

State of Florida



Public Service Commission

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DATE: April 12, 2013

TO: Office of Commission Clerk (Cole)

FROM: Division of Economics (Wu, Stallcup) *Wu*
Division of Engineering (Matthews) *MS*
Office of the General Counsel (Murphy) *CM MF*

RE: Docket No. 120318-EI – Petition for approval of a new environmental program for cost recovery under the Environmental Cost Recovery Clause, by Progress Energy Florida, Inc.

AGENDA: 04/25/13 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECO\WP\120318.RCM.DOC

Case Background

On December 21, 2012, Progress Energy Florida Inc. (PEF or the Company) petitioned the Florida Public Service Commission (Commission) for approval of a new environmental compliance program, Groundwater Monitoring, Operation and Maintenance Requirements (GWMOMR) Compliance Program (Petition), and to recover the associated cost through the Environmental Cost Recovery Clause (ECRC). PEF's Petition was filed pursuant to Section

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

PEF's Crystal River Energy Center (CR) Units 3, 4 and 5 operate in accordance with certain conditions of certification established pursuant to the Florida Electrical Power Plant Siting Act (PPSA). By Final Order dated August 1, 2012, the Florida Department of Environmental Protection (FDEP) imposed new GWMOMR in a new Attachment H to the Conditions of Certification.² PEF's Petition reported activities for complying with the newly imposed GWMOMR at the CR plant, and estimated the expenditures associated with these activities.

Pursuant to Section 366.8255(2), F.S., electric utilities may petition the Commission to recover projected environmental compliance costs required by environmental laws or regulations. Pursuant to Section 366.8255(1)(c), 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." If the Commission approves the utility's petition for cost recovery, only prudently incurred costs may be recovered.³ The Commission has jurisdiction over this matter pursuant to Section 366.8255(2), F.S.

¹ Order No. PSC-94-0044-FOF-EI, issued 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 December 22, 1999, in Docket No. 990007-EI, In re: Environmental Cost Recovery Clause.

² Final Order Monitoring Conditions of Certification, August 1, 2012, Case Number PA77-09P, OGC Case Number 10-2632, Attachment H - Groundwater Monitoring, Operation and Monitoring Requirements.

³ See Order No. PSC 11-0080-PAA-EI, issued January 31, 2011, in Docket No. 100404-EI, In re: Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause or fuel cost recovery clause at pp. 2-5, recounting the history of ECRC eligibility criteria pursuant to Section 366.8255, F.S.

Discussion of Issues

Issue 1: Should the Commission approve PEF's Petition for approval of its Groundwater Monitoring, Operation and Maintenance Requirements Compliance Program and the recovery of the associated cost through the Environmental Cost Recovery Clause pursuant to Section 366.8255, F.S.?

Recommendation: Yes. Staff recommends that the Commission approve the GWMOMR Compliance Program for ECRC recovery. (Wu, Stallcup, Matthews)

Staff Analysis:

Changes to the GWMOMR Conditions of Certification for PEF's CR plant impose four new environmental requirements in order to ensure compliance with FDEP's groundwater criteria in Chapter 62-520, Florida Administrative Code: (a) Percolation Pond Flow Quantification Requirement (Flow Quantification), (b) Freeboard Limitation and Related Studies (Freeboard Limitation), (c) Impoundment Integrity Inspections (Impoundment Integrity), and (d) Groundwater Flow/Contour Mapping (Groundwater Mapping).

The wastewater generated at the CR plant site from the coal units is treated and then flows into a Percolation Pond system. The system is designed to allow treated wastewater effluent to filter or percolate slowly into the ground. The pond acts as a holding facility while gravity allows the treated wastewater to percolate through the soil or other unconsolidated medium into the local water table, usually the surficial aquifer. Freeboard Limitation is the elevation difference between the processed wastewater in the pond and the lowest point of the pond embankment prohibiting overflow. Impoundment Integrity Inspections are done to ensure that the entire body of wastewater is confined within the percolation pond. Finally a Groundwater Mapping is a mapping technique used to depict valleys and hills, and the steepness of slopes. It is a common method used to study an ocean, a river, or a pond to present the vertical features in measurable form and their horizontal positions.

To comply with Flow Quantification requirement, PEF needs to quantify wastewater flow to the CR Units 4 and 5 industrial wastewater percolation basin system. Consequently, the Company needs to install flow monitoring devices within 240 days of the Final Order, unless the FDEP grants an extension of time.⁴ PEF evaluated two flow monitoring options: (1) installing three new magnetic flowmeters and (2) installing a new sump and pumping system. Labor costs, equipment costs and total project costs vary depending on the flow monitoring option selected. Each option requires subsurface excavations and installations below the normal water table. Based on soil analyses, the Company selected the three magnetic flowmeters option since it was the lower cost and simpler alternative.

With respect to the Freeboard Limitation, PEF needs to meet new limitations on the freeboard capacity of the CR facility's industrial wastewater percolation basins.⁵ The Company

⁴ The Final Order was issued August 1, 2012, see Exhibit 2 of the Petition. The extension condition is addressed in Attachment H of the Petition, Sect. II. 9, at p. 12.

