BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into affiliated cost-plus fuel supply relationships of Florida Power Corporation.

DOCKET NO. 860001-EI-G
ORDER NO. 21847
ISSUED: 9/7/89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

Pursuant to Notice, a public hearing on the above matter was held before the Florida Public Service Commission on December 14-19, 1988 and April 19, 1989.

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ORDER GRANTING REFUND

Background

We opened this docket in February, 1986, as a fuel adjustment "spin-off" for the purpose of investigating the affiliated cost-plus fuel supply relationships between Florida Power Corporation (FPC) and Tampa Electric Company (TECO) and their respective affiliated fuel supply corporations. Also, in February, 1986, we established Docket No. 860001-EI-F, Investigation into Certain Fuel Transportation Costs Incurred By Florida Power Corporation in Order No. 15895 for the purpose of determining why FPC's costs to transport coal by its affiliated waterborne system exceeded its costs to transport coal by non-affiliate rail. In September, 1987, we issued Order No. 18122, which removed TECO from Docket No. 860001-EI-G, established Docket No. 870001-EI-A for hearing the TECO issues, consolidated the two FPC issues for hearing in Docket No. 860001-EI-G and closed Docket No. 860001-EI-F.

By Order No. 18982, issued on March 11, 1988, this Commission determined to bifurcate the hearings in this docket on (1) the policy issue of whether a market price standard should be imposed on the recovery of costs for goods and services purchased from affiliated companies and (2) the separate issue of whether any of the monies FPC had recovered through its fuel and purchased power cost recovery clause for

goods and services purchased from affiliates from 1984 to date had been imprudently or unreasonably incurred and should, therefore, be refunded to its customers. Hearings on the policy issue in this docket were held on May 11-13, 1988. Separate hearings were held in Docket No. 870001-EI-A on May 26, 1988, on the advisability of continuing TECO's recovery for affiliated transactions on a cost-plus basis. Hearings on the prudence issue in this docket were held December 14-19, 1988 and April 19, 1989.

In Order No. 20604 issued January 13, 1989, we ordered that as a matter of general policy, market-based pricing for affiliate fuel and fuel transportation services shall be used for the purposes of fuel cost recovery where a market for the product or service is available. We further stated that a market-based price, to be effective April 1, 1989, should be developed for affiliate coal purchased by FPC. The parties in the proceeding were directed to meet in workshops to attempt to develop a methodology by which market-pricing could be adopted for affiliated coal purchases and coal-handling transactions where to do so is reasonably possible. We are scheduled to consider Staff's recommendation on this issue at our October 17, 1989 Agenda Conference.

Our resolution of TECO's case in Docket No. 870001-EI-A, including our acceptance of a stipulation establishing methods for pricing TECO's affiliated coal and coal handling and transportation on a "market-price" basis are reported in Order No. 20298.

Due to the complex nature of the relationship between FPC, Electric Fuels Corporation (EFC) and the network of affiliates and joint ventures which have been created to supply FPC's fuel needs, we believe it is appropriate to examine in detail FPC's fuel supply and delivery network. Therefore, we have included a summary of these complex arrangements in this order prior to our discussion of each transaction at issue in this proceeding.

In March, 1976, Electric Fuels Corporation was established as a wholly-owned subsidiary of Florida Power Corporation and signed a Coal and Supply Delivery Agreement for the purchase and delivery of coal to Crystal River Units 1 and 2 (CR-1 and 2). The contract, in effect until 1991, had a minimum tonnage of 1.9 million tons per year, plus or minus 15% and provided for an adjustable base coal price based on changes in EFC's

costs of mining, acquisition, handling and transportation of coal. This agreement was amended in October, 1977, to include in the basis for price adjustment, inclusion of a return on EFC's equity at a rate equal to the mid-point authorized FPC by this Commission. In December, 1978, EFC and FPC executed a similar Coal Supply and Delivery Agreement for CR-4 and 5, which provided for an annual minimum tonnage of 1.0 million tons for the two units. Since 1982, when Florida Progress Corporation, a holding company, was formed, EFC has been an affiliate of FPC.

Chapter 366, Florida Statutes (1987), provides the statutory basis for the exercise of the Commission's jurisdiction over public utilities. Public utilities are defined as "every person, corporation ... supplying electricity ... to or for the public within this state." Section 366.02, Florida Statutes. FPC is a public utility as defined in Chapter 366 and is therefore subject to the jurisdiction of the Commission. EFC and the complex supply and delivery network they have created are not subject to the jurisdiction of the Commission under Chapter 366.

In Order No. 12645, this Commission considered and adopted certain standards for new long-term fuel contracts and concluded that the guidelines adopted should be applied to affiliates and subsidiaries of utilities or utility holding companies engaged in the procurement of fuel or services for a utility. We believe it reasonable then as well as now that purchases by affiliated companies for a utility meet the same standards as purchases by the utility itself. Therefore, in this proceeding we will review and subject the activities of EFC to the same scrutiny and standards that we would apply to FPC if they had procurred their own fuel.

Dulcimer Reserves/Powell Mountain Joint Venture

In 1979, EFC purchased an 80% undivided interest in 33,000 acres of land in Kentucky and Virginia, including the mineral and surface rights. This 33,000 acres was, in turn, leased to the Dulcimer Land Company (Dulcimer), which is a partnership between Little Black Mountain Coal Reserves, Inc. (wholly owned subsidiary of EFC) and Murphy's Coal Company with partnership interests of 80% and 20%, respectively. Dulcimer subleases the coal reserves to various coal producers, one of which is Powell Mountain Joint Venture (PMJV).

PMJV is a 50-50 partnership between Homeland Coal Company, Inc. (wholly-owned subsidiary of EFC) and Angus Minerals Company, Inc. Both Murphy's Coal Company and Angus Minerals Company are wholly-owned subsidiaries of Amvest Corporation, the company from which EFC purchased its interest in these coal reserves.

Under a 1980 coal supply contract executed with EFC, PMJV mines, processes and ships coal to FPC. The contract establishes a base price per ton for coal, which consists of a base cost plus a base margin for overhead and profit. In addition, the billing price for coal was to be adjusted quarterly to reflect the difference between the specified base cost per ton and the actual cost per ton. In 1984, EFC negotiated a "price cap" with PMJV to constrain the escalating base price of the coal. The dollar difference between the invoiced price using the price cap the calculated base price accumulates in a "recoupable" reserve fund. Repayment of this fund by EFC is triggered when the PMJV price cap is equal to or more than $1.00 per ton less than the average delivered price of domestic compliance coal received by EFC from contract coal suppliers with contract terms of four years or more.

In May, 1987, a letter of agreement was executed by EFC and PMJV establishing a fixed billing price for coal for the period June, 1987 through December, 1988. This agreement amended the "trigger" mechanism for the recoupment fund established in 1984, so that payments from EFC occur when the then current billing price for coal under the Coal Sales Agreement is less than the highest price paid by EFC to a third-party of similar quality coal. At that time, EFC will pay PMJV one half the difference between the price paid to a third-party supplier and the then-current billing price for coal. This mechanism applies to coal purchased up until May 31, 1987.

During the Fixed Billing Price Period established by this letter of agreement, a second recoupment fund was established, which accumulates the difference between the actual margin and the base margin calculated under the Coal Sales Agreement. Repayment of this fund will be triggered in the same manner as the first recoupment fund.

The issue raised by this transaction may be generally stated as whether given the information available to EFC at the time regarding the Dulcimer reserves and the state of the coal market, was EFC's decision to enter into a long-term contract prudent.

In 1979, EFC purchased an 80% interest in the Dulcimer reserves. According to the testimony, Paul Weir Company (Weirco) was commissioned to review the Dulcimer properties on March 26, 1979, and submitted their preliminary reserve estimate to EFC on June 4, 1979. Weirco advised EFC that the purchase price of 19.3 million was reasonable. Witness Matyas testified that there are certain steps that a potential purchaser of coal should follow prior to actual purchase which included: (1) determination of the type of coal required; (2) locate and secure access to a prospective property; (3) conduct an initial exploration and prepare a reserve estimate; (4) prepare a preliminary feasibility study of mining the coal; and (5) prepare a mine plan and final feasibility study. The purpose of these five steps is to reduce the risk that coal production from the property could not be produced at a competitive price. We agree with Witness Matyas' testimony.

The record of this proceeding does not demonstrate that EFC followed any of the generally accepted procedures prior to the purchase of the Dulcimer reserves. Rather, the preliminary feasibility study was not prepared by Weirco until January 11, 1980. In addition, EFC purchased Dulcimer reserves prior to the completion of the preliminary reserve estimate and the final feasibility study. Therefore, we must conclude that EFC should have conducted additional research on the Dulcimer reserves prior to its purchase. We find that EFC accepted the risk that coal could not be produced from the property at a competitive price.

