

# Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial Number  
(850) 425-2359

March 4, 2009

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COMMISSION  
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## BY HAND DELIVERY

Ann Cole  
Director, Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 090007-EI  
Petition of Progress Energy Florida for Approval of Cost Recovery for New  
Environmental Program

Dear Ms. Cole:

On behalf of Progress Energy Florida, Inc. ("PEF"), enclosed for filing in the above docket are the original and fifteen copies of PEF's Petition for Approval of Cost Recovery for New Environmental Program, along with a diskette containing the Petition in Word format.

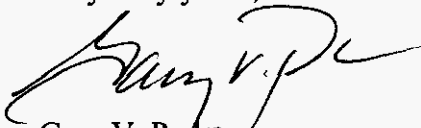
By copy of this letter, the enclosed documents have been furnished to the parties on the attached certificate of service.

**COM** Please stamp and return the enclosed extra copy of this filing. If you have any questions  
**ECR** *Task* regarding this filing, please give me a call at 425-2359.

- GCL** 2
- OPC**
- RCP** 4
- SSC**
- SGA** 1
- ADM**
- CLK**

GVP/mee  
Enclosures

Very truly yours,

  
Gary V. Perko

DOCUMENT NUMBER - DATE

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of PEF's Petition for Approval of Cost Recovery for New Environmental Program has been furnished to all counsel of record and interested parties as listed below by hand-delivery (\*) or regular U.S. mail this 4th day of March, 2009.

Martha Carter Brown (\*)  
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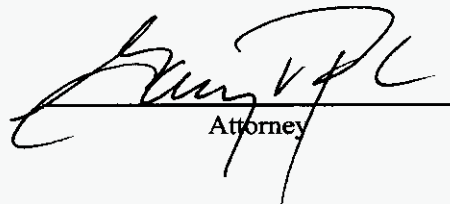
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\_\_\_\_\_  
Attorney

**BEFORE THE PUBLIC SERVICE COMMISSION**

In re: Environmental Cost Recovery Clause

DOCKET NO. 090007-EI

FILED: March 4, 2009

**PETITION OF PROGRESS ENERGY FLORIDA, INC.  
FOR APPROVAL OF COST RECOVERY FOR  
NEW ENVIRONMENTAL PROGRAM**

Progress Energy Florida, Inc. ("PEF" or "Company"), pursuant to Section 366.8255, Florida Statutes, and Florida Public Service Commission ("Commission") Order Nos. PSC-94-0044-FOF-EI and PSC-99-2513-FOF-EI, hereby petitions the Commission for approval for recovery through the Environmental Cost Recovery Clause ("ECRC") of costs associated with PEF's participation in environmental studies related to the Department of Environmental Protection's ("DEP's") development of Total Maximum Daily Loads (TMDLs) for mercury in State waters and rules regulating mercury emissions from various sources including, potentially, coal-fired power plants. In support, PEF states:

1. PEF is a public utility subject to the regulatory jurisdiction of the Commission under Chapter 366, Florida Statutes. The Company's principal offices are located at 299 First Avenue North, St. Petersburg, Florida.

2. All notices, pleadings and other communications required to be served on the petitioner should be directed to:

Gary V. Perko  
Hopping Green & Sams, P.A.  
123 S. Calhoun St. (32301)  
P.O. Box 6526  
Tallahassee, FL 32314

John T. Burnett  
Associate General Counsel  
Progress Energy Services Co.  
299 First Avenue North  
St. Petersburg, FL 33701

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

3. Section 366.8255, Florida Statutes, authorizes the Commission to review and approve recovery through the ECRC of prudently incurred "environmental compliance costs," which are broadly defined as "costs or expenses incurred by an electric utility in complying with environmental laws or regulations." In turn, section 366.8255 defines "environmental laws or regulations" broadly to 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." In Order No. PSC-94-0044-FOF-EI, the Commission established the following criteria for cost recovery under the ECRC:

- (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 that was created, 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.

The information provided below satisfies the minimum filing requirements established in Part VI of Order No. PSC-99-2513-FOF-EI.

4. Section 303(d) of the federal Clean Water Act requires each state to identify state waters not meeting water quality standards and establish a total maximum daily load (TMDL) for the pollutant or pollutants causing the failure to meet standards. See 42 U.S.C. § 1313(d). Under a 1999 federal consent decree, TMDLs for over 100 Florida water bodies listed as impaired for mercury must be established by September 12, 2012. DEP has initiated a research program to provide the necessary information for setting the appropriate TMDLs for mercury. Among other things, the study will assess the relative contributions of mercury-emitting sources, such as coal-

fired power plants, to mercury levels in surface waters. In turn, DEP could seek to use this information to attempt to impose new regulatory requirements on mercury-emitting sources, such as coal-fired power plants. Additionally, in a separate effort, DEP's Division of Air Resources Management is in the process of developing rules to regulate mercury emissions from various sources, which may include coal-fired power plants.

