

State of Florida



Public Service Commission
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DATE: SEPTEMBER 25, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (BREMAN, BRINKLEY, DRAPER)
OFFICE OF THE GENERAL COUNSEL (STERN, VINING)

RE: DOCKET NO. 030711-EI - PETITION OF PROGRESS ENERGY
FLORIDA, INC. FOR APPROVAL OF NEW ENVIRONMENTAL PROGRAMS
FOR COST RECOVERY THROUGH ENVIRONMENTAL COST RECOVERY
CLAUSE.

AGENDA: 10/7/2003 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030711.RCM

CASE BACKGROUND

On July 28, 2003, Progress Energy Florida, Inc. ("PEF") petitioned this Commission for approval of the Pipeline Integrity Management Program ("PIM") and the Aboveground Storage Tank Secondary Containment Project ("ASTSC") as two new activities for cost recovery through the Environmental Cost Recovery Clause ("ECRC").

The PIM program consists primarily of upgrades and continual integrity testing of a 14-inch fuel oil pipeline which extends 33 miles from PEF's Bartow Power Plant to its Anclote Power Plant. PEF's petition states that the PIM program is required to comply with the U.S. Department of Transportation Regulation 49 CFR Part 195, as amended on February 15, 2002.

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The ASTSC project consists primarily of installing secondary containment for tank bottoms for 12 tanks and upgrades to two dike fields. PEF's petition states that the AST project is required to comply with the provisions of Florida Department of Environmental Protection Rule 62-761.510, Florida Administrative Code.

Section 366.8255, Florida Statutes, the ECRC, gives the Commission the authority to review and decide whether a utility's environmental compliance costs are recoverable through a cost recovery factor. Electric utilities may petition the Commission to recover projected environmental compliance costs required by environmental laws or regulations. See Section 366.8255(2), Florida Statutes. 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." Section 366.8255(1)(c). If the Commission approves the utility's petition for cost recovery through this clause, only prudently incurred costs shall be recovered. See Section 366.8255(2), Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve Progress Energy Florida, Inc.'s petition for the Pipeline Integrity Management ("PIM") project as a new activity for cost recovery through the ECRC?

RECOMMENDATION: Yes. The PIM program is required to comply with Regulation 49 CFR Part 195, as amended on February 15, 2002. The resultant environmental compliance costs are incremental to PEF's base rates because the requirements of 49 CFR Part 195 did not affect PEF prior to the company's 2002 rate case (Docket No. 000824-EI). (Breman, Brinkley, Draper, Stern)

STAFF ANALYSIS: PEF is implementing the PIM program to comply with the U.S. Department of Transportation's regulations in 49 CFR Part 195. The regulation applies to pipelines with 500 or fewer miles that transport hazardous substances across or near population centers, environmentally sensitive areas and commercially navigable waters. The operators of such pipelines must manage pipeline integrity to ensure that leaks do not occur.

The PIM program addresses initial inspecting and testing, upgrades, and continual integrity assessment of a 14-inch fuel oil pipeline which extends 33 miles from PEF's Bartow Power Plant to its Anclote Power Plant. PEF states that it does not seek recovery of the costs incurred prior to filing this petition. The petition costs to be excluded from the ECRC are for initial pipeline identification, development of the integrity management program, and a leak detection study. Staff notes that excluding costs that have already been incurred is consistent with Order No. PSC-94-1207-FOF-EI, in Docket No. 940042, issued October 3, 1994, which states: "Environmental compliance cost recovery, like cost recovery through other cost recovery clauses, should be prospective."

PEF seeks to recover costs incurred after July 28, 2003, the date of this petition. The projected 2003 costs are \$990,000 in capital investments for an upgraded leak detection system and \$10,000 in related operating and maintenance ("O&M") expenses. PEF projects it will incur an additional \$245,000 in O&M expense in 2004. Competitive bidding will be used to select the lowest cost supplier of the necessary services wherever possible. Approximately every five-years PEF will have to retest and assess each pipeline segment at a cost between \$150,000 and \$200,000 not including upgrades that may also be required.

Staff believes that costs incurred to comply with 49 CFR Part 195 are incremental to PEF's current base rates because the requirements of 49 CFR Part 195 did not exist prior to the 2002 rate case. PEF completed its MFRs budget for 2002 in July 2001 and began filing its MFRs and rate case testimony on September 14, 2001. PEF became aware of the proposed changes to 49 CFR Part 195 on January 16, 2002. The environmental requirement did not become effective until February 15, 2002 which was after the intervenors and staff began filing testimony in Docket No. 000824-EI. Rate case discovery ended on March 13, 2002. Consequently, no witness could have reasonably addressed environmental compliance costs associated with 49 CFR Part 195, as amended on February 15, 2002. Based on this information staff concludes that PEF's current base rates do not provide recovery of the ongoing costs for the PIM program.

Based on the foregoing, staff believes that the PIM program satisfies the requirements of Section 366.8255, Florida Statutes, and qualifies for recovery through the ECRC. The actual expenditures will be addressed in the ECRC true-up cycle and be subject to audit. Issues that will determine the specific amount recoverable through the ECRC, such as whether specific costs were prudently incurred and the appropriate return on investment, will be further examined and resolved in Docket No. 030007-EI. PEF is not requesting a change in the ECRC factors that have been approved for 2003. Instead, PEF included the estimated 2003 expenses for the PIM activity in its true-up calculations filed in Docket 030007-EI. Staff agrees that the PIM activity expenses do not require a mid-course correction because only 0.2% of PEF's estimated under recovery for 2003 is due to the PIM activity while 99.7% of the estimated under recovery is due to cost increases for activities already included in the ECRC. Therefore, the review of PEF's ECRC expenses, including the PIM program expenses, should be addressed at the November 2003 ECRC hearing.