In 1978, EFC conducted a formal solicitation of the compliance coal market which resulted in EFC's December, 1978 contract to buy one million tons of compliance coal from A.T. Massey. EFC was also able to produce documentation of this formal solicitation regarding the Massey coal. However, EFC is unable to produce any documentation regarding any compliance coal market solicitations conducted in 1979 or 1980. Rather, EFC's witness Bourn stated that they relied on telephone conversations over a two-year period of time to update the 1978 formal solicitation.

We do not believe EFC's telephone communications with suppliers constitutes a formal bid solicitation. An appropriate solicitation consists of an effort to contact all qualified bidders, a formal offer to purchase coal and written documentation of all the responses from the bidders. In Order No. 12645, we approved certain recommended guidelines as part of the Commission's Fuel Procurement Policy. Among our recommended guidelines is a suggestion that all aspects of the procurement process employed in acquiring a long-term fuel on services supply contract should be documented and available to the Commission upon request. While these guidelines were implemented after EFC's decision to purchase the Dulcimer reserves, we believe that it is appropriate for a utility to be able to produce documentation of its efforts to this Commission when the company's seeks to recover costs associated with the transactions from its ratepayers. EFC is unable to produce any written offers for compliance coal from coal suppliers in 1979 or 1980 or any other documentation to support its assertion that its 1978 solicitation was updated.

Basically, all the witnesses agree that the coal market in general was depressed in 1979 and 1980. A review of the base contract price for compliance coal constracts signed during the 1976-1981 period indicates a distinct upward trend in new compliance coal contracts through 1978. In 1979 there was a district change and compliance contracts signed in 1979 and 1980 were signed at prices approximately equal to and below these signed in 1978. Witness Heller testified that the compliance coal market was buffeted by strong forces in 1979. He also testified that in a market buffeted by strong forces it is difficult to determine whether prices will increase or decrease. We are therefore of the opinion that the compliance coal market changed from a sellers' market in 1979 with increasing prices to an unstable market with an uncertain price direction.

We must now determine whether EFC's agreement with PMJV was reasonable and if the costs were prudently incurred. In general, when this Commission examines the expenses or investments incurred by a utility, each investment expense must be reasonable in amount, prudent and be utility related.

In addition, this Commission has the authority to review the prudence of past fuel adjustments and order a refund for

imprudent expenses:

> Fuel adjustment charges are authorized to compensate for utilities' fluctuating fuel expenses. The fuel adjustment proceeding is a continuous proceeding and operates to a utility's benefit by eliminating regulatory lag. This authorization to collect fuel costs close to the time they are incurred should not be used to divest the Commission of the jurisdiction and power to review the prudence of these costs.

In Re: Investigation of Fuel Cost Recovery Clauses of Electric Utilities (Gulf Power Company - Maxine Mine), Docket No. 820001-EU-A, Order No. 13452 (84 FPSC 295), aff'd Gulf Power Co. v. Florida Public Service Commission, 487 So.2d 1036, 1037 (Fla. 1986). To make a determination of whether EFC's decision to enter into the PMJV contract was prudent, we must review and evaluate EFC's actions based upon the facts which were known or should have been known by EFC at the time of their decision. This standard of review is consistent with that which was employed by this Commission in Maxine Mine. We believe it is appropriate to state that a decision by this Commission to disallow recovery of imprudently incurred fuel costs will have absolutely no impact of FPC's contractual relationship with its affiliates. FPC has apparently taken the position that if the decision to incur certain costs were prudent when made, a subsequent decision to disallow recovery is improper. We agree with this basic principle, however, we must note that there has been no previous evaluation by this Commission of the prudency of the fuel costs at issue in this proceeding. Preliminary estimates of production costs prepared by Weirco in January, 1980, indicated that compliance coal could be produced in the Mayflower area of the Dulcimer reserves for $47.89 per ton, not including a profit margin. EFC felt that this cost was high and requested that Amvest perform a production cost estimate. Amvest is EFC's partner in the PMJV. Amvest estimated a production cost of $30.82 per ton, not including a profit margin. This is $17 less than the Weirco estimate. Weirco was asked to comment on the Amvest study. Weirco concluded that the Weirco production cost might be conservative, but Weirco was confident that they were not that conservative. We are of the opinion that EFC should have had serious concerns about the economic viability of the Dulcimer reserves given the unstable

compliance coal market and the large difference between the two production cost estimates. In addition, EFC's decision not to include a market price reopener in this long-term cost-plus contract was imprudent. Therefore, we conclude that EFC's decision to enter into this cost-plus contract with PMJV was not reasonable nor prudent considering the unstable compliance coal market which existed at the time, unanswered questions concerning the economic viability of the Dulcimer reserves and the failure to include certain protections for the ratepayers in the contract.

Having determined that EFC acted imprudently with respect to the PMJV contract, we must determine whether FPC's ratepayers paid excessive costs because of this imprudent action. As we noted in Maxine Mine imprudent actions involving fuel procurement may or may not cause injury. 84 FPSC 6:305.

We are of the opinion that FPC should be limited to recovery of an amount equal to the market price of compliance coal which could have been obtained had EFC conducted a formal solicitation in a similar market environment. Staff recommended a methodology to evaluate the market price of coal for the years 1984 through 1987. We concur with Staff's recommendation that a market methodology be used to establish whether EFC's imprudent actions have caused injury. However, while the market standard recommended by Staff appears to be reasonable for application to this contract for this period, we believe it appropriate to delay a final determination of the positive or negative impact of this contract on FPC's ratepayers until after a final market standard methodology has been established in Phase I of this proceeding.

Kentucky May Coal Company

EFC purchased Kentucky May Coal Company Inc. (Kentucky May) in December, 1985,and also obtained a 60% interest in Hatfield Terminals, Inc., a coal processing and bulk commodities terminaling company on the Ohio River. In February, 1986, EFC and Kentucky May executed a three-year agreement for the delivery of 275,000 to 375,000 tons per year of compliance or 1% sulfur coal. This agreement was amended effective August 1, 1987, to establish a base price for coal, subject to semiannual adjustments on based specified indices. The annual amount of coal to be delivered under this addendum is 300,000 tons plus or minus 10%. Any profits EFC receives

from Kentucky May are retained and are not used to reduce the cost of coal to FPC.

The issue raised regarding this transaction was whether EFC's decision to contract with Kentucky May was prudent.

OCC is the only party to this proceeding suggesting EFC was imprudent in its decision to purchase the Kentucky May coal maintaining that the price paid was excessive and that EFC should have purchased coal on the spot market rather than purchase additional contract coal. However, both witnesses Jaron and Carter testified that the price EFC paid for the Kentucky May coal was reasonable. In addition, a report prepared by OCC's Witness Sansom's consulting firm concluded that the Kentucky May contract contained prices which were indicative of current market pricing. We believe that the contract price charged to FPC for coal purchased by EFC from Kentucky May was reasonable. OCC also suggests that EFC should not have committed to purchase additional contract coal but rather EFC should have relied on spot market purchases to supplement their additional needs. In Order No. 12645, we adopted standards for the purchase of fuel and recommended that a majority of a utility's coal be purchased under contract. We did not, however, include a specific contract/spot mixture in our standards. Therefore, we are of the opinion that it was not unreasonable for EFC to purchase additional coal under contract as opposed on the spot market.

<u>Bow Valley Coal Resources, Inc.</u>

In 1980, Bow Valley Coal Resources, Inc. (Bow Valley) an unaffiliated company which had been a long-time supplier of coal to FPC leased 6,100 acres of the Dulcimer reserves. At the time of this lease EFC had a coal supply agreement with Bow Valley which was scheduled to expire on December 21, 1987. In 1980, seven (7) years before this coal supply agreement was to expire, EFC extended the Bow Valley contract until 1994 without conducting a solicitation. In 1984, EFC purchased 168,000 tons of coal over the contract amount of 850,000 tons per year. Finally, Bow Valley agreed to waive year-end contract adjustments totalling $3,475,782.

OCC and OPC maintain that EFC renegotiated its seven year extension in return for Bow Valley leasing a portion of the Dulcimer coal reserves. This assertion is made by Witness

Sansom in his testimony. The testimony of Witness Bourn states that EFC had discussed extending the contract with Bow Valley prior to purchasing the Dulcimer property. In addition, Witness Bourn testified that Bow Valley had been trying to purchase the property it ultimately leased from EFC. Finally, the record indicates that EFC was advised in 1979 by Weirco, its consultant, not to purchase additional coal by contract from Bow Valley until Bow Valley acquired additional reserves. We agree with our Staff that there is no evidence that Bow Valley leased the Dulcimer property in return for the 1980 contract extension. Rather the testimony indicates that Bow Valley had an interest in the Dulcimer reserves prior to EFC acquiring its interest and made the decision to lease additional reserves in order to have sufficient reserves to supply the additional tonnage required by its contracts. In addition, the record indicates that Bow Valley was a consistent supplier of quality compliance coal in a reliable manner at a competitive price. Therefore, we conclude that EFC's agreement to extend the Bow Valley contract was reasonable.

