

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**IN RE: FLORIDA POWER AND LIGHT
COMPANY
TURKEY POINT UNITS 6 & 7
POWER PLANT SITING APP. PA03-45A3**

**DOAH Case No. 09-03575-EPP
DEP OGC Case No. 09-3107**

**MIAMI-DADE COUNTY'S THIRD STATEMENT
AND COMMENTS REGARDING COMPLETENESS OF
THE TRANSMISSION LINE PORTION OF THE APPLICATION**

Pursuant to section 403.5252 (4), Fla. Stat., Miami-Dade County submits this third statement regarding the completeness of the transmission line portion of the application in this matter.¹ Based on analyses of the application, including, without limitation, the second completeness responses provided by FPL on October 1, 2009, by the Miami-Dade County Department of Planning and Zoning (DPZ), the Miami-Dade County Department of Environmental Resources Management (DERM), the Miami-Dade County Public Works Department, and the Miami-Dade County Parks and Recreation Department, Miami-Dade County recommends that the transmission line portion of the application be found incomplete because it fails to provide information needed to enable the County to prepare the report required by section 403.526, Fla. Stat., as to the impact of the proposed transmission line or corridor, including its consistency with all applicable local ordinances, regulations, standards or criteria, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental

¹ The Department of Environmental Protection (DEP) found the transmission portion of the application incomplete in its entirety on August 6, 2009. On August 19, 2009, in response to DEP's determination, FPL provided additional information in an effort to complete the application. The DEP again found the transmission portion of the application incomplete on September 17, 2009. On October 1, 2009, FPL provided its second completeness responses in an effort to complete the application.

TURKEY POINT UNITS 6 & 7
POWER PLANT SITING APP. PA03-45A3
DOAH Case No. 09-03575-EPP
DEP OGC Case No. 09-3107

regulations. Miami-Dade County acknowledges the assertions of DEP and FPL that construction of transmission lines on established rights-of-way is excluded from the definition of “development” as provided in section 380.04 and Chapter 163, Fla. Stat. This argument notwithstanding, in final disposition of the application, the Siting Board is required to consider whether and the extent to which the location of the transmission line corridor and the construction, maintenance, and operation of the transmission line will “be consistent the applicable provisions of local government comprehensive plans, if any,” and “effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, ... and the impact upon the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines.” *Section 403.529 (4) (d) and (e).* Fla. Stat. The Siting Board and the ALJ will rely on Miami-Dade County’s report to provide the information that will enable them to effect this balance. The information the County continues to request is necessary for the preparation of this report pursuant to Section 403.526, Fla. Stat.

Miami-Dade County’s third completeness comments are attached.

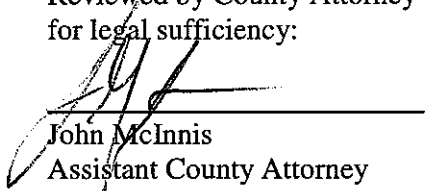
***TURKEY POINT UNITS 6 & 7
POWER PLANT SITING APP. PA03-45A3
DOAH Case No. 09-03575-EPP
DEP OGC Case No. 09-3107***

RESPECTFULLY SUBMITTED

GEORGE BURGESS.
Miami-Dade County Manager
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128
Tel:
Fax:

By: 
Marc C. LaFerrier
Director
Department of Planning and Zoning

Reviewed by County Attorney
for legal sufficiency:


John McInnis
Assistant County Attorney

**TURKEY POINT UNITS 6 & 7
POWER PLANT SITING APP. PA03-45A3
DOAH Case No. 09-03575-EPP
DEP OGC Case No. 09-3107**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Miami-Dade County's Third Completeness Statement and Comments has been furnished by _____ U.S. mail _____ facsimile XX electronic mail **ONLY** this 22 day of October, 2009, to:

Peter Cunningham, Esq.
Carolyn Raepple, Esq.
Virginia Dailey, Esquire
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, FL 32314
peterc@hgslaw.com
craepple@hgslaw.com
vdailey@hgslaw.com
cc: gails@hgslaw.com

Sam Goren, Esq.
Michael D. Cirullo, Jr., Esquire
Goren, Cherof, Doody, Ezrol
South Florida Regional Planning Council
3099 E. Commercial Blvd., Suite 200
Fort Lauderdale, FL 33308
sgoren@cityatty.com
mcirullo@cityatty.com

Michael S. Tammaro, Senior Attorney
Florida Power and Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
michael.tammaro@fpl.com

Julie O. Bru, Esquire
City of Miami, City Attorney
444 SW 2 Avenue, Suite 945
Miami, Florida 33130
JOBru@miamigov.com
Vmendez@miamigov.com