⁵ See Exhibit 2, Attachment H of the Petition, Sect. III. A. 3, at p. 14.

must ensure that percolation basins are operated at a level to maintain specific freeboard requirements except after rainfall events exceeding the 25-year, 24-hour storm event. Additionally, the basins are required to have the capability to hold all industrial wastewater as well as rainfall from a 25-year, 24-hour storm event without discharging to surface waters. PEF notes that no capital projects are anticipated to meet this limitation at CR facility. The Company's basin inspection started in January 2013. The Company's basin assessment and final report are expected to be completed by February 15, 2015. Through an RFP process, PEF has selected a contractor to provide engineering support. RFPs for other types of work required have not been submitted, hence other specific entities for work other than engineering support have not yet been selected.

To satisfy the Impoundment Integrity requirement, PEF must engage qualified personnel to conduct annual inspections of impoundment integrity. PEF will use a contractor to perform the 2013 impoundment integrity inspection and related services, but has not decided whether future inspections will be performed by PEF or a third party.

To meet the Groundwater Mapping criteria, PEF must provide FDEP with groundwater contour maps and groundwater flow analyses utilizing data from wells associated with PEF's ash storage facility. The contour maps and groundwater flow analyses are to be summarized in an annual report generated, signed and sealed by a Florida registered professional geologist or professional engineer.⁶ A contractor will perform groundwater flow/contour mapping services to satisfy this requirement. The contractor will collect groundwater monitoring data semi-annually using existing wells associated with the Crystal River ash storage area, perform analysis, and submit the results in an annual report to the FDEP.

By its Petition, PEF notified the Commission that it will incur consultant expenditures associated with the activities to meet the Freeboard Limitation, Impoundment Integrity and Groundwater Mapping criteria discussed above. To ensure that the costs incurred are prudent and reasonable, the Company will identify qualified contractors and, when appropriate, will use competitive bidding.

The estimated costs of the petitioned GWMOMR Compliance Program are presented in Exhibit 1 of the Petition which is confidential. These costs appear reasonable based on staff's review. If the Petition is approved by the Commission, the actual costs associated with the program will be evaluated with particularity in the ECRC docket along with the progress of the program activities.

Staff notes that major portions of the proposed program are on-going annual operation and maintenance (O&M) activities; and all of the capital projects are expected to be completed in 2013. PEF does not seek to change the ECRC factors established for 2013 by Order No. PSC-12-0613-FOF-EL.⁷ Costs incurred in 2013 will be included in the Company's Estimated True-Up filings in the 2013 ECRC docket. PEF will include program costs projected for 2014 and beyond in the appropriate projection filings in the ECRC proceedings. All of these costs will be

⁶ See Exhibit 2, Attachment H of the Petition, Sect. VI. B. 2. a, at pp. 16-17.

⁷ Order No. PSC-12-0613-FOF-EL, issued November 16, 2012, in Docket No. 120007-EI, In re: Environmental cost recovery clause.

subject to audit by the Commission. Table 1 below illustrates the estimated residential monthly rate impacts for a 1,000 kWh bill associated with the proposed new GWMOMR Compliance Program.⁸

Year	(\$/1,000 kWh)
2014	0.002
2015	0.002
2016	0.002
2017	0.001
2018	0.001

PEF proposed that the O&M costs associated with the GWMOMR Compliance Program be allocated to the rate classes on an energy basis, and any resulting capital expenditures be allocated on a demand basis. The Company pointed out that this is consistent with the cost allocation method used for the National Pollutant Elimination System (NPDES) Permit Renewal Requirement Program approved by the Commission.⁹ PEF noted that the GWMOMR addresses similar environmental requirements as the NPDES Permit Requirements such as wastewater percolation pond freeboard capacity limitation and related studies. The Company asserted that it is reasonable to allocate costs that vary with volume of plant production (such as wastewater and groundwater monitoring O&M expenditures) to rate classes on an energy basis. PEF also asserted that it is reasonable to allocate fixed costs such as capital expenditures to rate classes on a demand basis. The Company noted that this is consistent with how similar costs are allocated to the retail rate in base rates. Staff recommends that it is reasonable for PEF to use the same cost allocation method as the one used to allocate the costs of the NPDES Permit Renewal Requirement Program.

Based on the Petition and the Company's responses to discovery, staff recommends that PEF's proposed GWMOMR Compliance Program is not discretionary or voluntary. Instead, it is an essential program that would not be carried out but for PEF's obligation to comply with a government-imposed environmental regulation. The need for this compliance program has been triggered after the Company's last test year upon which rates are currently based. Further, the costs of the petitioned GWMOMR Compliance Program are not recovered through some other cost recovery mechanism or through base rates. Thus, staff recommends that the petitioned program meets the criteria for ECRC cost recovery established by the Commission by Order No. PSC-94-0044-FOF-EI, 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

⁸ See PEF's response to Staff's Second Data Request, No. 9.

⁹ See Order No. PSC-11-0553-FOF-EI, Issued December 7, 2011, in Docket 110007-EI, In re: Environmental cost recovery clause, at p. 11. ("Capital costs for the NPDES project should be allocated to rate classes on a demand basis. O&M costs for the project should be allocated to the rate classes on an energy basis.")

- (c) none of the expenditures are being recovered through some other cost recovery mechanism or through base rates. See *Id.* at page 6

As such, staff recommends that the Commission approve PEF's proposed GWMOMR Compliance Program for ECRC recovery pursuant to Section 366.8255, F.S. Staff also recommends that the O&M costs associated with the proposed program be allocated to rate classes on an energy basis, and the capital costs associated with the proposed program be allocated to rate classes on a demand basis.

Docket No. 120318-EI
Date: April 12, 2013

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. (Murphy)

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.