5. DEP has invited stakeholders to participate in the design and completion of the mercury TMDL study. PEF believes it is prudent to participate in the TMDL study and in the parallel air rulemaking effort to ensure that the relative contributions of mercury-emitting sources, such as power plants, are appropriately analyzed so that future environmental compliance costs are minimized. Accordingly, PEF is participating in the mercury TMDL study and air rulemaking proceedings through its membership in the Florida Electric Power Coordinating Group's Environmental Committee (FCG). To ensure that the ongoing regulatory efforts are based on good science, the FCG is contracting with various consultants to participate in the monitoring and modeling of mercury emissions and their fate in the environment.

6. As the Commission recognized in Order No. PSC-08-0775-FOF-EI issued in Docket 08-0007-EI on November 24, 2008:

Utilities are expected to take steps to control the level of costs that must be incurred for environmental compliance. An effective way to control the costs of complying with a particular environmental law or regulation can be participation in the regulatory and legal processes involved in defining compliance.

Based on that understanding, the Commission has previously approved recovery through the ECRC of costs incurred by utilities for technical analyses and other activities associated with participation in development of regulatory compliance measures. See e.g., Order No. PSC-08-0775-FOF-EI issued in Docket No. 080007-EI (Nov. 24, 2008) (costs for participating in

rulemaking and legal proceedings related to EPA's Section 316(b) Phase II rules); Order No. PSC-05-1251-FOF-EI issued in Docket No. 050007-EI (Dec. 22, 2005) (costs associated with technical analysis and legal challenges to Clean Air Interstate Rule); and Order No. PSC-00-0476-PAA-EI issued in Docket No. 991834-EI (Mar. 6, 2000) (costs associated with participating in ozone modeling study).

7. PEF seeks approval to recover through the ECRC costs for its participation in the mercury TMDL study. None of the costs for which PEF seeks recovery were included in the MFRs that PEF filed in its last ratemaking proceeding (Docket No. 050078-EI.). Therefore, the costs are not recovered in base rates.

8. PEF estimates the total project costs to be approximately \$92,000 for the remainder of 2009, approximately \$36,000 for 2010 and approximately \$38,000 for 2011.

9. PEF does not seek to change the ECRC factors currently in effect for 2009. The Company proposes to include 2009 program costs in its estimated true-up filing for 2009. The Company will include program costs projected for 2010 and beyond in the appropriate projection filings. PEF expects that all of these costs will be subject to audit by the Commission and that the appropriate allocation of program costs to rate classes will be addressed in connection with those subsequent filings.

10. PEF is not aware of any dispute regarding any of the material facts contained in this petition. The information provided in this petition demonstrates that the programs for which approval is requested meets the requirements of Section 366.8255 and applicable Commission orders for recovery through the ECRC.

WHEREFORE, Progress Energy Florida requests that the Commission approve for recovery through the ECRC the costs incurred after the date of this petition in connection with it

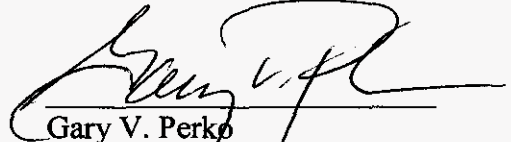
participation in environmental studies related to the development of Total Maximum Daily Loads (TMDLs) for mercury in State waters and rules regulating mercury emissions.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of March, 2009.

John T. Burnett  
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By:

  
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Attorneys for PROGRESS ENERGY FLORIDA, INC.

**AFFIDAVIT**

STATE OF FLORIDA     )  
                                  )  
COUNTY OF PINELLAS    )

The undersigned Patricia Q. West, first being duly sworn, deposes and says:

1. I am employed as Manager of Environmental Services for Progress Energy Florida, Inc.

2. I have reviewed the above Petition of Progress Energy Florida, Inc. for Approval of Cost Recovery for New Environmental Program and the facts stated in that petition are true and correct to the best of my knowledge, information and belief.

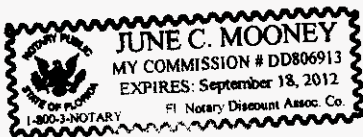
Patricia Q. West  
Patricia Q. West

Sworn to and subscribed before me by Patricia Q. West, who:

is personally known to me

presented Florida Drivers License Number \_\_\_\_\_ as identification

this 3rd day of Mar, 2009.



June C. Mooney  
Notary Public