Jennifer Brubaker, Asst. Gen. Cnsl.
Public Service Commission
2450 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
jbrubake@psc.state.fl.us

Toni L. Sturtevant, Asst. Gen. Cnsl
State of Florida Department of
Environmental Protection
3900 Commonwealth Blvd, M.S. 35
Tallahassee, FL 32399-3000
toni.sturtevant@dep.state.fl.us

Matthew G. Davis, Asst. Gen. Cnsl
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
matthew.davis@dca.state.fl.us

Jimmy L. Morales
John Herin, Esquire
City of Doral, City Attorney
Stearns Weaver Miller Wessler Alhadeff
& Sitterson, PA
150 West Flagler, Suite 2200
Miami, Florida 33130
jmorales@stearnsweaver.com
jherin@stearnsweaver.com

***TURKEY POINT UNITS 6 & 7
POWER PLANT SITING APP. PA03-45A3
DOAH Case No. 09-3575-EPP
DEP OGC Case No. 09-3107***

Emily Norton, Asst. Gen. Cnsl
Fish and Wildlife Conservation Comm.
620 S. Meridian Street
Tallahassee, FL 32399-1600
emily.norton@myfwc.com

Kimberly Menchion, Asst. Gen. Cnsl
Dept. of Transportation
605 Suwannee Street, MS 58
Tallahassee, FL 32399-0450
Kimberly.Menchion@dot.state.fl.us

Ruth Holmes, Asst. Gen. Cnsl.
South Florida Water Mgt. District
3301 Gun Club Road
West Palm Beach, FL 33406
rholmes@sfwmd.gov

Elizabeth M. Hernandez, Esquire
City of Coral Gables, City Attorney
405 Biltmore Way
Coral Gables, Florida 33134
ehernandez@coralgables.com

Lawrence Feingold, Interim City Attorney
City of South Miami
6130 Sunset Drive
South Miami, Florida 33143
aslanf@aol.com

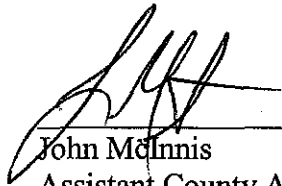
Johanna Gamboa Moas, Esquire
Town of Medley, Asst. Town Attorney
7777 NW 72 Avenue
Medley, Florida 3366
jgmoas@townofmedley.com

Cynthia A. Everett, PA
Village of Pinecrest, City Attorney
7700 N. Kendall Drive, Suite 703
Miami, Florida 33156
cae@caeverett.com

Matthew Pearl, Esquire
Office of the City Attorney
City of Homestead
Weiss, Serota, Helfman, Pastoriza, Cole, &
Boniski, PL
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
mpearl@wsh-law.com

Regine Monestime, Esquire
City of Florida City, City Attorney
The Monestime Firm, PA
909 North Miami Beach Boulevard
Suite 501
North Miami Beach, Florida 33162
reginemonestime@bellsouth.net
reginemonestime@floridacity.gov

Eve A. Boutsis, Esquire
Village of Palmetto Bay, City Attorney
Figueredo, Boutsis and Montalbo, PA
18001 Old Cutler Road, Suite 556
Palmetto Bay, Florida 33157
eboutsis@fbm-law.com



John McInnis
Assistant County Attorney

MIAMI-DADE COUNTY'S THIRD STATEMENT OF COMPLETENESS

COMMENTS FOR THE TRANSMISSION LINE PORTION OF THE FPL SITE CERTIFICATION APPLICATION – TURKEY POINT UNITS 6 & 7, OCTOBER 15, 2009

The below completeness comments are in response to the *Turkey Point Units 6 & 7 Second Completeness Responses – Transmission Lines* document submitted by FPL on October 1, 2009. All comments included in this document apply only as they pertain to the transmission line portion of the application. All comments regarding the same or similar questions as they pertain to the site certification application for the power plant will be addressed separately as provided in the PPSA.

The information provided in FPL's Second Completeness Responses for the transmission lines is not sufficient in comprehensiveness of data or in quality of information to allow an evaluation of the project with the nonprocedural requirements of Miami-Dade County, including Chapter 24, Miami-Dade County's Environmental Protection Ordinance, nor is it sufficient to allow Miami-Dade County to prepare the reports required by s. 403.526. Miami-Dade County (the County) acknowledges that permits, including local environmental permits, will be issued by FDEP pursuant to the PPSA. However, while the PPSA provides for a centrally coordinated state and local permitting process, that process includes the participation of affected agencies, and requires agency reports with an evaluation of the project's consistency with non-procedural regulations, standards, and criteria of local governments.

