

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of Progress Energy Florida, Inc.'s benchmark for waterborne transportation transactions with Progress Fuels. DOCKET NO. 031057-EI  
ORDER NO. PSC-04-0713-AS-EI  
ISSUED:

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER APPROVING STIPULATION AND SETTLEMENT

BY THE COMMISSION:

I. Case Background

Progress Fuels Corporation ("PFC") is an affiliate of Progress Energy Florida, Inc. ("PEF" or "the utility") that arranges all purchases and transportation of coal and other solid fuels for use by PEF. By Order No. PSC-93-1331-FOF-EI, issued September 13, 1993, in Docket No. 930001-EI, and Order No. PSC-94-0390-FOF-EI, issued April 4, 1994, in Docket No. 940001-EI, we established market price proxies to determine the amount PEF would be permitted to recover from ratepayers for waterborne transportation provided by PFC for domestic and foreign coal, respectively.

At our November 12-14, 2003, hearing in Docket No. 030001-EI, we voted to eliminate the existing market price proxies effective December 31, 2003, and directed that a new docket be opened for the purpose of establishing a new system for determining the just, reasonable, and compensatory amount for PEF to recover from ratepayers for waterborne coal transportation service ("WCTS") provided by PFC in 2004 and beyond. Accordingly, this docket was opened. The Office of Public Counsel ("OPC") and the Florida Industrial Power Users Group ("FIPUG") intervened in this docket.

On April 29, 2004, PEF, OPC, and FIPUG ("the parties") filed a Joint Motion for Approval of Stipulation and Settlement ("Joint Motion") to resolve all issues in this docket. Upon motion of PEF, portions of the Stipulation and Settlement were granted confidential classification by Order No. PSC-04-0705-CFO-EI, issued July 20, 2004. The Stipulation and Settlement, with confidential portions redacted, is attached hereto as Attachment A and is incorporated herein by reference.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

For the reasons set forth below, we grant the Joint Motion for Approval of Stipulation and Settlement. We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

## II. Analysis and Findings

The parties' Stipulation and Settlement addresses the amounts PEF will be permitted to recover from ratepayers for WCTS provided by PFC in 2004 and the manner in which PEF will obtain WCTS from January 1, 2005, going forward. The following analysis deals with both aspects of the Stipulation and Settlement as well as clarifications provided by the parties in response to questions posed by our staff.

### Recoverable Amounts for WCTS Provided by PFC in 2004

The Stipulation and Settlement provides for a 26.4% reduction in the amount that PEF will recover from ratepayers for waterborne transportation of domestic coal during 2004 (on a per ton basis) compared to the amount that PEF would have recovered using the 2003 domestic market price proxy. The Stipulation and Settlement also provides for a 26.5% reduction in the amount that PEF will recover from ratepayers for waterborne transportation of foreign coal during 2004 (on a per ton basis) compared to the amount that PEF would have recovered using the 2003 foreign market price proxy. We estimate that these reductions will result in savings to ratepayers between \$13.3 million and \$15.6 million for calendar year 2004, depending on the amounts of foreign and domestic coal purchased by the utility.

In response to a question posed by our staff concerning the meaning of the term "FOB Gulf terminal" as used in Paragraph 4 of the Stipulation and Settlement, the parties indicated that the term refers to coal purchases for which PFC takes title at the terminal before the coal is unloaded or transloaded. The parties further indicated that while the term "FOB Gulf terminal" is intended to apply to shipments received at any Gulf terminal from Texas to Florida, the parties anticipate that Gulf terminal purchases will be made primarily at Davant, Louisiana (International Marine Terminal, or IMT) or at Mobile, Alabama (State Dock).

Our staff also requested clarification as to whether the stipulated 2004 rate for cross-Gulf waterborne transportation of foreign coal purchases or coal purchased "FOB Gulf terminal" is intended to provide for recovery of costs associated with Gulf terminalling. In response, the parties stated that normal, pre-arranged purchases at the Gulf terminal, and any other purchases where PFC has the option, will be made before terminalling charges have been included in the commodity price. This is an important clarification because it means that Gulf terminalling costs will not normally be included in the commodity price for such coal purchases. Thus, the stipulated 2004 rate for cross-Gulf waterborne transportation of foreign coal purchases or coal purchased FOB Gulf terminal is intended to provide for recovery of cross-Gulf shipping costs and Gulf terminalling costs. The parties indicated that transactions where terminalling may be included in the commodity price will be made only if the total price is less than the price of any

other regular (without terminalling charges) Gulf terminal purchases of coal with comparable BTU and sulfur content made within the preceding 60 days.

