

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a new environmental program for cost recovery under the Environmental Cost Recovery Clause, by Progress Energy Florida, Inc.

DOCKET NO. 120318-EI  
ORDER NO. PSC-13-0186-PAA-EI  
ISSUED: May 1, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING  
ENVIRONMENTAL COMPLIANCE PROGRAM

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (Commission) that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

**Case Background**

On December 21, 2012, Progress Energy Florida Inc.<sup>1</sup> (PEF or Company) petitioned this Commission (Petition) for approval of a new environmental compliance program, the Groundwater Monitoring, Operation and Maintenance Requirements (GWMOMR) compliance program, and to recover the associated cost through the Environmental Cost Recovery Clause (ECRC). PEF's Petition was filed pursuant to Section 366.8255, Florida Statutes (F.S.), and Order Nos. PSC 94-0044-FOF-EI and PSC-99-2513-FOF-EI.<sup>2</sup>

PEF's Crystal River Energy Center (CR) Units 3, 4 and 5 operate in accordance with conditions of certification established pursuant to the Florida Electrical Power Plant Siting Act (PPSA). By final order dated August 1, 2012 (Final Order), the Florida Department of Environmental Protection (FDEP) imposed new GWMOMR in a new Attachment H to the Conditions of Certification.<sup>3</sup> By its Petition, PEF identifies activities that are intended to comply

<sup>1</sup> Now, Duke Energy Florida, Inc.

<sup>2</sup> Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, F.S., by Gulf Power Company; Order No. PSC 99-2513-FOF-EI, issued December 22, 1999, in Docket No. 990007-EI, In re: Environmental Cost Recovery Clause.

<sup>3</sup> Final Order Monitoring Conditions of Certification, August 1, 2012, Case Number PA77-09P, OGC Case Number 10-2632, Attachment H - Groundwater Monitoring, Operation and Monitoring Requirements.

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with the newly imposed GWMOMR at CR, and estimates expenditures associated with these activities.

Pursuant to Section 366.8255(2), F.S., electric utilities may petition this Commission to recover projected environmental compliance costs required by environmental laws or regulations. Pursuant to Section 366.8255(1)(c), F.S., environmental laws or regulations include, "all federal, state or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment." If we approve the Company's Petition, only prudently incurred costs may be recovered.<sup>4</sup> We have jurisdiction over this matter pursuant to Section 366.8255(2), F.S.

### **Decision**

Changes to the GWMOMR of the Conditions of Certification for CR impose four new environmental requirements in order to ensure compliance with the FDEP's groundwater criteria in Chapter 62-520, F.A.C.: (a) Percolation Pond Flow Quantification Requirement (Flow Quantification), (b) Freeboard Limitation and Related Studies (Freeboard Limitation), (c) Impoundment Integrity Inspections, and (d) Groundwater Flow/Contour Mapping (Groundwater Mapping).

The wastewater generated by the CR coal units is treated and then flows into a percolation pond system. The system is designed to allow treated wastewater effluent to filter or percolate slowly into the ground. The pond acts as a holding facility while gravity allows the treated wastewater to percolate through the soil or other unconsolidated medium into the local water table, usually the surficial aquifer. Freeboard Limitation is the elevation difference between the processed wastewater in the pond and the lowest point of the pond embankment prohibiting overflow. Impoundment Integrity Inspections are done to ensure that the entire body of wastewater is confined within the percolation pond. Groundwater Mapping is a mapping technique used to depict valleys and hills, and the steepness of slopes. It is a common method used to study an ocean, a river, or a pond to present the vertical features in measurable form and their horizontal positions.

To comply with Flow Quantification requirement, PEF must quantify wastewater flow to the CR Units 4 and 5 industrial wastewater percolation basin system. To this end, the Company must install flow monitoring devices within 240 days of the Final Order, unless the FDEP grants an extension of time.<sup>5</sup> PEF evaluated two flow monitoring options: (1) installing three new magnetic flowmeters and (2) installing a new sump and pumping system. Labor costs, equipment costs and total project costs vary depending on the flow monitoring option selected. Each option requires subsurface excavations and installations below the normal water table.

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<sup>4</sup> See Order No. PSC 11-0080-PAA-EI, issued January 31, 2011, in Docket No. 100404-EI, In re: Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause or fuel cost recovery clause at pp. 2-5, recounting the history of ECRC eligibility criteria pursuant to Section 366.8255, F.S.

<sup>5</sup> The Final Order was issued August 1, 2012, see Exhibit 2 of the Petition. The extension condition is addressed in Attachment H of the Petition, Sect. II. 9, at p. 12.

Based on soil analyses, the Company selected the three magnetic flowmeters option because it will cost less and represents the simpler alternative.

With respect to the Freeboard Limitation, PEF must meet new limitations on the freeboard capacity of CR's industrial wastewater percolation basins.<sup>6</sup> The Company must ensure that percolation basins are operated at a level to maintain specific freeboard requirements.<sup>7</sup> Additionally, the basins are required to have the capability to hold all industrial wastewater as well as rainfall from a 25-year, 24-hour storm event without discharging to surface waters. PEF notes that no capital projects are anticipated to meet this limitation at CR. The Company's basin inspection started in January 2013; the basin assessment and final report are expected to be completed by February 15, 2015. Through a Request for Proposals (RFP) process, PEF has selected a contractor to provide engineering support. RFPs for other types of work required have not been submitted; hence the entities to perform work other than engineering support have not yet been selected.

To satisfy the Impoundment Integrity Inspections requirement, PEF must engage qualified personnel to conduct annual inspections. PEF will use a contractor to perform the 2013 Impoundment Integrity Inspection and related services, but has not decided whether future inspections will be performed by PEF or a third party.