The County does not agree with statements contained in FPL's Second Completeness Responses as they relate to FPL's interpretation of the application of Miami-Dade County Code. FPL's assertion is incorrect that the County's request for information described as part of a Comprehensive Environmental Impact Statement (CEIS) pursuant to Chapter 24 is strictly procedural. The County has been requesting these data and studies of the project related impacts to fully evaluate the proposed project pursuant to the non-procedural requirements of the Code of Miami-Dade County, which include protection of ground and surface waters, protection of rare, threatened, and endangered species and their habitat, the requirement to maximize preservation of existing natural resources, and a requirement to avoid and minimize adverse environmental impact, prior to consideration of mitigation as compensation for project impacts.

The following comments are referenced by number as stated in the above cited document.

MD-01 Item Determined Complete with Second Completeness Responses – 8/20/09.

MD-02 Item Determined Complete with Second Completeness Responses – 8/20/09.

MD-03 Item Determined Complete with Second Completeness Responses – 8/20/09.

MD-04 See response to MD-15.

MD-05 FPL's response states that it expects to perform detailed surveys of protected vegetation and wildlife species along the selected right-of-way within the certified corridor post certification. However, this information is required at this time in order to properly evaluate the proposed corridor and options for siting the right-of-way. This

information is necessary to evaluate conformance with non-procedural regulations, standards, and criteria of the Code of Miami-Dade County, which include protection of rare, threatened, and endangered species and their habitat, the requirement to maximize preservation of existing natural resources, and a requirement to avoid and minimize adverse environmental impact, prior to consideration of mitigation as compensation for project impacts. To the extent that additional information is not provided, the County will proceed with review of available information and if appropriate, may recommend conditions of certification to assure compliance with regulations, requirements and criteria of section 24-48(3), Code of Miami-Dade County.

In addition, the County notes that the application does not include a 2005 update to the 1990 Southwest Biscayne Bay Advanced Identification vegetation map (EPA 1994) that was completed by staff from the USFWS with assistance from County staff which included extensive ground-truthing efforts. The County believes this information should be included with the application and available for use by all reviewing agencies.

MD-06 Completeness of this item will be required under evaluation of the power plant portion of the site certification application.

MD-07 FPL's Second Completeness Responses state that "The monitoring plan in SCA Appendix 10.7.1.3 provides that mitigation will be provided if there are impacts to the crocodiles or their habitat." The County reiterates that the application does not sufficiently define the extent to which these resources are likely to be impacted.

MD-08 FPL has not provided the additional information regarding project related impacts on rare, threatened and endangered species and their habitat as requested.

MD-09 FPL has not provided the additional information regarding project related impacts on the indigo snake and its habitat as requested.

MD-10 The County does not agree with FPL's assertion that the requested information is premature because the final locations of the transmission lines have not yet been selected. Chapter 24-48.4 of the County Code requires that proposed projects maximize preservation of existing natural resources, and that proposed adverse environmental impacts must first be avoided and minimized, prior to considering mitigation to compensate for unavoidable impacts. The application and completeness responses do not contain details of the extent of proposed project impacts on Natural Forest Communities; therefore, it is impossible to determine whether the proposed project will satisfy the requirements of section 24-48.4.

MD-11/MD-12 The requested information was not provided. Notwithstanding FPL's position that the request is outside the scope of a completeness request, the County reiterates its assertion that the requested information is necessary to enable Miami-Dade County to evaluate the proposed transmission line corridor based upon factors that include, without limitation, the potential adverse and cumulative adverse environmental impacts of the proposed work, pursuant to the requirements of section 24-48.3, Code of Miami-Dade County.

MD-13/MD-14. The requested information was not provided. Notwithstanding FPL's position that the request is outside the scope of a completeness request, the County reiterates its assertion that the requested information is necessary to enable Miami-Dade County to evaluate the proposed transmission line corridor based upon factors that include, without limitation, the hydrology and wetlands habitats, the potential adverse and cumulative adverse environmental impacts of the proposed work to hydrology and wetlands habitats, pursuant to the requirements of section 24-48.3, and 24-48.4 Code of Miami-Dade County. The obligation to improve sheet flow pursuant to condition 17 of Resolution Z-56-07 is currently in force and is separate from the obligation to grant flowage easements. Furthermore, FPL has already provided mitigation plans addressing the impact of the power plant.

MD-15 FPL has not provided the requested information to adequately evaluate secondary impacts of the proposed project on protected resources within county owned Environmentally Endangered Lands.

MD-16 Item Determined Complete with Second Completeness Responses – 8/20/09.

MD-17 Item Determined Complete with Second Completeness Responses – 8/20/09.

