

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)	
Cost Recovery Clause with)	DOCKET NO. 050001-EI
Generating Performance Incentive)	FILED: September 30, 2005
Factor)	
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**OPC’S MOTION TO ESTABLISH SEPARATE “SPIN-OFF” DOCKET TO
EXAMINE CERTAIN COAL PURCHASE TRANSACTIONS BETWEEN
PROGRESS ENERGY FLORIDA AND ITS AFFILIATE**

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), move to establish a separate “spin-off” docket to evaluate the prudence and reasonableness of certain coal purchases made by Progress Energy Florida, Inc. (PEF) from its affiliate, Progress Fuels Corporation. In support of this motion, OPC states:

1. In this proceeding, the Commission has scheduled a hearing for November 7, 2005 to consider the electric utilities’ pending petitions for approval of true-up amounts for 2005 and cost projections for 2006. The utilities filed testimony addressing true-up amounts on August 9, 2005. Testimony addressing projected 2006 costs was filed on September 8, 2005. The current schedule requires intervenors to submit testimony for the November hearing no later than October 3, 2005.

2. At OPC’s request, on or about September 12, 2005, PEF provided to OPC an unredacted copy of its Form 423 Final Reports for the period January – June 2005. Based on information contained in the unredacted Form 423 Final Reports¹, during this period PEF purchased significant quantities of coal from its affiliate, Progress Fuels

¹ PEF submitted the unredacted Form 423 Final Reports to the Commission on a confidential basis. To avoid the redundant handling of documents deemed confidential by PEF, OPC incorporates those forms in this Motion by reference.

Corporation, at prices substantially higher than the prices it paid other suppliers. In most instances the coal that is the subject of the disparate prices noted by OPC originates from the same geographical area and is used to fuel the same PEF coal-burning generators.

3. The purpose of this docket is to ensure that the utilities' customers are not required to pay for imprudent or unreasonable fuel costs. Standing alone, price disparities of the magnitude reflected on the Form 423 reports cited in this Motion would demand careful scrutiny. The fact that PEF is paying these materially higher prices to an affiliated company heightens significantly the need for a detailed review and evaluation of the transactions.

4. On September 14, 2005, OPC served on PEF some basic interrogatories and a request to produce documents that relate to this subject. PEF has not yet answered the interrogatories. PEF indicated to OPC that it will allow OPC to review the coal contracts in question some time during the week of October 3, 2005. OPC believes it is highly unlikely that PEF's responses to OPC's initial discovery requests will satisfy all of OPC's discovery needs on the subject. OPC also anticipates it may require the services of a consultant to assist OPC in its review of relevant information.

5. Intervenors' testimony is due on October 3, and the evidentiary hearing is scheduled for November 7, 2005. As is frequently the case when significant and complicated factual issues arise in the ongoing fuel cost recovery proceeding, the schedule in Docket No. 050001-EI simply does not afford OPC an adequate opportunity to develop relevant facts and, if warranted, prepare testimony. Moreover, the information gained on this subject may have implications for future projection periods.

6. On numerous occasions in the past, the Commission has recognized the necessarily limited ability of the fuel cost recovery docket to accommodate, within its compressed schedule, issues that require significant fact-finding and analysis. In those instances, it has “spun off” contentious matters into separate dockets.² To afford due process to OPC and other interested parties, as well as to position itself to make an informed decision on the matter, OPC submits the Commission similarly should establish a separate procedural docket in which to examine and consider the prices being paid by PEF to its affiliate.

OPC has conferred with Counsel for PEF and is advised that PEF opposes this motion. FIPUG and CSX do not oppose the motion. Thomas K. Churbuck takes no position on the motion.

² See, for example, Order No. PSC-03-1461-FOF-EI, issued in Docket No. 030001-EI, in which the Commission established a separate docket to consider PEF’s waterborne transportation costs, and Order No. PSC-03-1359-PCO-EI, issued in Docket No. 030001-EI, in which the Commission deferred similar waterborne transportation costs of TECO to a separate docket. In the latter order, the Commission stated, “Many complex and difficult matters are addressed each year in our hearing in this docket under a demanding schedule. Many such issues are also deferred to subsequent proceedings to allow for further review.”

WHEREFORE, OPC requests the Commission to grant this Motion; reserve jurisdiction over the costs associated with the transactions between PEF and its affiliate that are the subject of PEF's Petition in this docket; establish a separate docket in which to examine the transactions between PEF and Progress Fuels Corporation identified herein; and, upon receipt of all evidence, take all measures to protect Citizens' interests that are warranted by the facts.

Harold McLean
Public Counsel

s/ Joseph A. McGlothlin
Joseph A. McGlothlin
Florida Bar No. 163771
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Establish Separate “Spin-Off” Docket to Examine Certain Coal Purchase Transactions Between Progress Energy Florida and its Affiliate has been furnished by electronic mail and U.S. Mail on this 30th day of September, 2005, to the following:

James Beasley
Lee Willis
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Bill Walker
Florida Power & Light Company
215 S. Monroe Street, Suite 818
Tallahassee, FL 32301-1859

James A. McGee
Progress Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, FL 33733-4042

Tim Perry
McWhirter Reeves Law Firm
117 S. Gadsden Street
Tallahassee, FL 32301

John T. Buter, P.A.
Steel Law Firm
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131-2398

Jennifer Rodan
Adrienne Vining
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John McWhirter, Jr.
McWhirter Reeves Law Firm
400 North Tampa Street, Suite 2450
Tampa, FL 33602

R. Wade Litchfield
Florida Power & Light Company
700 Unviersse Boulevard
Juno Beach, FL 33408-0420

Norman H. Horton, Jr.
Floyd R. Self
Messer Law Firm
Post Office Box 1876
Tallahassee, FL 32302-1876

Susan D. Ritenour
Richard McMillan
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Angela Llewellyn
Tampa Electric Company
P.O. Box 111
Tampa, FL 33602-0111

Moyle Law Firm
Jon C. Moyle
118 N. Gadsden Street
Tallahassee, FL 32301

Thomas K. Churbuck
911 Tamarind Way
Boca Raton, FL 33486

Hopping Law Firm
Gary V. Perko
P.O. Box 6526
Tallahassee, FL 32314

Black & Veatch
Myron Rollins
11401 Lamar Avenue
Overland Park, KS 66211

Florida Public Utilities Company
Cheryl Martin
P.O. Box 3395
West Palm Beach, FL 33402-3395

Landers Law Firm
Robert Scheffel Wright
John T. LaVia, III
P.O. Box 271
Tallahassee, FL 32302

Beggs & Lane Law Firm
Jeffrey A. Stone
Russell Badders
P.O. Box 12950
Pensacola, FL 32591

CSX Transportation, Inc.
Mark Hoffman
500 Water Street, 14th Floor
Jacksonville, FL 32202

Michael B. Twomey
Post Office Box 5256
Tallahassee, FL 32314-5256

s/ Joseph A. McGlothlin _____
Joseph A. McGlothlin
Associate Public Counsel