OPC does not believe that the Company should be able to obtain such pre-approval for fuel costs via this proceeding.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

IX. ISSUES AND POSITIONS

ISSUE 1: **Did Progress Energy Florida (PEF) adequately solicit potential natural gas providers to provide fuel to the Hines 4 generating unit? (VonFossen, McNulty, Bohrmann)**

POSITIONS

PEF: Yes. While there is no statutory or rule-based requirement for PEF to issue an RFP for natural gas supply and transportation contracts, PEF solicited bids from all entities maintained on its internal list of credit worthy counterparties that provide natural gas supply and transportation. This list contains natural gas suppliers and transportation companies which, in PEF's opinion, would have been capable of providing fuel to Hines 4 under PEF's requirements. Thus, PEF's solicitation was adequate and resulted in PEF obtaining highly competitive and cost-effective supply and transportation options under the BG/Cypress/FGT contracts. (Murphy, Caldwell)

BG: No position at this time.

OPC: No position at this time.

STAFF: No position pending further discovery and evidence adduced at the hearing.

ISSUE 2: Is the proposal contemplated in PEF's petition the most cost-effective option considering price and non-price factors? (Harlow, Sickel, VonFossen, Bulecza-Banks, Makin, Lester)

POSITIONS

PEF: Yes, PEF's proposal is the most cost-effective option when considering certainty of success of the project, economics and price, operational flexibility, and geographic diversity. (Murphy, Waters, Caldwell, Hughes)

BG: No position at this time.

OPC: No position at this time.

STAFF: No position pending further discovery and evidence adduced at the hearing.

ISSUE 3: Is the 20-year term of the contracts contemplated in PEF's petition appropriate? (VonFossen, McNulty, Bohrmann)

POSITIONS

PEF: Yes. PEF was able to negotiate favorable pricing and other terms in the BG/Cypress/FGT contracts which make the 20 year term of the contract at issue both appropriate and favorable. In addition, considering the scope and magnitude of the project contemplated by the BG/Cypress/FGT contracts, a twenty-year term is appropriate to ensure long-term commitments for all parties involved. (Murphy, Caldwell, Hughes)

BG: No position at this time.

OPC: OPC has concerns that Progress by seeking approval of these contracts, may be looking for pre-approval of the fuel costs associated with these contracts which have been traditionally addressed as part of the annual fuel clause proceedings. OPC does not believe that the Company should be able to obtain such pre-approval for fuel costs via this proceeding.

STAFF: No position pending further discovery and evidence adduced at the hearing.

ISSUE 4: Based on the resolution of the foregoing issues, should the Commission grant PEF's petition? (VonFossen, McNulty, Bohrmann)

POSITIONS

PEF: Yes. (Murphy, Waters, Caldwell, Hughes)

BG: No position at this time.

OPC: No position at this time.

STAFF: No position pending further discovery and evidence adduced at the hearing.

ISSUE 5: Should this docket be closed? (Vining)

POSITIONS

PEF: Yes. (Murphy, Waters, Caldwell, Hughes)

BG: No position at this time.

OPC: No position at this time.

STAFF: No position at this time.

X. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Robert F. Caldwell	PEF	<u>RFC-1</u>	Visual Aid Map
Pamela R. Murphy	PEF	<u>PRM-1</u>	A Firm Gas Supply Contract with BG LNG Services, LLC for Hines Unit 4
Pamela R. Murphy	PEF	<u>PRM-2</u>	A Precedent Agreement for Firm Transportation with Southern Natural Gas Company

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Pamela R. Murphy	PEF	<u>PRM-3</u>	Firm Gas Transportation Contracts with Florida Gas Transmission Company
Pamela R. Murphy	PEF	<u>PRM-4</u>	A Visual Aid Map
Pamela R. Murphy	PEF	<u>PRM-5</u>	Analysis of Gas Supply Alternatives on Comparable Volume Basis
Pamela R. Murphy	PEF	<u>PRM-6</u>	Analysis of Contracts Versus Current Market Option
Bruce H. Hughes	PEF	<u>BHH-1</u>	Map of Interstate Pipelines
Bruce H. Hughes	PEF	<u>BHH-2</u>	Southern Natural's Pipeline Project Timeline
Bruce H. Hughes	PEF	<u>BHH-3</u>	Aerial Photo of LNG Facilities
Samuel S. Waters	PEF	<u>SSW-1</u>	Graph of Historical and Projected Energy by Fuel Type for Peninsular Florida

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XII. PENDING MOTIONS

There are no pending motions at this time.

XIII. PENDING CONFIDENTIALITY MATTERS

PEF's First Request for Confidential Classification	12/20/2004
PEF's Second Request for Confidential Classification	2/01/2005
PEF's Third Request for Confidential Classification	3/01/2005
PEF's Fourth Request for Confidential Classification	3/14/2005
PEF's Fifth Request for Confidential Classification	4/15/2005

PEF's Sixth Request for Confidential Classification

4/20/2005

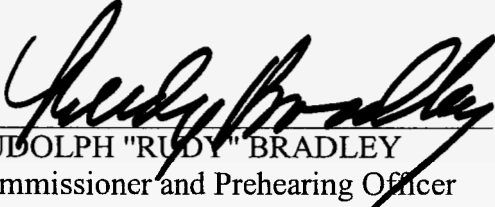
XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this
25th day of April, 2005


RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in

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the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.