OCC and OPC also maintain that EFC was imprudent when it purchased 168,000 tons of coal from Bow Valley in 1984 in excess of the contract commitment. Witness Sansom maintained that by not purchasing this coal on the spot market, FPC's ratepayers made overpayments of $1,428,000. Witness Carter testified that EFC bought the additional coal above the contract minimum because of the quality of the coal and Bow Valley's agreement to give up claims to multi-million dollar price adjustments called for under its contract.

Witness Carter also testified that the additional purchases resulted in a savings to FPC's ratepayers of $100,000 compared to spot purchases. We do not believe the record supports the finding that EFC's decision to purchase the additional tonnage was unreasonable. The testimony in the record supports the conclusion that the additional purchases from Bow Valley in 1984 were reasonable and resulted in a savings to FPC's ratepayers of approximately $100,000 compared to spot prices. Therefore, we are unable to conclude that EFC was imprudent when it purchased the additional coal from Bow Valley in excess of its contract commitment.

A. T. Massey

In 1986, EFC renegotiated its contract with A. T. Massey, ten months prior to the time the price was scheduled by contract to be reopened. The price was negotiated downward to a price of $31.00 per ton resulting in a price reduction of $6.94 per ton. In 1986, A. T. Massey released a claim it held against an EFC affiliate, COMCO, damages from which could not be passed through to FPC's ratepayers.

OCC, OPC and FIPUG maintain that EFC accepted an above market price from Massey in exchange for Massey's agreement to release a substantial claim against EFC's affiliate COMCO. They rely primarily on a single letter of agreement executed by EFC and Massey in 1986 which set the new contract price of $31 a ton and released EFC affiliate COMCO from take-or-pay obligations under a separate contract to Massey. However, Witness Carter testified that the negotiations between Massey and COMCO were separate from the negotiations to reduce the price of coal in the contract between Massey and EFC. According to Witness Carter, renegotiating the price downward ten months prior to the date specified in the Massey contract resulted in savings of $5,205,000 and if this amount was spread over the period specified by the contract reopener clause, the effective price of coal would be $29.49 per ton. We agree with Staff's conclusion that this effective price of $29.49 per ton compares favorably with Witness Sansom's market price estimate of $29.20 per ton.

Therefore, we are unable to conclude that EFC was imprudent when it renegotiated its compliance coal contract with Massey. Rather the record indicates that the renegotiated price was comparable to the market price when the savings which resulted from the early renegotiation were spread over the period specified in the reopener clause. Finally, we are unable to find any evidence in the record to support the allegation that EFC traded an above market-price in exchange for Massey's release of a claim against COMCO.

FPC's Waterborne Transportation System

In March, 1977, EFC executed a partnership agreement with Dixie Bulk Transport, Inc., creating a partnership called Dixie Fuels Limited (Dixie). EFC has a 65% ownership in Dixie and the purpose of this partnership was to create an ocean-going

barge system for the transportation of coal from the New Orleans area to Crystal River. In December, 1977, EFC executed an affreightment contract with Dixie for barge services from the period March, 1978 through March, 2002. Pursuant to the contract and its addendum, three barge/tug units were dedicated to FPC's business to transport a minimum of 1.2 million tons per year. Under this "dedicated" barge concept, all operating costs of the barge/tug units were charged to FPC business. In Order No. 14782, which resulted from the February, 1985 fuel adjustment hearings, profits resulting from EFC's backhaul business from the Tampa area to the New Orleans area were ordered to be used to offset the cost of barge/tug service for FPC business.

In June, 1977, EFC entered into a partnership agreement with Marine Terminals Incorporated and Associated Energy Transporters to establish International Marine Terminals Partnership (IMT). The purpose of this partnership was to develop, and operate for profit, the Island Creek Dock as a bulk commodities terminal facility. Subsequently, the partner entities changed and the current entities are Mississippi River Terminals, Inc. (MRT) (a wholly-owned subsidiary of EFC), P&C "Bituminous Coal", Inc. and Kentucky Ohio Transportation Company. Each of these partners own a 33-1/2% interest in IMT.

The 1977 affreightment contract that EFC executed with Dixie was based on a daily charter rate per tow. The daily charter rate was escalated by various indices. In 1981, the affreightment contract was amended to establish a daily freight rate based on actual cost plus a profit component.

In October, 1985, EFC and Dixie executed Addendum 10, which changed the original affreightment contract by providing four/tug units and increasing the minimum tonnage to be shipped to 2.4 million tons per year. Addendum 10 was effective January 1, 1985. Profits realized by Dixie are shared 65% by EFC and 35% by Dixie Bulk Transport. EFC's shares of the profits are allocated 75% to reduce the price of coal to FPC, while 25% are retained by EFC. According to FPC only 75% of the profits are used to reduce the price of coal to FPC because FPC, through EFC, has an equity investment in only 3 of the 4 barge/tug units being used for FPC business.

Concurrent with the execution of the original partnership agreement, EFC signed a terminal agreement with IMT for the

provision of coal handling and storage services. This original agreement established a minimum of 1,220,000 tons, plus or minus 10% to be received, shared and/or transferred through IMT facilities. The original terminal agreement was replaced, in part, by a settlement agreement between IMT and EFC which settled a dispute regarding deficit tonnages and damage incurred by EFC in 1982 and 1983. A new minimum tonnage was set at 1.75 million tons per year. For 1984 and 1985, a new base rate was established with a per ton discount for all tons shipped over 1.25 million tons and a reduction in the base price for all tons shipped in excess of 1.95 million for the years 1986 through 1988, the base price was fixed with discounts given for tons handled over 1.25 million tons.

In general, all the parties to this proceeding agree that EFC's maintenance of a dual mode transportation system is reasonable and operates in a manner to benefit FPC's ratepayers. We stated in Order No. 15895:

> We acknowledge the desirability of maintaining alternative transportation routes for the purposes of increasing reliability and enhancing price competition.

While it is desirable and appropriate for a utility to have a dual mode of transportation, we do not believe it is appropriate for a utility to favor an affiliate transportation route over a less costly non-affiliate transportation route to the detriment of its ratepayers.

In order to evaluate the extent to which FPC favored its waterborne affiliate route over the non-affiliate rail route, we must first determine the amount of coal it was feasible to transport to Crystal River by rail. In January, 1984, EFC was operating four unit trains to deliver coal to Crystal River by rail. Later in 1984, EFC added two additional unit trains to their rail delivery fleet. Late in 1987, a seventh unit train was added to the fleet. We believe that the evidence available indicates that there were no impediments to EFC making these improvements to their rail delivery fleet at an earlier date except EFC's commitment to their waterborne transportation route.

OCC argues that it was possible to transport approximately 5,113,472 tons of coal per year to Crystal River by rail during

the period of 1984 to 1987. According to OCC's witness, if this rail delivery level could be achieved, then Dixie tows 3 and 4 would not have been necessary. However, this level of rail delivery would have required the use of nine unit trains. We agree with our Staff that at least 3,625,000 tons of coal and possibly as much as 4 million tons of coal could have been transported to Crystal River by rail. These levels of delivery were achieved in 1987 and 1988. However, they could have been achieved during the 1984 to 1987 time period by simply adding the additional trains and making improvements to Crystal River's receiving facilities at an earlier date.

The intervenors (OCC, OPC and FIPUG) do not question the decision by EFC to purchase Dixie tows 1 and 2, but they do question the price paid by EFC for the services provided by the two barge/tow units. Our review of the record shows that the concerns of the intervenors are without merit. EFC solicited bids for the construction of Dixie tows 1 and 2 to obtain the lowest available price for their construction. In addition, we believe the charges for services provided by Dixie tows 1 and 2 were reasonable through 1984.

As was indicated earlier, the construction of Dixie tows 3 and 4 were authorized by EFC in April, 1981 and both tows were placed in service in 1982. There is, however, no documentation which was prepared simultaneously with this decision showing an economic evaluation of the impact of the decision to purchase these two additional barges. The testimony offered by EFC's Witness Upmeyer states that EFC determined in 1979 that four barges would be required to deliver phosphate and coal to FPC once Crystal River units 4 and 5 came on line. Further, the testimony states that initially, EFC planned to ship 1.0 million tons of coal from A. T. Massey by water, 500,000 tons of coal from Amax by water and 500,000 tons of coal from Consol by water. Both the Amax and Consol were long-term contract suppliers of coal to EFC at the time of the decision to add tows 3 and 4 and the delivery of Massey coal was scheduled to begin in 1982.

The record also indicates that EFC had conflicting advice as early as 1978-79 regarding whether FPC would be allowed to burn the high sulfur Amax and Consol coals at Crystal River. Witness Upmeyer testified that he received an opinion from FPC's Environmental Department that the environmental standards would be changed to allow the Amax and Consol coals to be

burned at Crystal River. In 1978, the record indicates that EFC's outside legal counsel for environmental issues advised EFC that once Crystal River Units 4 and 5 went on line the high sulfur Amax and Consol coal could not be burned at Crystal River. In addition, outside legal counsel advised EFC they could not claim force majeure because FPC knew about the environmental regulations before the Amax and the Consol contracts were signed. We believe that it was imprudent to base a decision to purchase Dixie tows 3 and 4 on FPC's advice that the environmental standards at Crystal River would be relaxed thus allowing the Amax and Consol coals to be burned at Crystal River. We believe that EFC should have known that replacement of low sulfur coal would come from Central Appalachia and could be delivered to Crystal River at a lower cost by rail.