Procurement of WCTS Beginning January 1, 2005

The Stipulation and Settlement provides that, beginning January 1, 2005, PEF's recoverable waterborne transportation costs will be based on the results of competitive bidding by PFC. In the event that competitive bidding does not result in a valid market price, PEF will propose a market price proxy for Commission approval. The main elements of the Stipulation and Settlement for the period beginning January 1, 2005, are summarized as follows:

- PFC will conduct a competitive bidding process for all WCTS.
- PFC will maintain sufficient documentation to allow the Commission and affected parties to fairly evaluate the bidding process and the selection decision. This documentation will be made available no later than 45 days after the execution of any WCTS contract resulting from the competitive bidding process.
- For any competitive bidding proposal and RFP procedure for cross-Gulf WCTS, PEF and PFC will meet with staff and affected parties at least 30 days prior to issuing the proposal and will give due consideration to the input of the meeting participants.
- If the Commission determines that the bidding process did not produce competitive bids or did not result in a valid market price for the component of WCTS addressed by the process, or if the bidding process did not result in a WCTS contract, PEF will petition the Commission for approval of a market price proxy for that component.
- Contracts entered into by PFC for WCTS provided to PEF will be subject to competitive bidding procedures. Each such contract, and the competitive bidding process from which the contract results, will be presented to the Commission for review and approval or denial.
- If the initial contract or market price proxy for a WCTS component has not been approved or established by the Commission on or before January 1, 2005, the portion of the recoverable costs attributable to such component will remain in effect until a new contract or market price proxy is subsequently approved by the Commission. The respective portions attributable to each WCTS component are as follows: Upriver – 25%; River Barge – 40%; Gulf Terminal – 10%; and Cross-Gulf – 25%.

In response to a question posed by our staff, the parties stated that these terms of the Stipulation and Settlement are not intended to address the recovery of costs incurred by PFC to integrate, coordinate, and schedule WCTS provided beginning January 1, 2005. These are costs

other than WCTS contract costs or WCTS market price proxy costs related to WCTS for which PEF may request cost recovery through the Fuel and Purchased Power Cost Recovery Clause. Parties to the Stipulation and Settlement may take any position regarding any request by PEF to recover such costs.

The Stipulation and Settlement indicates that if the initial contract or market price proxy for a WCTS component has not been approved or established by this Commission on or before the effective date of January 1, 2005, the portion of the FOB Mine deliveries specified in Paragraph 4 attributable to such WCTS component shall remain in effect on an interim basis, subject to true-up. The parties clarified that for all such deliveries, the costs derived from the contract or market price proxy subsequently approved by the Commission will then be used to true-up the component's interim costs as of January 1, 2005.

The parties also clarified that the components of PEF's WCTS addressed by the Stipulation and Settlement will initially include upriver, river barge, Gulf terminal, and cross-Gulf components. Depending upon the source of future coal purchases, new or reconfigured components may arise, and the parties intend that contracts or market price proxies would be entered into or established for such components as well.

Finally, the parties clarified that PEF will file documentation supporting any new contract in the form of a petition to this Commission for review and approval or denial. In the event we determine that the competitive bid process and any resulting WCTS contract did not result in a valid market price for a specified WCTS component, or if the competitive bid process does not result in a WCTS contract, PEF will petition this Commission for approval of a market price proxy for that WCTS component.

### Findings

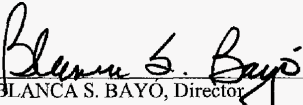
With the clarifications provided by the parties, we find that the Stipulation and Settlement represents a reasonable means of resolving the issues in this docket and that approval of the Stipulation and Settlement is in the public interest. While the recovery of costs to integrate, coordinate, and schedule WCTS charged by PFC to PEF are not addressed by the Stipulation and Settlement, those costs are relatively small compared to the contractual costs incurred by PFC to provide WCTS, and we may address the prudence of such costs upon review of any request by PEF for recovery of such costs. Accordingly, we hereby grant the Joint Motion and approve the Stipulation and Settlement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion for Approval of Stipulation and Settlement is hereby granted. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of July, 2004.

