State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: June 17, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Floyd, Matlock, Windham, Maurey, McNulty, VonFossen)
Division of Auditing & Safety (Vandiver)
Office of the General Counsel (C. Keating, Rodan)

RE: Docket No. 031057-EI – Review of Progress Energy Florida, Inc.'s Benchmark for Waterborne Transportation Transactions with Progress Fuels.

AGENDA: 06/29/04 – Regular Agenda – Recommendation on Stipulation and Settlement – Parties May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\031057.RCM.DOC

Case Background

At its November 12-14, 2003, hearing in Docket No. 030001-EI, the Commission voted to defer consideration of issues related to Progress Energy Florida, Inc.'s (PEF) waterborne transportation transactions with Progress Fuels Corporation (PFC) to a separate proceeding. PFC is the coal procurement affiliate of PEF that arranges all coal purchases and coal transportation for the utility. The Commission also voted to eliminate the domestic and foreign waterborne coal transportation price proxies paid by PEF to PFC as established in Order No. PSC-93-1331-FOF-EI and Order No. PSC-94-0390-FOF-EI, respectively, beginning January 1, 2004. The Commission directed the staff to open a new docket for the purpose of establishing a new system for determining the just, reasonable, and compensatory rate for PEF's waterborne coal transportation service for 2004 and beyond.

The parties in this docket filed a Joint Notice of Settlement and Motion to Abate Proceeding on April 28, 2004. On April 29, 2004, the parties filed their Joint Motion for

Approval of Stipulation and Settlement (Joint Motion). Attachment 1 to this recommendation is the Joint Motion with a redacted copy of the Stipulation and Settlement. On April 30, 2004, the Prehearing Officer issued Order No. PSC-04-0451-PCO-EIO granting the Joint Motion to Abate Proceedings. All controlling dates in the docket are held in abeyance pending the Commission's consideration of the settlement agreement.

On May 7, 2004, staff sent the parties a list of questions seeking clarification of certain terms of the Stipulation and Settlement. On June 1, 2004, the parties submitted a joint response to staff's questions.

This recommendation addresses the Joint Motion for Approval of Stipulation and Settlement. The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the Stipulation and Settlement?

Recommendation: Yes. The Stipulation and Settlement, as clarified by the parties' joint response to staff's questions, represents a fair and reasonable resolution of all issues in this docket. (FLOYD, McNULTY, WINDHAM, MAUREY, MATLOCK, VONFOSSEN)

Staff Analysis: The Stipulation and Settlement addresses the amount PEF will be permitted to recover from ratepayers for waterborne coal transportation services (WCTS) 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 the clarifications that were provided in response to staff's questions.

Recoverable Costs for WCTS for 2004

The Stipulation and Settlement calls for a 26.4% reduction in the transportation cost per ton for domestic purchases of coal during 2004 compared to the cost that would have been incurred using the 2003 domestic market price proxy. Also, the transportation cost for foreign purchases of coal during 2004 would be reduced by 26.5% compared to the cost that would have been incurred using the 2003 foreign market price proxy. Staff estimates that these reductions would result in savings between $13.3 million and $15.6 million for calendar year 2004, depending on the amounts of foreign and domestic coal that will be purchased.

In its questions concerning this portion of the Stipulation and Settlement, staff first requested clarification regarding what is meant by the term "FOB Gulf terminal" as referenced in Paragraph 4 of the Stipulation and Settlement. The parties responded that the term refers to coal purchases for which PFC takes title at the terminal before the coal is unloaded or transloaded. In addition, 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).

Second, staff requested clarification as to whether the proposed 2004 rate for cross-Gulf waterborne transportation of foreign coal purchases or coal purchased FOB Gulf terminal, appearing in Paragraph 4 of the Stipulation and Settlement, includes the 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 proposed stipulated rate for cross-Gulf waterborne transportation of foreign coal purchases or coal purchased FOB Gulf terminal includes not only cross-Gulf shipping costs, but also the Gulf terminalling costs as well. The parties specified 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 with comparable BTU and sulfur content made within the preceding 60 days.

WCTS Beginning January 1, 2005

The Stipulation and Settlement proposes that, beginning January 1, 2005, waterborne transportation costs that are allowed to be recovered from ratepayers by PEF through the fuel cost recovery clause will be based on the results of competitive bidding. 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 staff's questions, the parties stated that terms of the Stipulation and Settlement with respect to 2005 and beyond do not address the recovery of costs incurred by PFC to integrate, coordinate, and schedule WCTS. These are costs other than WCTS contract costs or WCTS market proxy costs related to WCTS for which PEF may request cost recovery through the Fuel and Purchase Power Cost Recovery Clause. Other parties to the Stipulation and Settlement may take any position regarding such requests.

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 the 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. For all such deliveries, the costs derived from the contract or market proxy subsequently approved by the Commission will then be used to true-up the component's interim costs as of January 1, 2005, according to the clarification provided by the parties.

In addition, staff sought clarification regarding the identity of the components of PEF's waterborne coal transportation service. The Parties responded that the components 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 these components as well.

Finally, the parties clarified that PEF will file documentation supporting any new contract in the form of a petition to the Commission for review and approval or denial. In the event the Commission determines 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 the Commission for approval of a market price proxy for that WCTS component.

Conclusion

With the clarifications provided by the parties, staff recommends the Commission determine the Stipulation and Settlement is in the public interest and approve it as a reasonable means of resolving the issues in this docket. While the recovery of costs to integrate, coordinate, and schedule waterborne coal transportation costs charged by PFC to PEF are not addressed by the Stipulation and Settlement, staff believes these costs are relatively small compared to the contractual costs incurred by PFC to provide WCTS, and the recovery of such costs may be resolved by the Commission's review of any such cost recovery requests by PEF.