With respect to the Massey coal, OCC suggests that this coal should also have been delivered by rail. However, the record indicates that in 1982 to move the Massey coal by rail would have resulted in increased turn times which would have required additional unit trains, the effect of which would make rail transportation costs more expensive than water transportation costs. Therefore, we believe that it was appropriate to move the Massey coal by water.

We also believe that it was appropriate to move coal from the Powell Mountain contract by water initially. The record indicates that without certain repairs by the railroad, it would have been a two line haul to deliver the coal from Powell Mountain to Crystal River. EFC's Witness Meade testified that the railroad was only willing to make the repairs if EFC paid them $2.4 million dollars. We believe that the cost of the repairs, the volume of coal shipped and the rail/water differential make it reasonable for EFC to ship the Powell Mountain coal by water. Apparently after EFC begun moving the coal by water to Crystal River, CSX repaired the bridge and tunnels and the first single line haul to Crystal River was loaded in January, 1984.

The coal capacity of Dixie tows 1 and 2 is 1.2 million tons per year plus the phosphate backhaul. This is consistent with the Dixie contract minimum of 1.2 million tons. We believe that the 1.0 million ton per year A. T. Massey contract coal should have been shipped by water. We are also of the opinion that the two 500,000 ton per year Amax and Consol

contracts should have been shipped by rail. EFC could have planned to ship some of Powell Mountain coal by water in 1982 and 1983. The record indicates that higher sulfur midwestern coal would be phased out between 1982 and 1983, but does not indicate what volumes would be shipped in these years. All other coal for Crystal River Units 1 and 2 should have been shipped by rail. Therefore, we expect that water shipments would be in excess of 1.2 million tons in 1982 and 1983.

We believe that maintaining a fleet of two barges at this time might create operational contraints which would limit EFC's flexibility in procuring coal supplies, reduce reliability and limit EFC's leverage with the railroads. For this reason, we do not consider the purchase of an additional tug/barge unit in 1982 to be an imprudent decision. This finding is not only supported by this record but is also consistent with this Commission's decision in Docket No. 850001-EI-A where we concluded that EFC should maintain a three barge fleet in 1982. This third Dixie tow would provide EFC with an additional 600,000 to 720,000 tons of coal capacity thereby increasing Dixie's capacity to at least 1.8 million tons of coal per year. As we previously stated, FPC and EFC could have increased rail capacity to at least 3.625 million tons, and possibly 4.0 million tons per year. The spreadsheet in Appendix A shows the volumes of coal delivered to Crystal River in the period 1984 through 1987. This chart demonstrates that the fourth Dixie tug/barge unit was not required until 1987 when rail tonnage with three tug/barge units would exceed 4.0 million tons. We concur with our Staff's recommendation that FPC should have been responsible for 600,000 tons per year per barge, or for 1.8 million tons of barge capacity in 1984, 1985 and 1986. However, the record demonstrates that EFC actually shipped 716,000 tons of coal in excess of the 1.8 million ton waterborne responsibility during 1984, 1985 and 1986. We believe that the decision to ship this excess tonnage by water was imprudent and that the costs associated with this decision should be disallowed.

Having concluded that the decision to ship coal using Dixie tow 4 was imprudent we must now calculate the costs associated with that decision. With respect to the appropriate rail/water rate differential to be applied when calculating the amount to be disallowed, witnesses for both EFC and OCC presented testimony.

Specifically, witness Sansom testified that the 1980 water delivery from Central Appalachia was $7.50 per ton more expensive than rail delivery. This rail/water differential was also supported by Mr. Bourne's exhibit entered in the record of this proceeding. Witness Carter also testified regarding the appropriate rail/water differential. However, his figure was based on 1987 costs and is not supported by any backup documentation. We concur with our staff's recommendation that the figure ($7.50) supported by backup documentation be used to calculate the appropriate disallowance. We, therefore, conclude that $5,370,000, plus interest should be disallowed for excess barge usage in 1984, 1985 and 1986 (Appendix A). The amounts disallowed (exclusive of interest) on an annual basis are $367,500 for 1984, $2,122,500 for 1985 and $2,880,000 for 1986.

<u>Refunds And The Appropriate Rate of Interest</u>

As indicated in our discussion of the issues related to Dixie tows, we have concluded that FPC should be required to refund to its ratepayers, $5,370,000 plus interest for the tonnage shipped by EFC on the waterborne route associated with the fourth tug/barge unit. There is, however, disagreement among the parties as to how the interest rate applied to any refund should be calculated, as well as, how the refund should be distributed among FPC's customers.

It is well settled in Florida law and Commission practice and policy that utilities must pay interest on utility overcharge refunds. <u>Kissimmee Utility Authority v. Better Plastics, Inc.</u>, 526 So.2d 46 (Fla. 1988); Rule 25-6.109, Florida Administrative Codes. We will first address the issue of how interest should be calculated for any refund ordered in this proceeding. OCC's witness, Dr. Kennedy, testified that the appropriate rate of interest to be applied to any refund is 12% per annum as provided for in Section 687.01, Florida Statutes, rather than the market interest rate formula which is contained in Commission Rule 25-6.109. We believe that reliance on Chapter 687.01, Florida Statutes, for the rate of interest to be applied to any refund ordered in this proceeding is misplaced and inappropriate. In <u>Maxine Mine</u>, this Commission previously considered the appropriate methodology for calculating the interest on a refund of excess fuel costs and we concluded that the methodology contained in Rule 25-6.109(4) was appropriate. We believe that the methodology should also be applied here.

Generally, the intervenors support a refund methodology which would provide a refund to those who actually paid the excess fuel costs in the form of a check or a credit. We concur with our staff that such a refund methodology could be fraught with administrative difficulties which would operate to dilute the impact of any refund ordered, especially for FPC's residential customers. Since a refund is basically a reflection of the costs determined to have been imprudently collected through the fuel adjustment process, we believe it appropriate that the refund be returned through the fuel adjustment process. Therefore, we conclude that the fuel costs we have previously determined were imprudently incurred plus interest as calculated pursuant to Rule 25-6.109(4), Florida Administrative Code, should be refunded by FPC through the fuel adjustment clause for the April 1, 1990 through September 30, 1990 fuel adjustment period.

We note with considerable interest that one of the issues raised in this proceeding was whether or not the creation of EFC and its affiliate network has resulted in excess risk and fuel cost to FPC's ratepayers. While we decline to make a specific finding regarding this issue, we are approving the proposed findings of fact and conclusions of law filed by OPC as provided for in Section 120.57(4), Florida Statutes, related to this issue. We must, however, comment on the complexity of FPC's fuel supply structure and the inherent tension created when an unregulated affiliate must make choices which may impact either adversely on FPC's ratepayer or the affiliate's shareholders.

FPC has essentially delegated to EFC the responsibility for supplying all its fuel needs. In order to accomplish this task EFC has created a number of wholly-owned subsidiaries, partnerships and/or joint ventures. Notwithstanding this maze of companies and complex transactions, this Commission has the responsibility of scrutinizing FPC's fuel expenses in order to insure that FPC's ratepayers are only paying prudently incurred fuel expenses. As we have stated in previous orders, we will review the costs associated with affiliate fuel supply transactions in the same manner as we review unaffiliated fuel supply transactions. We also believe it important to note that EFC was created with and apparently given, conflicting goals. On the one hand, EFC is charged with acquiring the highest quality, lowest cost fuel available for FPC's ratepayers and on the other hand EFC is seeking to make a profit for its

shareholders. We believe these two goals can often be at odds and incompatible. Therefore, we find it appropriate and necessary to continue to review each of EFC's transactions on behalf of FPC on a case by case basis to insure that FPC's ratepayers are protected from any adverse impact which may result from EFC's conflicting directives.

Miscellaneous

The Office of Public Counsel (OPC) included over two hundred proposed findings of fact and/or conclusions of law related to many of the issues considered in this proceeding in its Post Hearing Brief. As required by Section 120.59(2), F.S., the Commission has ruled on each of OPC's proposed findings of fact or conclusions of law. While the findings of fact reached in this order are supported by the weight of the evidence of record and generally encompass the findings of fact proposed by the OPC, we have included our ruling on each proposed finding of fact in Appendix B of this Order. In addition, while our reasoning is discussed in the body of this order, we have also ruled upon each specific conclusion of law proposed by OPC and included our response to each individually in Appendix B.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power Corporation refund the amount of $5,370,000, plus interest calculated according to this Order, through its fuel adjustment factor for the April 1, 1990 through September 30, 1990 fuel adjustment period. It is further

ORDERED that, within 30 days of the date of the Order, Florida Power Corporation submit a proposed calculation of the interEst on the refund. It is further

ORDERED that the market price methdology to be established in Phase I of this proceeding be used to determine whether Florida Power Corporation's ratepayers are entitled to a refund because of the utility's imprudent decision to enter the Powell Mountain Joint Venture.

