

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of cost recovery for new environmental program by Progress Energy Florida. | DOCKET NO. 100025-EI  
ORDER NO. PSC-10-0099-PAA-EI  
ISSUED: February 22, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
DAVID E. KLEMENT  
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING PROGRESS ENERGY FLORIDA'S NEW ENVIRONMENTAL  
PROGRAM FOR COST RECOVERY THROUGH THE ENVIRONMENTAL COST  
RECOVERY CLAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service 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.

CASE BACKGROUND

On January 8, 2010, Progress Energy Florida, Inc. (PEF or Company) filed a petition 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's petition was filed pursuant to 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 unit. The intention of the ICR is to assist the Administrator of

<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.

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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 requests that we 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.

We have jurisdiction over the subject matter of this petition pursuant to Section 366.8255, F.S.

#### ANALYSIS & RULING

The letter PEF received from the EPA in December 2009 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. 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. 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. These requirements are summarized, by facility, in Table 1 below.

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

<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.

FL	Suwannee	2	Comprehensive Oil-Fired Testing
FL	Suwannee	3	Comprehensive Oil-Fired Testing

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. We 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 this Commission, and that the appropriate allocation of program costs to rate classes will be addressed in connection with those subsequent filings.

Electric utilities may petition 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 we approve the utility's petition for cost recovery through this clause, only prudently incurred costs may be recovered. Section 366.8255(2), F.S.

We have 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> we granted Florida Power & Light Company's (FPL) and Gulf Power Company's (Gulf) requests for ECRC cost recovery for ICR Compliance programs. In addition, PEF's ICR Compliance Program meets the criteria for ECRC cost recovery established by our Order No. PSC-94-0044-FOF-EI,<sup>4</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.

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<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.

<sup>4</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.

In conclusion, we find that PEF's ICR Compliance Program satisfies the statutory requirements specified in Section 366.8255, F.S. Accordingly, we hereby grant PEF's petition for approval of ECRC cost recovery for its ICR Compliance Program. The appropriate allocation of program costs to rate classes shall 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida, Inc.'s petition for approval of cost recovery for its Information Collection Request Compliance Program through the Environmental Cost Recovery Clause is hereby granted. It is further

ORDERED that the appropriate allocation of program costs to rate classes shall be addressed in the 2010 Environmental Cost Recovery Clause hearing in connection with Progress Energy Florida, Inc.'s subsequent filing in Docket No. 100007-EI, In re: Environmental Cost Recovery Clause. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of February, 2010.



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ANN COLE  
Commission Clerk

( S E A L )

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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 March 15, 2010.

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.