  
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BLANCA S. BAYO, 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.

### STIPULATION AND SETTLEMENT

The Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and Progress Energy Florida, Inc. (PEF) enter into this Stipulation and Settlement for the purpose of resolving all outstanding issues regarding waterborne coal transportation services provided to PEF by Progress Fuels Corporation (PFC) currently pending before the Florida Public Service Commission (the Commission) in Docket No. 031057-EI and, accordingly, hereby stipulate and agree as follows:

#### **Background**

1. In Order No. PSC-03-1461-FOF-EI, issued in Docket No. 030001-EI on December 22, 2003, the Commission eliminated the domestic and foreign market price proxies for waterborne coal transportation services (WCTS) beginning January 1, 2004.

2. Docket No. 031057-EI was opened to establish "a new system for establishing the just, reasonable, and compensatory rate for PEF's waterborne coal transportation service for 2004 and beyond." Order No. PSC-03-1461-FOF-EI at 12.

3. This Stipulation and Settlement is intended to address the amount PEF will be permitted to recover from ratepayers for WCTS in 2004 and the manner in which PEF will obtain WCTS from January 1, 2005 forward.

#### **Recoverable Costs for WCTS for 2004**

4. For all domestic coal purchased FOB Mine or FOB Barge and delivered to PEF via PFC's river and cross-Gulf waterborne transportation route in calendar year 2004, PEF will be allowed to recover \$ [REDACTED] per ton or \$ [REDACTED] per ton, respectively, through its Fuel and Purchased Power Cost Recovery Clause. For all foreign coal purchases or coal purchased FOB Gulf terminal and delivered to PEF via PFC's cross-Gulf waterborne transportation route in 2004, PEF will be allowed to recover \$ [REDACTED] per ton.

5. Effective January 1, 2005 and thereafter until modified or terminated by the Commission, PEF's recoverable costs for WCTS provided by PFC will be based on competitively bid contracts or, if competitive bidding is unsuccessful, on market price proxies for each component of WCTS that have been entered into or established in accordance with the competitive bidding procedures and related provisions of paragraphs 6 and 7 below. However, if the initial contract or market price proxy for a WCTS component has not been approved or established by the Commission on or before the effective date of January 1, 2005, the portion of the recoverable costs for FOB Mine deliveries specified in paragraph 4 above attributable to such WCTS component<sup>1</sup> shall remain in effect on an interim basis. When a new contract or market price proxy is subsequently approved by the Commission, such interim costs for the WCTS component will be trueed up as of January 1, 2005 in accordance with the procedures applicable in the Fuel and Purchased Power Cost Recover docket. Commission approval of each WCTS contract and market price proxy will be required to confirm that the competitive bidding procedures and related provisions of this Stipulation and Settlement have been followed and that the contract price or a market proxy, if necessary, is reasonable and prudent. Once approved by the Commission, a WCTS contract or market price proxy will be deemed reasonable for cost recovery purposes.

6. Contracts entered into by PFC for WCTS provided to PEF will be subject to the competitive bidding procedures set forth below. Each such contract, and the competitive bidding process from which the contract results, will be presented to the Commission for review and approval or denial.

(a) PFC will conduct a competitive bidding process for all WCTS. The competitive bidding process will be open to all qualified bidders, including affiliates of PEF. PFC will maintain sufficient documentation to allow the Commission and affected parties to fairly evaluate the bidding process, including the Request For Proposals (RFP) instrument, the criteria for selection, the solicitation schedule, the evaluation and screening process, and the selection

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<sup>1</sup> For the purpose of determining interim costs subject to true-up pursuant to this provision of paragraph 5 only, the respective portions of the recoverable cost for delivery of FOB Mine purchases attributable to each WCTS component are as follows: Upriver -- 25%; River Barge -- 40%; Gulf Terminal -- 10%; and Cross-Gulf -- 25%.

decision. PEF will make this documentation available to Staff and affected parties no later than 45 days after the execution of any WCTS contract resulting from the competitive bidding process. Unless good cause is shown to do otherwise, PFC will use reasonable efforts to conclude the competitive bidding process and execute any resulting WCTS contract at least 90 days before the existing contract or market proxy terminates or service under the new contract commences. In the event this schedule does not provide sufficient time for Staff and affected parties to review, and the Commission to consider, the competitive bidding process and the resulting contract at the November fuel hearing prior to the termination of the existing contract or market proxy or the commencement of service under the new contract, PEF shall charge the costs previously approved for cost recovery under the prior contract to fuel expense, subject to true-up based on the Commission's subsequent decision.

