

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** January 28, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Wu) *Wu*  
Office of the General Counsel (Brown, Williams) *Wu*  
*MCB JSB Arw*

**RE:** Docket No. 100025-EI – Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Progress Energy Florida.

**AGENDA:** 02/09/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All

**PREHEARING OFFICER:** Stevens

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\100025.RCM.DOC

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### Case Background

On January 8, 2010, Progress Energy Florida, Inc. (PEF or Company) petitioned the Florida Public Service Commission (Commission) for approval of a new environmental program, the Information Collection Request (ICR) Compliance Program, and for cost recovery through the Environmental Cost Recovery Clause (ECRC). PEF petitioned the Commission pursuant to

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Section 366.8255, Florida Statutes (F.S.), and Commission Order Nos. PSC-94-0044-FOF-EI and PSC-99-2513-FOF-EI.<sup>1</sup>

In 2009, the U.S. Environmental Protection Agency (EPA) initiated efforts to develop an ICR, which requires that owners/operators of all coal- and oil-fired electric utility steam generating units provide information that will allow the EPA to assess the emissions of hazardous air pollutants from each such unit. The intention of the ICR is to assist the Administrator of the EPA in developing national emission standards for hazardous air pollutants under Section 112(d) of the Clean Air Act, 42 U.S.C. 7412. Pursuant to those efforts, by letter dated December 24, 2009, the EPA formally requested that PEF comply with certain data collection and emissions testing requirements for several of its steam electric generating units. The EPA letter states that initial submittal of existing information must be made within 90 days, and that the remaining data must be submitted within 8 months. Collection and submittal of the requested information is mandatory under Section 114 of the Clean Air Act, 42 U.S.C. 7414.

PEF is requesting that the Commission approve for cost recovery through the ECRC all expenditures incurred in complying with the EPA's ICR. The Company estimated that the total project costs will be approximately \$854,000 for 2010. It currently anticipates that all costs for complying with the ICR will be incurred in 2010. PEF does not seek to revise the ECRC factors established for 2010 by Commission Order No. PSC-09-0759-FOF-EI.<sup>2</sup> Instead, the Company proposes to include in its ECRC Estimated/Actual True-Up filing for 2010 all program costs incurred subsequent to the filing of this petition through the end of 2010.

The Commission has jurisdiction over the subject matter of this petition pursuant to Section 366.8255, F.S. Electric utilities may petition the Commission to recover projected environmental compliance costs required by environmental laws or regulations. Section 366.8255(2), 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." Section 366.8255(1)(c), F.S. If the Commission approves the utility's petition for cost recovery through this clause, only prudently incurred costs may be recovered. Section 366.8255(2), F.S.

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<sup>1</sup> Order No. PSC-94-0044-FOF-EI, issued on 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 on December 22, 1999, in Docket No. 990007-EI, In Re: Environmental Cost Recovery Clause.

<sup>2</sup> Order No. PSC-09-0759-FOF-EI, issued on November 18, 2009, in Docket No. 090007, In Re: Environmental Cost Recovery Clause.

**Discussion of Issues**

**Issue 1:** Should the Commission approve PEF’s petition for approval of the ICR Compliance Program and the recovery of the associated costs through the ECRC pursuant to Section 366.8255, F.S.?

**Recommendation:** Yes. PEF’s ICR Compliance Program satisfies the statutory requirements specified in Section 366.8255, F.S. (Wu, Brown, Williams)

**Staff Analysis:** This Commission has previously held that costs of complying with the ICR are recoverable under the ECRC. By Order No. PSC-09-0759-FOF-EI,<sup>3</sup> the Commission granted Florida Power & Light Company’s (FPL) and Gulf Power Company’s (Gulf) requests for ECRC cost recovery for ICR Compliance programs.