By ORDER of the Florida Public Service Commission, this 7th day of SEPTEMBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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APPENDIX A

	Coal Deliveries to Crystal River							
	Rail	Water	Total	Capacity Of 3 Barges	Rail With 3 Barges	Capacity Of 4th Barge	Remaining Rail Tonnage	Excess Barge (B-D-F)
	(tons)	(tons)	(tons)	(tons)	(tons)	(tons)	(tons)	(tons)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	
1984	2,231,000	1,849,000	4,080,000	1,800,000	2,280,000	0	2,280,000	49,000
1985	2,803,000	2,083,000	4,886,000	1,800,000	3,086,000	0	3,086,000	283,000
1986	3,231,000	2,184,000	5,415,000	1,800,000	3,615,000	0	3,615,000	384,000
1987	3,625,000	2,361,000	5,986,000	1,800,000	4,186,000	600,000	3,586,000	0
1988	4,000,000	2,153,000	6,153,000	1,800,000	4,353,000	600,000	3,753,000	0
								716,000
								x $7.50
								$5,370,000

Source: Tr. 330, 509, 1163

APPENDIX B

ISSUE 1: Was EFC's acquisition on June 12, 1979 of an 80% interest in the Dulcimer coal reserves for a price of $19.3 million based on sufficient investigation and economic analysis?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

1. Mr. Storey's testimony and exhibits on the Dulcimer purchase were not intended by Mr. Storey to address the prudence of the price of PMJV coal sold to FPC.

2. The Weir Company was pressed for time and had to get out a quick estimate of the Dulcimer property to EFC before the study was completed.

3. Significant compliance coal tonnage had been extracted from the Dulcimer property before EFC purchased it.

4. The evaluation of the Dulcimer reserves was inadequate to support a purchase decision by EFC.

5. At the time EFC made its purchase, 800,000 tons from Dulcimer were reserved for Kentucky Utilities.

7. Dulcimer received $1,394,410 from PMJV as royalty payments in 1987.

9. EFC had no time beyond June 12, 1979 to decide how much coal was on the Dulcimer reserves or the economics of mining coal from that property.

10. Weirco in its 1980 study found less compliance coal in seams greater than 36" than Boyd had found in its earlier study.

11. The Dulcimer property was subject to existing leases at the time of EFC's purchase which Weirco didn't know at the time of its hurried evaluation.

12. There has been mining on the Dulcimer reserve property since 1905.

13. Weirco was hired to evaluate the Dulcimer reserves on March 26, 1979 less than three months before EFC purchased an interest in the reserves.

14. Little, if any, surface mineable coal remained on the Dulcimer reserves at the time EFC acquired its interest.

15. By 1979 the better, deep mineable seams on the Dulcimer reserves had already been extensively mined.

16. The value of coal reserves depends on whether they can be mined profitably.

17. High cost mines are characterized by rugged terrain, variable seam thickness, and variable mining conditions.

18. A thin-seamed mine is generally less productive than one with thick seams.

19. Only eight million tons of the compliance or near- compliance coal on the Dulcimer reserves was known to EFC to be located in seams over 42".

20. The character of the Dulcimer reserves reasonably indicated that mining compliance coal would be high cost.

21. No economic analysis of the costs to mine coal from the Dulcimer reserves was performed by or on behalf of EFC before it acquired an 80% interest in the reserves.

We reject the following proposed findings of fact because they are not supported by the weight of the evidence in the record of this proceeding.

6. When the Kentucky Utilities sale did not develop, EFC found itself with an expensive property and no market for the Dulcimer coal.

8. EFC's decision to purchase the Dulcimer reserves was based entirely on a one-page preliminary estimate prepared by Weirco on June 4, 1979.

ISSUE 2: Did EFC/FPC conduct a solicitation of the compliance coal market in 1979 or 1980?

ISSUE 3: Was the compliance coal market in October 1980 a declining market?

ISSUE 4: Is EFC's agreement with Powell Mountain Joint Venture ("PMJV") reasonable and have the costs been prudently incurred?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by by the weight of the evidence in the record of this proceeding.

1. EFC, as a 50% participant in PMJV cannot override the other partner's interests.

2. EFC/PMJV contract does not preclude PMJV coal from going to a customer other than FPC.

3. EFC'S obligation as a seller of coal through PMJV is to maximize its profits.

4. Difference in the cost estimates by Weirco and Amvest were not resolved when EFC contracted with PMJV in October 1980.

5. Twelve million of the 20 million tons required by the PMJV contract are in thinner, higher seams.

6. Compared to projections, production at PMJV has been lower, costs have been higher and mining in more difficult seams has been abandoned.

8. EFC approved the PMJV contract before Weirco's comparison analysis of its own and Amvest's study was completed.

9. Coal prices in general have been decreasing because of productivity increases.

10. EFC's entry into a long-term, cost-plus contract with an affiliate without a market reopener on a take-or-pay basis without a solicitation under market conditions at the time was imprudent.

11. The FPC/EFC contract places the risk of PMJV price increases on FPC's ratepayers.

12. The initial PMJV price was above prices prevailing in the market.

13. EFC did not include a productivity incentive in the PMJV contract.

14. The profit margin in the PMJV contract is much greater than the industry average.

15. PMJV earned a return on equity of 44%-56% between 1982 and 1986. This is five times the average of eleven other companies who mine coal in the same region.

16. PMJV coal was not needed until Crystal River Unit No. 5 came on-line in 1984, but EFC began shipping PMJV coal at an earlier date.

17. Productivity at PMJV has not increased in pace with the relevant industry average which has doubled during relevant period.

19. Amvest earns a 3.3% management fee on gross sales from PMJV.

20. Reopeners are often used by both sides to allow contract coal prices to reflect actual market conditions.

21. Contractor-operated mines at PMJV have lower costs even though they operate in thinner seams than company mines.

22. EFC and PMJV did not anticipate or allow for changes in the economy after 1980.

23. The other PMJV contract (besides EFC's) is based on a negotiated initial price subject to renegotiation by either party.

24. The Weirco estimate of $47.89 per ton compares with Amvest's $30.82 on an "apples-to-apples" basis.

26. Amvest was not on Weirco's 1978 list of compliance coal sources prepared for EFC.

28. EFC's sole basis for asserting the reasonableness of the PMJV price to EFC as reflected in Mr. Bourn's responses to Chairman Wilson, is not based upon a market comparison but instead is based on the fact that its the lowest price at which PMJV can extract, produce and sell coal.

29. EFC adopted a policy in 1979 on the procurement of coal reserves which set a target return on investment of 19%.

30. EFC has not produced written offers for compliance coal from prospective coal suppliers in 1979 or 1980 to support its claim that it updated its 1978 solicitation. The record does not support EFC's claim that it conducted a reasonable solicitation or market survey capable of determining the market price of compliance coal in 1979 or 1980.

31. Kentucky Utilities (KU) conducted a compliance coal solicitation in 1979 which elicited 22 potential coal sources [T. 550]. Amvest, EFC's partner in PMJV, responded to Kentucky Utilities' solicitation in early 1979. Subsequently it reduced its price in its update of its bid.

32. Amvest's 1979 offer of $35.48 per ton to Kentucky Utilities was refused by the utility.

33. EFC was "quite willing" to increase its commitment to 1 million tons per year when Kentucky Utilities elected not to purchase 800,000 tons.

34. Baltimore Gas & Electric conducted a compliance coal solicitation in 1980 which elicited 20 potential coal sources.

35. The record does not support EFC's claim that it conducted a reasonable solicitation or market survey capable of determining the market price of compliance coal in 1979 or 1980.

37. On January 11, 1980, Weirco provided EFC with a preliminary estimate of the costs to mine coal from the Mayflower area of the Dulcimer reserves which totalled $47.89/ton, before profit.

38. A 1980 report prepared by Amvest estimated that the costs to mine coal from the Mayflower area of the Dulcimer reserves ranged from $28.75/ton to $30.82/ton, before profit.

39. EFC's Board of Directors approved the development of the Dulcimer reserves in May, 1980, even though the two sharply different estimates had not been reconciled and a June 1980 report by Weirco stated that Weirco's preliminary mining cost estimate of $47.89/ton was conservative but not conservative enough to explain the differences between its estimate and Amvest's estimate.

41. EFC did not determine before it signed the PMJV contract that the Dulcimer reserves would be economic to mine or that a cost-plus contract for coal from the Dulcimer reserves would be less expensive than alternatives.

42. The price reopener provision in EFC's 1978 compliance coal contract with A. T. Massey Company could be exercised only by EFC andnot by Massey.