ISSUE 2: Should the Commission approve Progress Energy Florida, Inc.'s petition for the Aboveground Storage Tank Secondary Containment ("ASTSC") project as a new activity for cost recovery through the ECRC?

RECOMMENDATION: Yes. The ASTSC project is required to comply with Rule 62-762.510, Florida Administrative Code, as modified on July 13, 1998. The rule change requires PEF to increase compliance activities. PEF should be allowed to recover prudently incurred costs for compliance with this rule, which are incremental to base rates through the ECRC. The specific amount recoverable will be determined at the November hearings in Docket 030007-EI. (Breman, Brinkley, Draper, Stern)

STAFF ANALYSIS: Substantive rules on secondary containment for aboveground storage tanks ("ASTs") were first adopted on March 12, 1991 (Rules 17-762.500 through 17-762.520, Florida Administrative Code), and revised on July 13, 1998 (Rule 62-761.510, Florida Administrative Code). PEF asserts that the 1998 amendments to the rules require all internally lined single bottom ASTs to be upgraded with secondary containment. In 2003, PEF identified 12 aboveground storage tanks which must be upgraded by January 1, 2010, to comply with the amended rule. The 12 tanks are located at PEF's Bartow, Bayboro, Avon Park, Intercession City, Turner, DeBary, University of Florida, Suwannee and Anclote power plant sites. PEF must also upgrade certain dike fields at its Crystal River Power Plant and its Rior Pinar Power Plant sites by January 1, 2005, to comply with the amended rule.

Staff notes that between 1991 and 1999, PEF incurred a total of \$516,200 in operations and maintenance ("O&M") expenses and \$2,526,369 in capital additions at 13 tank sites to comply with some version of the rule. The last of these various activities occurred in 1999, after the most recent rule revision, at the Suwannee River Power Plant on Tank No. 10. The Suwannee River Power Plant Tank No. 10 activity included cleaning, baseline inspection, necessary repairs, cathodic protection, and installation of a dike field liner.

PEF reports no new expenses for the ASTSC activity occurred in years 2000, 2001, and 2002. In 2003, subsequent to its rate case, PEF began to incur costs for additional ASTSC activity. PEF completed secondary containment upgrades on the Higgins Power Plant tank No. 1 in May 2003. Upgrades to Crystal River tanks Nos. 3 and

13 began in July 2003 and are expected to be completed by December 2003. PEF states that it does not seek recovery of the costs incurred prior to July 28, 2003, the date it filed its petition. Staff notes that PEF's petition is consistent with Order No. PSC-94-1207-FOF-EI, in Docket No. 940042, issued October 3, 1994, which states: "Environmental compliance cost recovery, like cost recovery through other cost recovery clauses, should be prospective."

The projected ASTSC expenditures through 2009 are \$4.6 million in capital investments. Approximately \$694,000 in capital investments are projected for the last quarter of 2003. PEF is using a consultant to evaluate the tanks and associated piping and to develop a comprehensive compliance plan. However, actual remediation of the facilities will be addressed on a site-by-site basis. The site specific engineering portions of the work may be completed by internal personnel or outsourced while the actual construction will be outsourced.

PEF's ASTSC program has substantively increased in scope compared to prior years. For example, the total projected plant addition to address prospective upgrades at 12 tanks is \$4.6 million which is almost twice the \$2.5 million in plant additions PEF incurred to address compliance issues at 13 tanks prior to year 2000. At certain power plant sites, PEF will have to perform improvements in addition to upgrades already taken to satisfy the requirements of the 1991 version of the rule. The increased scope of activity is largely due to the evolving nature of the rule which in turn creates a level of costs greater, to some degree, than the level of costs recovered in base rates. Thus, a remaining question is whether recovery of PEF's prospective costs through the ECRC will provide double recovery of ASTSC compliance costs. At this time, staff has not determined what adjustment, if any, should be made to avoid double recovery. Review of the double recovery concern is ongoing. Typically, double recovery issues are resolved in the annual ECRC hearings.

Based on the foregoing, staff believes that PEF's ASTSC project satisfies the requirements of Section 366.8255, Florida Statutes. What the actual incremental costs are, and whether adjustment is needed to prevent double recovery will be determined in the November hearing in Docket No. 030007-EI. PEF is not requesting a change in the ECRC factors that have been approved for 2003. Instead, PEF included the estimated 2003 expenses for the

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ASTSC project in its true-up calculations filed in Docket 030007-EI. Staff agrees that the ASTSC project expenses do not require a mid-course correction because only 0.1% of PEF's estimated under recovery for 2003 is due to the ASTSC project while 99.7% of the estimated under recovery is due to cost increases for activities already included in the ECRC. Therefore, the review of PEF's ECRC expenses, including the ASTSC project expenses, should be addressed at the November 2003 ECRC hearing.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (STERN)

STAFF ANALYSIS: If no timely protest to the proposed agency action is filed within 21 days, this docket should be closed upon the issuance of the Consummating Order.