(b) In addition to the provisions of paragraph 6(a) above, PEF and PFC will meet with Staff and the affected parties to discuss the content of any competitive bidding proposal and RFP procedure for cross-Gulf WCTS at least 30 days prior to issuing the proposal and will give due consideration to the input of the meeting participants.

7. If competitive bidding is unsuccessful, market price proxies for WCTS will be established in accordance with the following provisions.

(a) If, after review of a competitive bidding process and any resulting WCTS contract as provided for in paragraph 6 above, the Commission determines that the bidding process did not produce competitive bids or result in a valid market price for the component of WCTS addressed by the process, or if the competitive bidding process does not result in a WCTS contract, PEF will petition the Commission for approval of a market price proxy for that WCTS component. Nothing in this Stipulation and Settlement shall preclude or restrict any position the parties hereto may wish to present with respect to the propriety of the competitive bid process or the basis on which the market price proxy is established.

(b) PEF will file its petition for approval of a market price proxy no later than 45 days after (i) the issuance of an order reflecting the Commission's determination described in paragraph 7(a) above, or (ii) the conclusion of a competitive bidding process that does not result in a WCTS contract. In the event this schedule does not provide sufficient time for Staff and affected parties to review, and the Commission to consider, the petition at the November fuel hearing



prior to the termination date of the existing contract or market proxy that the proposed market price proxy is intended to replace, PEF shall charge the currently approved costs, subject to true-up, based on the Commission's subsequent decision.

### **General Provisions**

8. Upon approval of this Stipulation and Settlement by the Commission in accordance with paragraph 10 below, all outstanding and pending issues in Docket No. 031057-EI will be deemed resolved and the docket will be closed. All outstanding discovery and any motions, pleadings or other matters pending or scheduled in the docket will be held in abeyance pending approval of this Stipulation and Settlement.

9. The parties hereto believe and therefore represent that this Stipulation and Settlement fairly balances the respective interests of the parties, promotes administrative efficiency by avoiding costly adversarial litigation, facilitates the Commission's long-standing policy of encouraging compromise and settlement by parties to proceedings before it, and that approval by the Commission would therefore serve the public interest.

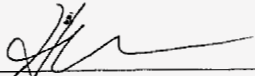
10. This Stipulation and Settlement is expressly conditioned upon approval by the Commission in its entirety. OPC, FIPUG and PEF agree to jointly seek and support such approval, and shall not unilaterally recommend or support the modification of this Stipulation and Settlement, discourage its acceptance by the Commission, or request reconsideration of or appeal the Commission's order which approves this Stipulation and Settlement. If not approved in its entirety, OPC, FIPUG and PEF agree that this Stipulation and Settlement is void unless otherwise ratified by the parties, and that OPC, FIPUG or PEF may pursue their interests as those interests exist, and will not be bound to or make reference to this Stipulation before the Commission or any court.

11. This Stipulation and Settlement is based on the unique factual circumstances of this case and shall have no precedential value in proceedings involving other utilities or in other proceedings involving PEF before this Commission. OPC, FIPUG and PEF reserve the right to assert different positions on any of the matters contained in this Stipulation and Settlement if not approved by the Commission in its entirety.

12. This Stipulation and Settlement, dated as of April 29, 2004, may be executed in counterpart originals, and a facsimile of an original signature will be deemed an original.

In Witness Whereof, the parties hereto evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

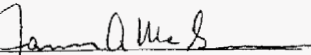
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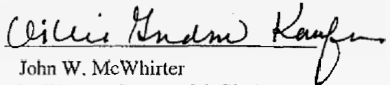
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