43. Although productivity in the coal industry has generally improved substantially since 1980, EFC has not demonstrated that comparable gains have been realized at PMJV.

We reject the following proposed findings of fact because they are not supported by the weight of evidence in the record of this proceeding.

7. PMJV's production cost are $5-$18 per ton higher than estimated in November 1980.

18. PMJV has consistently shipped under the contract minimum tonnage.

25. EFC thought the Amvest mine production plan was risky.

27. Royalties on PMJV coal assume the $19.3 million Dulcimer purchase price was all for coal in spite of evidence on oil, gas and timber resources available.

36. The compliance coal market in 1980 had declined since 1978 when EFC as agent for FPC conducted its last solicitation.

40. EFC's lease of the Dulcimer reserves specified that the Dulcimer partnership would sell 500,000 tons of coal per year to EFC and 800,000 tons of coal per year to KU [T. 425, 543; Exh. 202]. KU did not purchase coal from the Dulcimer reserves. This made it necessary for EFC to protect its investment by buying additional coal from the reserves for FPC even though the information available indicated the reserves would be high cost to mine.

44. PMJV's costs have been higher than market as compared with other utilities.

45. Ratepayers have been overcharged by $34,342,000 between 1984-87 for PMJV coal, exclusive of interest, based upon the excess over the market price as represented by the average prices paid under BG&E's compliance coal contracts signed after a competitive solicitation in 1980.

PROPOSED CONCLUSIONS OF LAW

We reject the following proposed conclusion of law.

1. Overcharges to ratepayers from the PMJV contract are $34,342,000 from 1984 - 1987, excluding interest, and continue through March 31, 1989, as measured by the difference between FOB-mine prices of PMJV and the BG & E market-based contract price.

ISSUE 5: Have the costs charged to the ratepayers for coal purchased from Kentucky May been prudently incurred?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

1. During 1985 EFC purchased 81% of its coal under contract.

2. In February 1986 EFC signed a three-year coal supply contract with its 100% owned affiliate Kentucky May Coal Company effective January 1, 1986, for delivery of 225,000 to 375,000 tons per year of compliance or 1% sulfur coal.

4. In 1986 EFC purchased spot coal from non-affiliated suppliers at weighted average prices of $22.79 for 1% sulfur coal and $22.15 for compliance coal.

6. The last coal solicitation conducted by EFC prior to the Kentucky May contract resulted in signing of the Reading & Bates and Carbocol contracts in mid-1984 [T. 373-75, 564]. The coal market after the Reading & Bates and Carbocol solicitation continued to decline.

7. The delivered price of Kentucky May coal exceed the delivered price of Reading & Bates or Carbocol in 1986.

8. Virginia Power conducted a solicitation and signed three contracts for coal effective on January 1, 986 [T. 564]. EFC's contract price for Kentucky May coal exceed Virginia Power's contract price for coal purchased under three contracts effective January 1, 1986.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

3. EFC entered into a term contract with Kentucky May even though it did not require additional coal.

5. Damages to ratepayers equal the difference between the spot market price and the Kentucky May price which was approximately $5.00/ton.

9. The Coal Purchase price paid by EFC to Kentucky May during the period January 1, 1986 to July 31, 1987 under the contract signed in February 1986, was above market for comparable contract and spot coal.

10. Ratepayers were injured by payments to Kentucky May in excess of the spot price.

PROPOSED CONCLUSIONS OF LAW

We reject the following proposed conclusions of law.

1. It was imprudent for EFC on behalf of FPC to sign a contract for additional coal from Kentucky May effective January 1986 at a price greater than the spot market price.

2. Ratepayers were overcharged by the difference between spot market prices and the imprudently agreed to Kentucky excluding interest.

ISSUE 6: Have the costs charged to the ratepayers for coal purchased from Bow Valley Coal Resources, Inc. been prudently incurred?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

1. In 1979 Paul Weir Company advised EFC that Bow Valley would require additional coal reserves to provide coal beyond the scheduled expiration date of the coal supply agreement of December 21, 1987.

2. In 1980 Bow Valley leased 6100 acres of the Dulcimer reserves which increased Dulcimer, and therefore EFC and FPC, shareholder income.

3. In 1980, 7 years before the contract expired, EFC extended the Bow Valley contract until 1994 without conducting a solicitation or other action aimed at ensuring this was the most cost-effective option for ratepayers.

6. In 1984 EFC purchased 168,000 tons of coal from Bow Valley over and above the contract amount of 850,000 tons per year.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

4. EFC extended Bow Valley's contract in return for Bow Valley's agreement to lease property from EFC.

5. Ratepayers paid [asserted by FPC to be confidential] in higher than market costs for Bow Valley coal in 1988 and 1989 and will continue to do so through 1994.

7. Comparable quality coal was available in 1984 on the spot market at the time for $8.50/ton less than what EFC paid Bow Valley for this additional coal.

8. Ratepayers suffered overcharges of $1,428,000 due to the 1984 excess purchase from Bow Valley, exclusive of interest.

PROPOSED CONCLUSIONS OF LAW

We reject the following proposed conclusions of law.

1. It was imprudent for EFC acting for FPC to enter into a package deal with Bow Valley in 1980 to extend the contract in 1980, without a solicitation in return for Bow Valley's agreement to lease part of the Dulcimer reserves.

2. Overcharges to ratepayers from the Bow Valley package deal, excluding interest, are $1,428,000 for 1984 purchases of 168,000 tons at $8.50/ton in excess of spot supplies, and [asserted by FPC to be confidential] per year beginning in 1988 as measured by the difference in the contract as extended, and the market price of $21.24/ton obtained by Georgia Power in 1987 competitive solicitation.

ISSUE 7: Have the costs charged to the ratepayers for coal purchased from A. T. Massey been prudently incurred?

PROPOSED FINDINGS OF FACT

We accept the following proposed finding of fact because it is supported by the weight of the evidence in the record of this proceeding.

1. EFC and Massey executed a single letter agreement in 1986 which set a new contract price of $31/ton and released EFC affiliate COMCO from take-or-pay obligations on a separate contract to Massey.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

2. The price EFC agreed to pay Massey in the 1986 letter agreement was $1.80/ton higher than the market price for comparable compliance coal.

3. By agreeing to a higher than market rate to be paid by ratepayers to obtain release for another EFC affiliate, EFC overrode FPC's ratepayers' interest to protect its shareholders, resulting in overcharges to ratepayers of $1,620,000 per year in 1986, 1987 and 1988, exclusive of interest.

PROPOSED CONCLUSIONS OF LAW

We reject the following proposed conclusions of law.

1. It was imprudent for EFC acting for FPC to renegotiate the Massey contract to an above-market price in 1986 in return for Massey's release of EFC affiliate COMCO from contract obligations.

2. Overcharges to ratepayers from the Massey deal, excluding interest, are $3,240,000 from 1984 - 87 and continue through March, 1989 as measured by the market price for contract coal on a delivered Btu basis.

ISSUE 8: Is the transportation of coal to FPC reasonable when the coal is transported by a rail/water mode versus rail only?

ISSUE 9: Has EFC's investment in and/or contractual commitment to Dixie Fuels Limited ("Dixie") been prudent?

ISSUE 10: Was it feasible to transport to Crystal River by rail the requirements for coal in excess of the 1.2 million tons EFC had committed to move by Dixie tows 1 and 2?

ISSUE 11: Have the costs charged to the ratepayers for Dixie tows 1 and 2 been prudently incurred?

ISSUE 12: Have the costs charged to the ratepayers for Dixie tows 3 and 4 been prudently incurred?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

3. Rail transportation has always been lower cost on average than affiliate waterborne transportation.

4. Rail transportation has generally been lower cost on a incremental basis than affiliate waterborne transportation.

5. EFC did not obligate itself in 1979 to transport Massey coal to Crystal River by water.

6. In July, 1980 EFC was still considering transporting Massey coal by rail, not water, to Crystal River.

9. The rail car cost of Gainesville's rail movement for coal from southern West Virginia beginning in 1981 was only $2.73/ton.

10. By 1981 EFC had ordered three additional unit trains capable of moving 1.5 million tons of coal to Crystal River.

11. EFC estimated in 1985 that rail turnaround times would range from 5.5 to 5.72 days round trip.

12. EFC did not experience turnaround times in excess of 5.5 to 5.72 days before the end of 1987.

13. EFC first negotiated guaranteed turnaround times with CSX effective January 1988.

16. Railroad sidings above Crystal River have always been available to "hold" a second unit train while a unit train is unloading coal at Crystal River.

17. EFC has never produced a contemporaneous economic analysis which compares the costs of transporting coal by water to the costs by rail in any year 1979 to 1985 when it made decisions to expand its waterborne commitments.

20. In 1978 EFC signed a phosphate backhaul contract for 450,000-650,000 tons per year with First Mississippi with a term scheduled to expire in 1983.

21. EFC's March, 1979 projections of its coal requirements showed a fourth barge was first needed to haul coal to Crystal River beginning in 1985.