MD-18 Please see comments for MD - 11/12

MD-19 The requested information is necessary and is not premature notwithstanding that the final location of the transmission lines have not yet been selected. The County evaluates projects through a comprehensive approach. Although transmission corridors are allowed in all land use categories, the siting of utility facilities is determined by the compatibility criteria found in Policies LU-4A, LU-4C and LU-4D of the Comprehensive Development Master Plan (CDMP). These policies speak to compatibility of uses, the protection of the health, safety and character of neighborhoods, and the use of design solutions. FPL's proposed eastern corridor along a high density growth corridor of the County creates potential compatibility issues, the evaluation of which is dependent on pole location and design. The County cannot determine the extent to which compatibility is an issue in its agency report unless the proper information is received. If exact locations cannot be given, as an alternative the County requests that the applicant provide the criteria used for pole placement so that County staff can better determine whether the proposed transmission line corridor will satisfy the policies of the above-cited provisions of the CDMP.

MD-20 The requested information is necessary and is not premature notwithstanding that the final locations of the transmission lines have not yet been selected. The County is responsible to ensure that proximate land uses are compatible. Policy LU-4A of the County's CDMP specifies that County must consider factors such as noise, lighting, shadows, glare, vibration, access, traffic, parking, height, bulk, scale of architectural elements, landscaping, buffering and safety to determine land use compatibility and consistency with the CDMP. FPL shall provide sufficient information to enable the County to determine consistency with Policy LU-4A of the CDMP. FPL does not own right-of-way along significant portions of US1, as appropriately indicated by FPL in Figure MD-02, Available FPL Rights-of-Way or Easements. Land use activities

occurring in public rights-of-way and public easement areas must be compatible with the policies and text of the CDMP and other approved County plans to improve and revitalize this important transit corridor. Design details, including pole placement, may significantly impact multiple aspects of existing County infrastructure, public and private facilities, and public right-of-way and are critical to the evaluation of this issue.

MD-21 The requested information was not provided in this response. Policy LU-4D of the CDMP requires the incorporation of design solutions where incompatible uses are permitted. This policy is a mandate to incorporate considerations of public health, safety, and welfare with respect to land use allowances within the County. The applicant must at a minimum detail the type of design solutions previously used and available for use along the east corridor so that the County can evaluate their appropriateness.

MD-22 The requested information was not provided in this response. This information is required in order to allow the County to prepare the report required pursuant to Section 403.526(2)(a)5 F.S. Information regarding the impact on pedestrian and transit use is important to several of the area plans including the County's, greenways network and transit corridor. Considering that the proposed transmission corridor is used for pedestrian and bike travel, as well as the County's transit facilities, the Applicant needs to address the impact of the pole placement on the surface facilities and the pole heights and EMF impacts on the electrical/mechanical aspects of the County's transit system.

MD-23 The requested information was not provided in this response. Policy LU-4C of the adopted County CDMP establishes that residential neighborhoods shall be protected from intrusion by uses that would disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood. The applicant's proposed eastern transmission line corridor would traverse residential neighborhoods and impact higher density structures envisioned in the adopted urban centers such as the Downtown Kendall Urban Center (DKUC). The County acknowledges that the Florida Department of Environmental Protection and the Public Service Commission regulate and enforce standards related to the electric and magnetic fields (EMF) of electrical transmission and distribution lines and substation facilities. However, the applicant's SCA does not illustrate how those critical public safety regulations will be met through the acquisition of sufficient right-of-way, installation of adequate safety design features, and the placement of proposed high voltage electric lines through the relatively constrained corridor of US1. This information is necessary in order to determine consistency with the adopted County CDMP Policy LU-4C.

MD-24 The requested information was not provided in this response. FPL is incorrect in its assertion that the cited Code reference does not apply to the transmission lines. Article XXXIII (I) of the code, permits mixed-use development along US-1 and the Busway. Much of this development is encouraged along the island located between US-1 and the Busway. Yet this is the area with the least available amount of right of way. The DKUCD calls for mixed-use buildings ranging in height from 6 to 10 stories and requires minimal setbacks to accommodate the transmission lines (Sec. 33-284.55 of the Code.) The proposed FPL transmission corridor alignment may also impact the areas within the Fixed Guideway Rapid Transit Zones (RTZ) along US-1 and around each of the Metrorail Stations on US-1. The RTZ provides for mixed-use development at and in the vicinity of the stations. This also happens to be the

narrowest portion of the US-1 corridor where it is unclear how the rights of way will be impacted. Location of poles along the US-1 corridor through the various urban centers may greatly impact the type and density of development in this area and may be contrary to the objectives of the County. Therefore, the requested information is needed and is necessary to determine compliance with the impacted urban center regulating plans.

MD-25 Item Determined Complete with Second Completeness Responses – 8/20/09.