To meet the Groundwater Mapping criteria, PEF must provide FDEP with groundwater contour maps and groundwater flow analyses utilizing data from wells associated with PEF's ash storage facility. The contour maps and groundwater flow analyses are to be summarized in an annual report generated, signed and sealed by a Florida registered professional geologist or professional engineer.<sup>8</sup> A contractor will perform groundwater flow/contour mapping services including collecting groundwater monitoring data semi-annually,<sup>9</sup> performing analysis, and submitting the results in an annual report to the FDEP.

PEF will incur consultant expenditures associated with the activities to meet the Freeboard Limitation, Impoundment Integrity Inspections and Groundwater Mapping criteria. To ensure that the costs incurred are prudent and reasonable, the Company will identify qualified contractors and, when appropriate, will use competitive bidding.

The estimated costs of the proposed GWMOMR compliance program are presented in Exhibit 1 of the Petition which is confidential. Based upon our review, these costs appear to be reasonable. The actual costs associated with the program will be evaluated with particularity in the ECRC docket along with the progress of the program activities.

We note that major portions of the proposed program are on-going annual operation and maintenance (O&M) activities and that all of the capital projects are expected to be completed in 2013. PEF does not seek to change the 2013 ECRC factors established by Order No. PSC-12-

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<sup>6</sup> See Exhibit 2, Attachment H of the Petition, Sect. III. A. 3, at p. 14.

<sup>7</sup> Except after rainfall events exceeding a 25-year, 24-hour storm event.

<sup>8</sup> See Exhibit 2, Attachment H of the Petition, Sect. VI. B. 2. a, at pp. 16-17.

<sup>9</sup> Using existing wells associated with the Crystal River ash storage area.

0613-FOF-EL.<sup>10</sup> Costs incurred in 2013 will be included in the Company's Estimated True-Up filings in the 2013 ECRC docket. PEF will include program costs projected for 2014 and beyond in the appropriate projection filings in the ECRC proceedings. All of these costs will be subject to audit by this Commission. Table 1 below illustrates the estimated residential monthly rate impacts<sup>11</sup> associated with the proposed new GWMOMR compliance program.

Year	(\$/1,000 kWh)
2014	0.002
2015	0.002
2016	0.002
2017	0.001
2018	0.001

PEF proposes that the O&M costs associated with the GWMOMR compliance program be allocated to the rate classes on an energy basis, and that any resulting capital expenditures be allocated on a demand basis. The Company asserts that this approach is consistent with the cost allocation method used for the National Pollutant Discharge Elimination System (NPDES) Permit Renewal Requirement Program which we have approved.<sup>12</sup> PEF argues that the GWMOMR addresses similar environmental requirements as the NPDES Permit Requirements such as wastewater percolation pond freeboard capacity limitation and related studies. The Company asserts that it is reasonable to allocate costs that vary with volume of plant production (such as wastewater and groundwater monitoring O&M expenditures) to rate classes on an energy basis. PEF also contends that it is reasonable to allocate fixed costs, such as capital expenditures, to rate classes on a demand basis. The Company argues that this approach is consistent with the allocation of similar costs to the retail rate in base rates. Upon review, we find that it is reasonable for PEF to use the same cost allocation method for its proposed GWMOMR compliance program that is used to allocate the costs of the Company's NPDES Permit Renewal Requirement Program.

Based on the Petition and the Company's responses to our requests for information, we find that PEF's proposed GWMOMR compliance program is not discretionary or voluntary. Instead, it is an essential program that would not be carried out but for PEF's obligation to comply with a government-imposed environmental regulation. The need for this compliance program has been triggered since the Company's last test year upon which rates are currently based. Further, the costs of the proposed GWMOMR compliance program are not recovered through some other cost recovery mechanism or through base rates. Thus, we find that the program meets the criteria for ECRC cost recovery established by Order No. PSC-94-0044-FOF-EI, in that:

<sup>10</sup> Order No. PSC-12-0613-FOF-EL, issued November 16, 2012, in Docket No. 120007-EI, In re: Environmental cost recovery clause.

<sup>11</sup> For a 1,000 kWh bill.

<sup>12</sup> See Order No. PSC-11-0553-FOF-EI, Issued December 7, 2011, in Docket 110007-EI, In re: Environmental cost recovery clause, at p. 11. ("Capital costs for the NPDES project should be allocated to rate classes on a demand basis. O&M costs for the project should be allocated to the rate classes on an energy basis.")

- (a) all expenditures will be prudently incurred after April 13, 1993;
- (b) the activities are legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and
- (c) none of the expenditures are being recovered through some other cost recovery mechanism or through base rates. *See Id.* at page 6.

As such, pursuant to Section 366.8255, F.S., we shall approve PEF's proposed GWMOMR compliance program for ECRC recovery. O&M costs associated with the program shall be allocated to rate classes on an energy basis, and the capital costs associated with the program shall be allocated to rate classes on a demand basis.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida Inc.'s Petition for approval of its Groundwater Monitoring, Operation and Maintenance Requirements Compliance Program and the recovery of the associated cost through the Environmental Cost Recovery Clause is hereby approved as set forth in the body of this Order. It is further,

ORDERED that this docket shall be closed upon the issuance of a Consummating Order unless a person whose substantial interests are affected by our decision files a protest within 21 days of the issuance of this proposed agency action.

By ORDER of the Florida Public Service Commission this 1st day of May, 2013.



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ANN COLE  
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Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 22, 2013.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.