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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause. )  
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)

Docket No. 040007-EI  
Filed: October 25, 2004

COMMISSION CLERK

**PROGRESS ENERGY FLORIDA'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY**

Progress Energy Florida, Inc. ("PEF"), hereby moves for leave to file supplemental direct testimony related to a single issue raised by Staff in this proceeding. In support of this request, PEF states:

1. In its Prehearing Statement filed on October 11, 2004, Staff raised the following issue (No. 10B): "What is the appropriate ECRC adjustment for broken water main costs of \$8,748 that were charged to an ECRC approved transformer oil remediation activity in PEFI's final true-up for 2003?"

2. On October 15, 2004, representatives of PEF and Staff met in an attempt to resolve the water main issue (and others). At that time Staff advised PEF of its current position that an adjustment was necessary because, in its view, PEF had not exercised "due diligence" in investigating whether a water main was present at the remediation site in question.

3. Prior to the meeting on October 15, 2004, Staff had raised questions regarding the \$8,748 water main repair expenditure, but Staff had never suggested that the ECRC recovery should be denied on grounds that the company had failed to exercise "due diligence." In Staff's audit report, for example, Staff recommended further investigation to determine whether there was a budgeted or contingency item that the water main repair costs

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ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SEC 1  
OTH Kim P.

*Done 11/02/04 KMP*

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FPSC-BUREAU OF RECORDS

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FPSC-COMMISSION CLERK

should be charged to rather than to the ECRC. See Relevant Excerpts in Exhibit “A” hereto. Then, in its First Set of Interrogatories, Staff inquired about any steps that PEF had taken or planned to take to recover the repair costs from the third party it uses to locate underground facilities. See Exhibit “B” hereto. Neither the audit report nor the interrogatories gave any suggestion that Staff was concerned that PEF may have failed to exercise “due diligence” by relying on the statutorily created service to identify the water main.

4. PEF and Staff have continued to discuss the issue, but Staff has not provided PEF any guidance as to what it would consider to be “due diligence” under the circumstances. Moreover, Staff did not file any testimony in support its position by the October 15, 2004, deadline set forth in the Order Amending Order Establishing Procedure.

5. Although the adjustment at issue only involves \$8,748, the question of what constitutes “due diligence” has ongoing significance. Absent guidance on what constitutes “due diligence,” PEF cannot determine how to proceed in the future and, therefore, cannot accept Staff’s position without such guidance. At this point, however, there is no evidence from which the Commission can determine what constitutes “due diligence.” Accordingly, PEF offers supplemental testimony to explain what efforts PEF takes to identify water mains and other underground facilities and why PEF believes it would be imprudent to incur additional expenditures on specialized investigations outside the statutorily created identification system absent some visible evidence or other circumstances suggesting that an underground facility may be present at a remediation site.

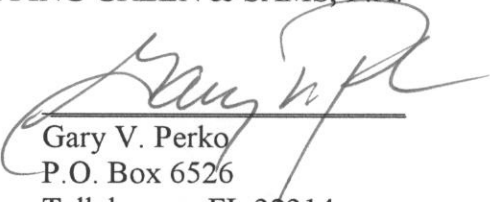
6. The acceptance of PEF’s supplemental testimony will not prejudice any party. Progress would not object if Staff desires to file supplemental testimony in response, provided that it is served on PEF within 5 days prior to the hearing in this matter scheduled to begin November 8, 2004.

WHEREFORE, PEF requests that the Commission grant leave to file supplemental direct testimony on the issue of what constitutes due “due diligence” in investigating whether underground facilities may be present at sites targeted for remediation under PEF’s approved Distribution System Investigation, Remediation, and Pollution Control Program.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of October, 2004.

HOPPING GREEN & SAMS, P.A.

