



Public Service Commission

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DATE: OCTOBER 22, 2003

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

FROM: DIVISION OF ECONOMIC REGULATION (BREYAN) *JB WBM RJ*
OFFICE OF THE GENERAL COUNSEL (STERN, VINING) *Walt mks JDS*

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: 11/3/2003 - 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") filed a Petition 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.

The ASTSC project consists primarily of installing secondary containment for 12 tanks and upgrades to two dike fields. PEF's

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petition states that the ASTSC 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, 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 Section 366.8255(2), Florida Statutes, and Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, Docket No. 940042, In Re: Environmental Cost Recovery Clause, p.5, which provide that cost recovery is allowed for prospective costs only.

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 Minimum Filing Requirements budget for 2002 in July 2001 and began filing its Minimum Filing Requirements 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 percent of PEF's estimated under-recovery for 2003 is due to the PIM activity. 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. PEF should be allowed to recover the costs incurred for the installation of or upgrades to secondary containment for field-erected above ground storage tank systems as required by the 1998 amendments incorporated into Rule 62-761.510 (Table AST, Keynotes W and U), Florida Administrative Code. (Breman, Stern)

STAFF ANALYSIS: The substantive rules on secondary containment for above ground storage tanks ("ASTs") that existed in 1991, (Rules 17-762.500 through 17-762.520, Florida Administrative Code), were revised on July 13, 1998 (Rule 62-761.510, Florida Administrative Code). PEF asserts that the 1998 amendments to the rules require certain dike fields and internally-lined single bottom ASTs and associated piping in contact with the soil, to be upgraded with secondary containment.

PEF's Petition identifies 12 ASTs and two dike fields as requiring installation of or upgrades to secondary containment in order to satisfy the 1998 amendments to Rule 62-761.510, Florida Administrative Code. The tanks are listed below.

Table 1

Power Plant Site	AST Number	Start/Completion
Anclote	#1, #2	2008/2009
Avon Park	#5	2008/2008
Bartow	#11	phased 2003-2009
Bayboro	#12, #13	2006/2007
Crystal River	#2	2003/2003
DeBary	#23	2005/2005
Intercession City	#17, #18	2005/2006
Rio Pinar	#2	not scheduled
Suwannee	#24	2005/2005
Turner	#2	2003/2003
University of Fl.	#3	2006/2006

PEF must upgrade dike fields at its Crystal River and Rio Pinar power plant sites. Upgrades to the secondary containment of the tanks must be completed by 2010, and upgrades to the secondary containment of the dike fields must be completed by 2005. The specific work required at each site and the part of the rule requiring the work is shown in Attachment 1.

Because the rule incorporates requirements that existed in 1991 plus new requirements added in 1998, it was important to determine that PEF's activities were required by the new requirements added in 1998. PEF's compliance costs for activities required by the 1991 version of the rule are assumed to be recovered through base rates. Such costs would have to be excluded from the ECRC to avoid double recovery concerns. Based on extensive discussions with PEF and the Florida Department of Environmental Protection, staff believes that the activities identified in Attachment 1 are required by additions to the rule made in 1998 and cost recovery through the ECRC is appropriate because the costs are not being recovered through base rates.

As work on this docket progressed, PEF expressed a concern that the list of covered facilities in the petition may not be complete and that it would like the approval for this project to include additional, but as yet unknown, facilities requiring secondary containment. To accommodate PEF's concerns, staff recommends broadening the scope of approval to include the specifically identified facilities plus installation of or upgrades to secondary containment for field-erected above ground storage tank systems as required by the 1998 amendments to Rule 62-761.510 (Table AST, Keynotes W and U).

Before filing its Petition, PEF had begun secondary containment work at several facilities not listed above. PEF completed secondary containment upgrades on the Higgins Power Plant AST Tank No. 1 in May 2003. Upgrades to Crystal River AST 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 Section 366.8255(2), Florida Statutes, and Order No. PSC-94-1207-FOF-EI, p.5, which provide that cost recovery is allowed for prospective costs only.

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.

Based on the foregoing, staff believes that PEF's ASTSC project shown in Table 1 and including the dike field upgrades at Crystal River and Rio Pinar satisfies the requirements of Section 366.8255, Florida Statutes. 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 ASTSC project in its true-up calculations filed in Docket No. 030007-EI. Staff agrees that the ASTSC project expenses do not require a mid-course correction because only 0.1 percent of PEF's estimated under-recovery for 2003 is due to the ASTSC project. Therefore, the

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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.