Issue 2: Should Docket No. 031057-EI be closed?

Recommendation: Yes. If there is no appeal of the Commission's order on this matter, this docket should be closed after the time for filing an appeal of the Commission's order has run. (C. Keating)

Staff Analysis: Yes. If there is no appeal of the Commission's order on this matter. This docket should be closed after the time for filing an appeal of the Commission's order has run.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Progress Energy Florida's benchmark for Waterborne Transportation Transactions with Progress Fuels.	Docket No. 031057-EI Submitted for filing: April 29, 2004

JOINT MOTION FOR APPROVAL OF STIPULATION AND SETTLEMENT

The Office of Public Counsel, the Florida Industrial Power Users Group, and Progress Energy Florida (collectively, the Joint Movants) hereby jointly move the Commission to approve the Stipulation and Settlement, dated April 29, 2004 and attached hereto as Exhibit A, which the Joint Movants have entered into for the resolution of all issues in this proceeding, and to abate all actions and events currently pending or scheduled until the Commission has had the opportunity to consider the Stipulation and Settlement. In support of this motion, the Joint Movants represent as follows:

1. The Joint Movants have been engaged in negotiations for the purpose of reaching a comprehensive stipulation in settlement of all issues in this proceeding and thereby avoiding the need for expensive, time consuming litigation of these issues in hearings before the Commission. On April 28, 2004, the Joint Movants notified the Commission that they had reached an agreement in principle on such a settlement and that a definitive settlement agreement would be finalized and submitted for Commission approval soon thereafter. On April 29, 2004, the parties executed the Stipulation and Settlement attached to this joint motion for its approval by the Commission.

2. The Stipulation and Settlement establishes waterborne transportation costs that Progress Energy may recover during calendar year 2004 and a competitive solicitation methodology for determining market-based recoverable waterborne transportation costs beginning in 2005 and thereafter. For 2004, separate cost per ton charges are specified for waterborne deliveries of domestic FOB Mine and FOB Barge coal purchases, and for foreign coal deliveries. The blended, weighted average of the two charges for domestic coal deliveries and the charge for foreign coal deliveries each represent a reduction from the comparable charges in 2003 of over 25 percent, and are expected to result in customer savings of over $13 million compared to the costs that would have resulted had the 2003 charges been in effect. Moreover, both the blended domestic charge and the foreign charge are lower than the initial domestic and foreign market proxy prices that were based on audited waterborne transportation costs 12 years ago in 1992.

3. The methodology established by the Stipulation and Settlement for determining Progress Energy's recoverable waterborne transportation costs beginning in 2005 and beyond is based on the testimony of William McNulty presented to the Commission on behalf of Staff at the November 2003 fuel hearings, which led to the Commission's decision establishing this proceeding. The methodology describes the procedures for determining waterborne transportation charges based on market prices for each segment of the waterborne deliveries to Progress Energy's Crystal River plant site. Under these procedures, Progress Energy's coal and transportation supplier, Progress Fuels Corporation (PFC), will conduct a segment-by-segment competitive bid

solicitation using a documented and auditable Request For Proposals (RFP) process. Each individual solicitation and any resulting contract for waterborne transportation services will be submitted to the Commission for review and approval. In the event the Commission determines that the RFP process for a particular waterborne transportation segment did not produce competitive bids or result in a valid market price, or if the process did not result in a contract, Progress Energy will develop and file a petition for Commission approval of a market price proxy for that segment. When fully implemented, the methodology and related procedures will ensure that the costs charged to customers for waterborne coal transportation based on market-priced contracts or market-based proxies that have been reviewed and approved by the Commission.

4. The Joint Movants represent that this Stipulation and Settlement fairly and reasonably balances the various positions of the parties on issues in this proceeding and serves the best interests of the customers they represent and the public interest in general. The Stipulation and Settlement is fully consistent with and supportive of this Commission's long standing policy of encouraging the settlement of contested proceedings in a manner that benefits the ratepayers of utilities subject to the Commission's regulatory jurisdiction and avoids the need for costly, time consuming and inefficient litigation of matters before the Commission. For these reasons, the Joint Movants request that the Commission approve this Stipulation and Settlement.

5. The Joint Movants also ask that all pending and scheduled matters in this proceeding be abated until the Commission has had the opportunity to review the Stipulation and Settlement and to act upon this joint motion for its

approval. The Joint Movants ask that the Commission undertake this action at the earliest practicable date in order for the Stipulation and Settlement to be implemented, and its benefits received by customers, in a timely manner.

WHEREFORE, the Joint Movants respectfully request that the Commission approved the Stipulation and Settlement attached hereto at the earliest practicable date, and that this proceeding be abated until this joint motion for approval can be acted upon by the Commission.

Respectfully submitted,

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Attorneys for Florida Industrial Power
Users Group

DOCKET NO. 031057-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Joint Motion has been furnished to the following individual by U.S. Mail this 29th day of April, 2004.

Wm. Cochran Keating, IV, Esquire
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Economic Regulation Section
Florida Public Service Commission
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Attorney

EXHIBIT A

STIPULATION AND SETTLEMENT
dated April 29, 2004
(redacted copy)

Public Document - confidential information has been redacted

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, 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 $[redacted] per ton.

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 component[1] 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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By ______________________

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