By:

  
\_\_\_\_\_  
Gary V. Perko  
P.O. Box 6526  
Tallahassee, FL 32314  
(850) 425-2313

Attorneys for Progress Energy Florida, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Progress Energy Florida's Motion to File Supplemental Testimony in Docket No. 040007-EI has been furnished by hand-delivery and/or U.S. mail to the following this 25<sup>th</sup> day of October, 2004.

Marlene Stern\*  
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\*by hand-delivery

  
\_\_\_\_\_  
Attorney

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** July 27, 2004  
**TO:** Jim Breman, Division of Economic Regulation  
**FROM:** Denise N. Vandiver, Chief, Bureau of Auditing *DNV*  
Division of Regulatory Compliance and Consumer Assistance  
**RE:** **Docket No.** 040007-EI ; **Company Name:** Progress Energy Florida, Inc. ; **Audit Purpose:** Environmental Cost Recovery Clause ; **Audit Control No.** 04-044-2-2

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Attached is the final audit report for the utility stated above. I am sending the utility a copy of this memo and the audit report. If the utility desires to file a response to the audit report, it should send the response to the Division of the Commission Clerk and Administrative Services. There are confidential work papers associated with this audit.

DNV/jcp  
Attachment

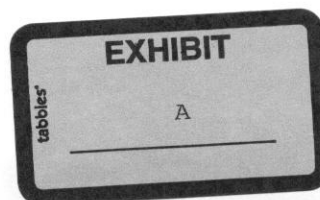
cc: Division of Regulatory Compliance and Consumer Assistance (Hoppe, District Offices, File Folder)  
Division of the Commission Clerk and Administrative Services (2)  
Division of Competitive Markets and Enforcement (Harvey)  
General Counsel  
Office of Public Counsel

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**FLORIDA PUBLIC SERVICE COMMISSION**

***DIVISION OF REGULATORY COMPLIANCE AND CONSUMER ASSISTANCE  
BUREAU OF AUDITING***

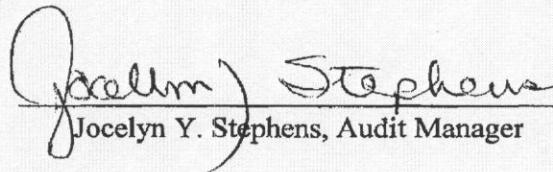
***Tampa District Office***

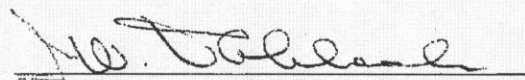
**PROGRESS ENERGY FLORIDA, INC.**

**ENVIRONMENTAL COST RECOVERY CLAUSE AUDIT**

**TWELVE MONTHS ENDED DECEMBER 31, 2003**

**DOCKET 040007-EI  
AUDIT CONTROL NO. 04-044-2-2**

  
Jocelyn Y. Stephens, Audit Manager

  
Joseph W. Rohrbacher  
Tampa District Supervisor

**AUDIT DISCLOSURE NO. 6**

**SUBJECT: WATER MAIN BREAK**

**STATEMENT OF FACT:**

Staff noted an invoice for a water main break charged to the ECRC for \$8,748.00

The Company explained that "Before soil clean up is done, a third-party performs "locates" for subsurface obstructions. A waterline was not identified during this task so PEF had no knowledge of its presence. During the remediation, the waterline burst. It was unavoidable and only occurred because of remediation.

**AUDITOR OPINION:**

Staff was not able to determine if a budgeted or contingency item exists for this type of incident. However, because of the extensive nature of underground projects that Company performs during the year, staff believes that a line item or contingency may exist. If so, the company should charge the costs of repairing the water line break against that budgeted item.