Progress Energy Aboveground Storage Tank Compliance Upgrades Included in ECRC Petition				
Site	No. of Regulated Tanks on Site	FDEP ID of AST Systems	Scope of Work/Regulatory Citation	Start/Completion Dates
Anclote	2	#1, #2	Anclote tanks #1 & 2 contain No. 2 oil (diesel fuel), and are subject to 62-761.510 (3)(d) Table AST U (1) to install secondary containment. 62-761.510(3)(d) Table AST U (2) does not apply because none of the pipe is in contact with the soil.	No specific scheduled currently established: 2008 or 2009
Avon Park	1	#5	Avon Park tank #5 is a No. 2 oil (diesel fuel) tank that is subject to 62-761.510 (3)(d) Table AST U(1) to install secondary containment. No piping is in contact with the soil; therefore no piping work is proposed.	This work is scheduled begin and be completed during the first quarter of 2008.
Bartow	1	#11	Bartow tank #11 contains No. 2 oil (diesel fuel), and is subject to 62-761.510 (3)(d) Table AST U (1) requiring the installation of secondary containment; and, to 62-761.510(3)(d) Table AST U(2)(a) which requires the double-walling of pipe in contact with the soil.	Piping work is to be started in September 2003 and completed in December 2003; secondary containment is scheduled to begin and be completed in early 2009.
Bayboro	2	#12, #13	Bayboro tanks #12 and #13 are No. 2 oil (diesel fuel) tanks that are subject 62-761.510(3)(d) Table AST U (1) to install secondary containment. The underground barge offloading line (that transports fuel to the ASTs) is subject to 62-761.510(3)(d) Table AST U (2)(a) to double wall pipe in contact with the soil.	The current project schedule is to start and complete secondary containment on both tanks between the 4 th quarter of 2006 and the first quarter of 2007. All piping changes are expected to be started and completed within the second quarter of 2007.
Crystal River	3	#2	Crystal River South has one No. 2 oil (diesel fuel) tank that is within a concrete secondary containment. This tank must be upgraded per 62-761.510(3)(d) Table AST W (1) to install secondary containment. There is no pipe in contact with the soil.	Scheduled start date is September 2003; scheduled completion is December 2003.
DeBary	1	#23	DeBary tank #23 is a No. 2 oil (diesel fuel) tank that is subject to 62-761.510(3)(d) Table AST U (1) to install secondary containment and to 62-761.510(3)(d) Table AST U (2)(a) to double wall pipe in contact with soil.	Work is scheduled to be started and completed during the second quarter of 2005.
Intercession City	2	#17, #18	Intercession City tanks #17 and #18 are No. 2 oil tanks that are subject to 62-761.510 (3)(d) Table AST U (1) to install secondary containment and to 62-761.510(3)(d) Table AST U (2)(a) to double wall pipe in contact with the soil.	Double-bottoming work will be initiated and completed for tank #18 during the first quarter of 2005. Tank #17 will be upgraded during the second quarter of 2006. All piping work will be performed during the second quarter of 2006.
Rio Pinar	1	#2	Rio Pinar tank #2 is a No. 2 oil tank that is within a concrete secondary containment and is subject to the upgrade required by 62-761.510 (3)(d) Table AST W (1) to install secondary containment. There is no pipe in contact with the soil.	The schedule for this work is flexible, but will be completed by the established deadline.

**Progress Energy
Aboveground Storage Tank Compliance Upgrades
Included in ECRC Petition**

SSuwannee	1	\$24.	Suwannee tank #24 contains No. 2 oil (diesel fuel), and is subject to 62-761.510 (3) (d) Table AST U (1) to install secondary containment; and, to 62-761.510 (3)(d) Table AST U (2)(a) to double wall pipe in contact with the soil.	All work is scheduled to begin and be completed during the fourth quarter of 2005.
Turner	1	#2	Turner tank #2 is a No. 2 oil (diesel fuel) tank subject to 62-761.510(3)(d) Table AST U (1) to install secondary containment. No piping will be in contact with the soil; therefore, 62-761.510(3)(d) Table AST U (2) does not apply.	Preparation work began at this site in July 2003, and will be completed by the end of 2003.
University of Florida	1	#3	University of Florida tank #3 is a No. 2 oil (diesel fuel) tank that is subject to 62-761.510 (3)(d) Table AST U (1) to install secondary containment. There is no pipe in contact with the soil.	This work is scheduled to be started and completed during the third quarter of 2006.