In December 2009, PEF received a letter from the EPA in which the agency formally requested that the Company comply with certain data collection and emissions testing requirements for sixteen (16) steam electric generating units located in various PEF facilities. EPA’s information collection request, which previously triggered the ICR compliance programs of FPL and Gulf, is for support to develop national emission standards for hazardous air pollutants under Section 112(d) of the Clean Air Act. The EPA letter outlines a phased approach for the Company’s collection and submission of the requested information. First, PEF is required to collect and submit existing information on all affected units, such as installation dates, any modifications made to the units, and configuration information. Second, PEF is required to conduct site-specific emissions testing on certain units. These requirements are summarized, by facility, in Table 1 below.

The EPA letter states that initial submittal of existing information must be made within 90 days, and that the remaining data must be submitted within 8 months. PEF is mandated to collect and submit the requested information pursuant to Section 114 of the Clean Air Act.

Table 1: EPA’s Information Collection and Testing Requirements

<b>State</b>	<b>Facility</b>	<b>Unit to be Tested</b>	<b>Surrogate Category for Testing</b>
FL	Anclote	1	Comprehensive Oil-Fired Testing
FL	Anclote	2	Comprehensive Oil-Fired Testing
FL	Crystal River	1	Acid Gases
FL	Crystal River	1	Non-Dioxin/Furan Organic HAP and Dioxin/Furan HAPs
FL	Crystal River	1	Mercury and Metals
FL	Crystal River	5	Acid Gases
FL	Suwannee	2	Comprehensive Oil-Fired Testing
FL	Suwannee	3	Comprehensive Oil-Fired Testing

<sup>3</sup> Order No. PSC-09-0759-FOF-EI, issued on November 18, 2009, in Docket No. 090007-EI, In Re: Environmental Cost Recovery Clause.

PEF estimates that the total costs associated with the ICR Compliance Program will be approximately \$854,000 for 2010. Such estimates are based on cost estimates published by the EPA. Actual costs incurred will depend upon finalizing plans with the EPA and the selection of qualified contractors. The Company currently anticipates that all costs for complying with the ICR will be incurred in 2010. PEF does not seek to revise the ECRC factors established for 2010 in Commission Order No. PSC-09-0759-FOF-EI.<sup>4</sup> Instead, the Company proposes to include in its ECRC Estimated/Actual True-Up filing for 2010 all program costs incurred subsequent to the filing of this petition through the end of 2010.

PEF seeks approval to recover through the ECRC all costs incurred to comply with the ICR. The Company asserted that 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, or PEF's pending ratemaking proceeding, Docket No. 090079-EI. The costs associated with the ICR Compliance Program are, therefore, not recovered in PEF's base rates.

In order to ensure that the costs incurred to comply with the ICR are prudent and reasonable, PEF has initiated a competitive bidding process to identify qualified outside contractors to assist internal PEF staff in collecting and processing the required information. Commission staff will further assess the process details in a timely manner through Docket No. 100007-EI, In Re: Environmental Cost Recovery Clause. The Company expects that all of the expenditures associated with the program 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.

PEF's ICR Compliance Program meets the criteria for ECRC cost recovery established by the Commission by Order No. PSC-94-0044-FOF-EI,<sup>5</sup> in that:

- (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.

In conclusion, staff recommends that PEF's petition for approval of ECRC cost recovery for its ICR Compliance Program should be granted pursuant to Section 366.8255, F.S. Staff also recommends that the appropriate allocation of program costs to rate classes should be addressed in the 2010 ECRC annual hearing in connection with the Company's subsequent filing in Docket No. 100007-EI, In re: Environmental Cost Recovery Clause.

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<sup>4</sup> Order No. PSC-09-0759-FOF-EI, issued on November 18, 2009, in Docket No. 090007-EI, In Re: Environmental Cost Recovery Clause.

<sup>5</sup> Order No. PSC-94-0044-FOF-EI, issued on 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.

Docket No. 100025-EI  
Date: January 28, 2010

**Issue 2:** 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. (Brown, Williams)

**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 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.