

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 \$22.90 per ton or \$17.15 per ton, respectively, though 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 \$10.70 per ton.

This docketed notice of intent was filed with Confidential Document No. 04986-04. The document has been placed in confidential storage pending timely receipt of a request for confidentiality.

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WCTS Beginning January 1, 2005

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 component¹ 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 trued 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

¹ 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.

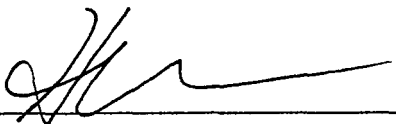
10. This Stipulation and Settlement is expressly conditioned upon approval by the Commission in its entirety. OPC, FIPUG and PEF agree to jointly seek and support such approval, and shall not unilaterally recommend or support the modification of this Stipulation and Settlement, discourage its acceptance 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.

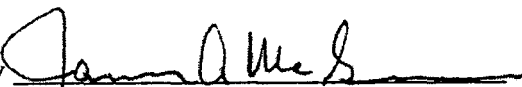
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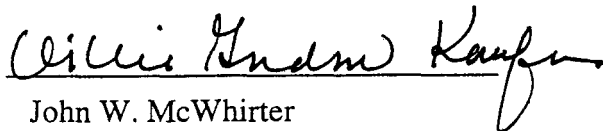
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