It is recommended that staff further investigate this issue to determine whether or not this charge is correctly charged to ECRC.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 040007-EI

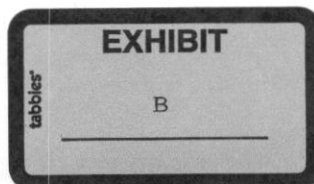
DATED: AUGUST 20, 2004

STAFF'S FIRST SET OF INTERROGATORIES TO PROGRESS ENERGY FLORIDA (NO. 1)

The Staff of the Florida Public Service Commission, by and through its undersigned attorney, propounds the following interrogatories, pursuant to Rule 1.340, Florida Rules of Civil Procedure, to Progress Energy Florida (PEF). These interrogatories shall be answered under oath by you or your agent, who is qualified and who will be identified, with the answers being served as provided by the Rules of Civil Procedure. As provided by Rule 1.340(a), Florida Rules of Civil Procedure, each interrogatory shall be answered separately and fully in writing under oath unless it is objected to. Each answer shall be signed by the person making it.

Give the name, address, and relationship to PEF of those persons providing the answers to each of the following interrogatories.


If an interrogatory contained herein asks for information that has already been provided or is in the process of being provided to the Commission through a Commission audit, please so state, indicating the date provided and the audit document/record request number.





INTERROGATORIES

1. Audit Disclosure #6 of PEF's final audit report for the 12 months ended December 31, 2003 (Audit Control No.04-044-2-2) states that an invoice for \$8,748.00 to repair a broken water main was charged to the environmental cost recovery clause.
  - a. Describe the steps that PEF has taken or will take to attempt to recover the \$8,748.00 from the company that failed to identify the water line?
  - b. If PEF has not taken any measures to recover the money, and does not intend to do so in the future, please explain why not.
  - c. Are there any provisions in the contract with the company hired to locate the water lines that address liability? If so, please provide a copy of each such provision.

  
\_\_\_\_\_  
MARLENE K. STERN  
Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
(850) 413-6230

**AFFIDAVIT**

STATE OF FLORIDA)

COUNTY OF \_\_\_\_\_)

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_, who is personally known to me, and he/she acknowledged before me that he/she provided the answers to interrogatory number(s) \_\_\_\_\_ from STAFF'S FIRST SET OF INTERRGATORIES TO PROGRESS ENERGY FLORIDA (NO.1) in Docket No. 040007-EI, and that the responses are true and correct based on his/her personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public  
State of Florida, at Large

My Commission Expires:  
\_\_\_\_\_

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 040007-EI

DATED: AUGUST 20, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one correct copy of STAFF'S FIRST SET OF INTERROGATORIES TO PROGRESS ENERGY FLORIDA (NO.1) has been served by U. S. Mail to Mr. Gary V. Perko, Hopping Green & Sams, P.O. Box 6526, Tallahassee, FL 32314 and that a true copy thereof has been furnished to the following by U. S. mail this 20<sup>th</sup> day of August, 2004:

Robert Vandiver, Esq. Office of Public Counsel 111 West Madison Street Room 812 Tallahassee, FL 32399	Lee L. Willis, Esq. James D. Beasley, Esq. Ausley & McMullen Attorney for TECO P.O. Box 391 Tallahassee, FL 32302
Gary V. Perko, Esq. Hopping, Green & Sams P.O. Box 6526 Tallahassee, FL 32314	Ms. Susan D. Ritenour Gulf Power Company One Energy Place Pensacola, FL 32520-0780
Vicki Gordon Kaufman, Esq. Joseph A. McGlothlin, Esq. McWhirter Reeves Attorneys for FIPUG 117 South Gadsden Street Tallahassee, FL 32301	Jeffrey A. Stone, Esq. Russell A. Badders, Esq. Beggs and Lane Attorneys for Gulf Power Corp. P.O. Box 12950 Pensacola, FL 32576
John W. McWhirter, Jr., Esq. McWhirter, Reeves, McGothlin, Davidson, et al. Attorneys for FIPUG P.O. Box 3350 Tampa, FL 33601-3350	Ms. Angela Llewellyn Tampa Electric Company Regulatory Affairs P.O. Box 111 Tampa, FL 33601-0111

*Marlene K. Stern*

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