22. EFC's July, 1980 "alternate" coal budget projections showed a fourth barge was first needed to haul coal to Crystal River beginning in 1984.

23. In 1980 Dixie hauled 655,000 tons of phosphate rock under the First Mississippi contract.

24. In 1980 Dixie leased two barge/tows to haul phosphate rock and satisfy its coal transportation requirements to Crystal River.

25. In April, 1981, Dixie's Board of Directors authorized construction of Dixie barge/tows three and four even though EFC know that the barges would provide excess capacity.

26. In April, 1981, EFC President Mr. Wells informed the Board of Directors that EFC was seeking limestone backhaul business to utilize the capacity of Dixie units three and four when they became available.

28. In January 1982 First Mississippi stopped shipping phosphate rock under its contract with EFC.

29. Dixie barge/tows three and four were placed in service hauling coal to FPC in 1982.

30. EFC received a written opinion letter of its counsel in 1978 advising that FPC's environmental air permit would not permit FPC to burn high-sulfur midwestern coal at Crystal River after Units 4 and 5 commenced operation.

31. EFC President, Mr. Wells, informed his Board of Directors in a letter dated January 14, 1980, that "[n]o change in the environmental regulations for the Crystal River units occurred during 1979. If this continues, Electric Fuels Corporation will have to seek a substantial reduction in its midwestern coal requirements, possibly as much as 90%, by the time Crystal River Unit No. 5 comes on line".

33. EFC increased its commitments to its waterborne affiliates in 1980 and 1981 even though it did not have under contract with its midwestern, water-transported coal suppliers coal which could be burned at Crystal River under environmental regulations.

34. By letter dated March 10, 1983 Dixie asked EFC to amend their contract to double EFC's minimum tonnage commitment to 2.4 million tons per year.

35. Dixie represented to EFC in its letter dated March 10, 1983 that the additional minimum tonnage commitment was the "only thing we have to justify construction of the last two tows".

36. In a letter dated May 1983, EFC's Vice President of Operations, Fred Murrell, represented that EFC was "not in a position to guarantee 2.4 million tons of coal per year for each remaining calendar under the contract" [Exh. 216]. Fred Murrell reiterated in comments on a Dixie memorandum dated December 29, 1983 that EFC would not guarantee 2.4 million tons of coal per year to Dixie.

37. In October, 1985 EFC Vice President for Operations W. David Carter executed Addendum 10 to the Dixie contract on behalf of EFC which increased the minimum tonnage commitment to 2.4 million tons per year and committed a total of four Dixie barge/tows to FPC.

38. There was no economic analysis of the benefits to FPC ratepayers from EFC's reversal of position and decision to sign Addendum 10.

39. EFC's decision to enter into Addendum 10 increased cost and risks to ratepayers without offsetting benefits.

41. Before EFC signed Addendum 10 it experienced significant net losses on the fourth barge [Exh. 149]. After EFC signed Addendum 10 it experienced significant net profits on the fourth barge.

42. Under Addendum 10, FPC ratepayers subsidize the fourth barge if it is not used in third party backhaul business.

43. EFC's expanded commitments to its waterborne affiliates effectively decrease leverage with the railroad because they remove those additional tons from competition.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

1. A market priced contract for transportation services entered into in the same period as the the 1977 EFC contract with Dixie would have allowed the transportation supplier to earn a 15% after-tax return on its equity investment.

2. EFC paid higher than market rates to Dixie as a result of the price initially agreed upon in the 1977 Dixie contract because the contract price was set higher than a rate that would have allowed Dixie to recover its cost plus a 15% after-tax return on equity.

7. EFC never performed an economic analysis which compares the cost of transporting Massey coal by water versus the cost of transporting coal by rail.

8. Based on Gainesville's experience in negotiating transportation with CSX for coal to be shipped under its 1978 transportation contract from Central Appalachia, EFC would have encountered only eight days turnaround time to transport Central Appalachia coal by rail to Florida in 1979-81, not eighteen days as stated in EFC's post-hoc analysis.

14. FPC has had the capability to unload two trains per day at Crystal River since at least 1986.

15. FPC has the capability to unload unit trains 364 of 365 days per year.

18. EFC could have delivered additional tons by rail, in 1984-87 as follows:

	Tons Delivered Rail	Additional Tons Which Could Have Been Rail Delivered
1984	2,231,000	737,000
1985	2,803,000	986,000
1986	3,231,000	1,326,000
1987	3,625,000	1,046.000

19. EFC could have delivered all its coal tonnages in 1984-87 above its initial waterborne tonnage commitment of 1,098,000 tons (1.2 million tons less 10%) by rail.

27. Dixie unit 3 was built primarily to carry phosphate.

32. EFC knew in 1980 it could not continue to burn the high-sulfur water-transported coal it had under contract with its midwestern suppliers, Amax and Consol under FPC's environmental air permit after 1982.

40. EFC has never succeeded in using its rail alternative as leverage in negotiating with its waterborne affiliates Dixie and IMT.

PROPOSED CONCLUSIONS OF LAW

We accept the following proposed conclusion of law.

2. It was imprudent for EFC acting for FPC to enter into Addendum 10 to the Dixie contract raising the minimum tonnage commitment to 2.4 million tons per year for 17 years for four Dixie barge/tows.

We reject the following proposed conclusions of law.

1. It was imprudent for EFC to purchase Dixie barge/tows 3 and 4 in 1981 and place them into FPC service in 1982.

3. Overcharges to ratepayers from the excessive use of the waterborne route are $33,436,000 from 1984 - 87 and continue through March 31, 1989 as measured by the difference between rail and waterborne costs, and $6,090,000 for moisture loss and other waterborne route costs which would not be incurred on the rail route as estimated by Dr. Sansom, exclusive of interest.

4. It was imprudent for EFC acting for FPC to sign the initial Dixie Contract in 1977 at above-market price in excess of 15% after-tax return on equity for the seller.

5. Overcharges to ratepayers from the initial Dixie contract are $8,487,000 in 1984 - 87 and continue through March 31, 1989, exclusive of interest, as measured by the methodology set forth by Dr. Sansom.

ISSUE 13: Were the costs charged to EFC ratepayers as a result of EFC's investment in and contractual commitment to International Marine Terminals ("IMT") prudent?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

1. EFC's less-than-majority ownership of IMT prevents EFC from compelling IMT to reduce its rates.

3. EFC could, if it so chose, charge FPC what EFC believes is a fair, lower IMT rate.

4. EFC will not charge FPC a lower rate unless IMT reduces its rate because to do so would harm EFC's stockholders.

5. EFC's less-than-majority ownership of IMT has been detrimental to FPC's ratepayers.

6. In EFC's view, FPC's ratepayers have a "financial stake" in the success of IMT.

7. EFC's decision to take Massey coal by water was not irrevocable.

8. Massey coal alone could not justify EFC's 800,000 ton increased commitment at IMT.

9. Consol and Amax coal were not available to meet the base IMT 1.2 million ton + [or -] 10% commitment once Crystal River 4 and 5 came on-line.

10. EFC earns on its investment in IMT irrespective of tonnage shipped through IMT.

11. To justify the increased IMT commitment, EFC had to have 2 million tons per year that were more economical to ship by water than by rail.

13. Rail costs did not drive EFC decisions to increase the IMT commitment based on Mr. Upmeyer's testimony that he was not sure whether EFC would have expanded the commitment even if rail rates declined.

14. The additional costs to FPC's ratepayers from the increased IMT commitment were not evaluated in a study done at the time which was presented in the record of this proceeding.

15. PMJV eliminated any need to ship western coal through IMT.

16. EFC did not need to expand its commitment to IMT unless it transported both midwestern coal and Massey coal by water for Crystal River units 4 and 5.

18. EFC has never had a contract with a western coal supplier and the only western coal FPC has burned at Crystal River was a small shipment of "pad" coal when Crystal River 4 commenced operation.

19. EFC did not need to expand its water commitment to transport Massey coal or midwestern coal to Crystal River.

20. EFC incurred $3.1 million in deficit tonnage charges in 1982 and 1983 because it was unable to meet its minimum 2.0 million tons per year commitment at IMT.

21. Since EFC's 800,000 ton increased commitment to IMT was not for the benefit of ratepayers, EFC's deficit tonnage charges should not be billed to ratepayers.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

2. EFC benefits as a one-third owner in IMT from IMT's refusal to reduce its rates.

12. EFC has produced no documentation that Massey coal could be delivered by water at a lower cost than delivery by rail.

17. EFC could have transported Massey coal by rail at a lower cost.

22. EFC's reason for expanding its waterborne commitments to IMT and Dixie in 1980 and 1981-82 was to enhance its third party business and not for the benefit of ratepayers.

ISSUE 15: Have FPC's efforts to control its fuel supply destiny through the creation of EFC and all of its affiliates resulted in excess risk and fuel cost to FPC'c ratepayers?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

1. FPC has completely contracted away its control over coal procurement to EFC.

2. The EFC/FPC contract gives EFC the right to assign its control of coal procurement to others.

3. EFC employees have responsibilities relating to the operation and financial health of one or more affiliates, and are therefore responsible to shareholders of those affiliates.

4. The interests of FPC ratepayers are, at times, in conflict with the interests of FPC-affiliates' shareholders.

6. At the time the Special Fuels Project was established by FPC in 1975, the Commission's fuel cost recovery mechanism was based on the application of a fuel adjustment factor derived from one month's cost to energy usage two months later, which could affect an electric utility's earned return on equity.

7. From the very beginning, EFC was intended to develop barge transportation as preferential to rail, to develop backhaul capabilities, and to enter into a joint venture for coal supply.

8. Assurance of an adequate return to stockholders was part of the corporate policy applicable to the Solid Fuels Project and to EFC and to the pricing arrangement between FPC and EFC.

9. The original intent to earn a 20% return on EFC's equity was not revised downward until the Commission staff suggested it should be equal to FPC's allowed return.

12. A joint venture in mining operations was perceived to have advantages for both the buyer and seller of coal, and EFC, through its participation in PMJV, is both.

13. Although it was thought that the purchase and development of coal reserves by EFC might be less costly than traditional methods of acquisition, it was understood that it might ultimately prove more expensive.

15. Except for taking equity positions, FPC could have entered the same fuel supply agreement (with non-affiliates) as EFC through an in-house fuel department.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

5. FPC's delegation of its fuel procurement responsibilities has caused ratepayers' interests to be subordinated to shareholder interests.

10. Coal supply alternative that required barge transportation were viable only if backhauls were available.

11. EFC was required to have an ownership interest in barge transportation facilities to realized any stockholder benefit from backhauls.

14. EFC was set up as a separate corporation for tax purposes and to allow EFC to take equity positions and earn an equity return from coal supply and transportation companies.

PROPOSED CONCLUSIONS OF LAW

We accept the following proposed conclusions of law.

1. Balancing the respective interests of FPC's customers and stockholders is a function of the Commission that cannot be performed by FPC or delegated to EFC.

2. FPC is obligated as a public utility to act in the best interests of its customers to obtain fuel for generation at the lowest reasonable cost from EFC or any other affiliated or unaffiliated suppliers.

3. FPC cannot by contract with EFC alter its statutory duties as a public utility or lessen its obligation to act in its customers' best interests when purchasing fuel for generation.

7. Pursuant to Appendix A, Paragraph II.C. of Order No.12645, FPC should document all aspects of the fuel procurement process. FPC has in this proceeding, failed to document relevant aspects of fuel procurement process relating to costs incurred from EFC's contracts with affiliates IMT, Dixie and PMJV.

8. Pursuant to Appendix A, Paragraph II.L. of Order No. 12645, FPC should have incorporated adequate, well-defined remedies in its contracts with EFC to protect the utility and its ratepayers from excessive charges over a protracted period of time. FPC's contracts with EFC do not include such provisions.

9. Pursuant to Appendix A, Paragraph II.S. of Order No. 12645, FPC should administer its contract with EFC in a manner identical to the administration of a contract with an independent organization. FPC's administration of its EFC contracts have not been consistent with this standard.

10. Pursuant to Appendix A, Paragraph II.P. of Order No. 12645, FPC's transaction with EFC should be based on costs which are consistent with or lower than the costs FPC would incur if it received the fuel or service from an independent through competitive bidding. FPC's contracts with EFC allow EFC to charge FPC costs in excess of this standard.

14. It was imprudent for EFC on behalf of FPC to enter into the October 1980 22-year cost-plus contract with PMJV without a market reopener.

We reject the following proposed conclusions of law because they are not supported by the evidence in the record of this proceeding.

4. FPC must exercise all legal means to extricate itself from or lessen the impact of contractual obligations to EFC or any other entity that requires its customers to pay excessive charges for fuel used in generation.

5. Pursuant to the Commission's Fuel Procurement Policy, Order No. 12645, Appendix A, Paragraph I.C. FPC's management is solely responsible for procurring fuel in the most cost efficient manner possible. FPC's contracts with EFC and the authority granted to EFC pursuant to other contracts are not consistent with that policy.

6. Pursuant to Appendix A, Paragraph I.G. of Order No. 12645, FPC bears the burden of proof to document the reasonableness of its procurement practices and the resultant expenses from such practices. FPC has not met that burden with regard to expenses incurred pursuant to its contract with EFC or EFC's contract with affiliated entities.

11. Pursuant to Appendix A, Paragraph II.T. of Order No. 12645, FPC has the full burden of proof to demonstrate that its transactions with EFC have been in the best interest of the ratepayer. FPC has not met its burden of proof in this docket on the issues placed in contention.

12. FPC's failure to comply with the Commission's Fuel Procurement Policy has resulted in excessive fuel and fuel-related charges from EFC being borne by FPC's ratepayers.

13. FPC's delegation of its coal procurement responsibilities to EFC and its affiliates resulted in excess risk and fuel cost to FPC ratepayers.

ISSUE 16: Are there sufficient tons of compliance coal on the Powell Mountain reserves that can be mined economically to meet the EFC/PMJV contract provisions?

PROPOSED FINDINGS OF FACT

We accept the following proposed findings of fact because they are supported by the weight of the evidence in the record of this proceeding.

1. The 1979 Boyd report indicated that only 8 million tons of the 20 million tons of compliance coal needed to satisfy the EFC-PMJV contract were located in seams greater than 42 inches thick.

2. Thinner seams of coal are generally more costly to mine than thicker seams of coal.

4. No evidence has been presented as to the price at which the tons of compliance coal remaining on the PMJV property as of February 1988 can be recovered.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

3. EFC should have known at the time it signed the PMJV contract that it would be costly to mine compliance and near compliance coal from the PMJV property.

5. EFC has failed to prove that the PMJV property contains adequate amounts of compliance coal in economically recoverable seams to assure that the specifications of the EFC-PMJV contract will be met at reasonable prices over the life of the contract.

ISSUE 17: Is it prudent for PMJV, through EFC, to sell compliance coal on the spot market at a cost lower than what PMJV charges EFC for supply to FPC?

PROPOSED FINDINGS OF FACT

We accept the following proposed finding of fact because it is supported by the weight of the evidence in the record of this proceeding.

1. EFC sells compliance coal originating from the Mayflower shipping point of PMJV on the spot market to electric utilities other than FPC at prices below the charges imposed on FPC for PMJV coal.

We reject the following proposed findings of fact because they are not supported by the evidence in the record of this proceeding.

2. FPC's ratepayers have underwritten EFC's participation in the PMJV and should have first claim to any coal from that source.

3. FPC's ratepayers have been harmed to the extent that PMJV reserves are depleted by sales to other utilities.

4. If PMJV coal can be sold to other utilities at spot prices below PMJV contract prices, it can be sold to FPC on the same basis.

ISSUE 18: If there were to be an order which would by reason of a disallowance of fuel cost recovery have the effect of depriving Florida Power or its affiliates of their investments or their contractual rights, whether the state statutes which authorize such disallowance are, as applied, repugnant to the Constitution or the laws of the United States or the State of Florida?

PROPOSED CONCLUSIONS OF LAW

We accept the following proposed conclusions of law.

1. FPC has the burden of proof to demonstrate that its costs of coal and coal transportation were prudently incurred, despite its contractual assignment of its coal procurement responsibilities to EFC. Florida Power Corp. v. Cresse, 413 So.2d 1187, 1191 (Fla. 1982); In re: Investigation of Fuel Cost Recovery Clauses of Electric Utilities (Gulf Power Company - Maxine Mine), Docket No. 820001-EU-A, Order No. 13452 (84 FPSC 295), aff'd, Gulf Power Co. v. Florida Pub. Serv. Comm'n, 487 So.2d 1036 (Fla. 1986) ("Maxine Mine").

2. The Commission has the authority to review the prudence of past actions of the utility so long as the review examines the prudence of the actions from the point in time at which the utility made the decision. Maxine Mine, supra, slip op. p.10.

3. The Commission may review any contract entered into by a public utility, including one with an affiliate, to determine whether the "contract is unreasonable and adversely affects the public interest." Florida Power Corp. v. Pub. Serv. Comm., 487 So.2d. 1061 9Fla. 1986); see Dayton P. & L. Co. v. Pub. Utils. Comm., 292 U.S. 290, 295 (1933).

4. Where a utility's imprudent actions impose "excessive costs" on ratepayers, "the excessive costs should be disallowed and refunded to [] ratepayers." Maxine Mine, supra, slip op. p.10.

5. Exercise of the Commision's authority to review utility actions for imprudency is in no way repugnant to the Constitution or the laws of the United States or of the State of Florida. Federal Power Commission v. Hope Natural Gas, 320 U.S. 521 (1944).

6. "[C]ontracts with public utilities are made subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in the interest of the public welfare without unconstitutional impairment of contracts." H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979).

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