

MEMORANDUM

TO: Patty Asseff, Chair
Council Members
Isabel Cosio Carballo, Executive Director

FROM: Samuel S. Goren, General Counsel *SSG*
Michael D. Cirullo, Jr. *MDC*

DATE: April 28, 2016

RE: South Florida Regional Planning Council ("SFRPC") / Florida Power and Light Company, Turkey Point Units 6 & 7, Power Point Siting Application PA-03-45A3, Florida Department of Administrative Hearing (DOAH)

Third District Court of Appeal Case Nos. 3D14-1467, 3D14-1466, 3D14-1465, 3D14-1451 (Lower Case Nos. 09-3575 and 09-3107)

As we have previously advised you, and discussed through our presentation at the April 4, 2016, Council meeting, in July, 2014, Miami-Dade County, City of Miami, Village of Pinecrest and the City of South Miami filed Notices of Appeal to the Third District Court of Appeal, in which they sought review of the final Siting Board Order certifying the two new nuclear units and associated facilities at the Florida Power and Light (FPL) Turkey Point Plant. The Siting Board Order had two main components: (1) certifying the new Units; and (2) certifying the corridor for transmission lines from the new facilities that would extend out, throughout Miami-Dade County from Turkey Point. The appealing local governments sought review of the portions of the Siting Board Order relating to the transmission lines.

1. April 20, 2016 Opinion from the Third District Court of Appeal

On April 20, 2016, the Third District Court of Appeal issued an opinion REVERSING the Final Order of the Siting Board. The appellate court found that the Siting Board erred on multiple different grounds, all related to the certification of the transmission lines. In summary, the appellate court found:

- The Siting Board failed to consider local regulations when certifying the transmission line corridors, including local comprehensive plan and land development regulations, and found that construction of transmission lines are not exempt from local land regulations under the "development exception" for work in rights-of-way since corridors are not rights-of-way.
- The Siting Board erred in concluding that it did not have the authority to require the transmission lines be placed underground. The appellate court did not compel that the transmission lines be placed underground, or decide the merits of the issue. Rather, it

found that the Siting Board was authorized to consider the issue, and ordered the Siting Board to do so (again without ordering a specific decision when it does so).

- Miami-Dade's East Everglades Ordinance was an environmental ordinance, not a zoning regulation. Therefore, ***FPL was required to comply*** with the ordinance, which prohibits the transmission lines in the areas they were certified within the Eastern Everglades without variances. The appellate court also determined that FPL did not obtain those variances, and that under the present facts in the case FPL could not get the necessary variances.

The appellate court reversed the Order and remanded to the Siting Board "for further review consistent with local developmental regulations, comprehensive plans and applicable environmental regulations, as discussed in this opinion."

2. The Stipulation between the SFRPC and FPL

The SFRPC was a party to the underlying certification proceedings, but entered into a Stipulation with FPL on June 4, 2013. As a result, the SFRPC acknowledged no disputed issues of fact or law between it and FPL relating to the certification. However, at the same time, the Stipulation sets forth the SFRPC's support for efforts of affected local governments to have conditions on the certification that they deem important:

[T]his Stipulation is not to be construed by any party in any way inconsistent with the belief of the SFRPC that [] proposed conditions [of local governments] are relevant and deserve review and consideration during the certification process.

Note that while the SFRPC was participating in the certification process prior to entering into the Stipulation, the SFRPC had not taken any position on the proposed corridor locations for the transmission lines due to potential conflicts between the various local governments affected by the location of those transmission lines.

3. Effect of the April 26, 2016 Opinion

As a result of the Third District Court Opinion, the certification now returns to the Siting Board for further review on the issues raised in the opinion. Thus, although the Order was reversed, the matters to be reviewed by the Siting Board are limited to the three issues discussed in the opinion and which formed the basis for the reversal. Resolving these issues may require further factual determinations, so it is possible that the matter could return to the Administrative Law Judge to conduct further hearings and make additional findings of fact and recommendations on the certification of the transmission lines.

It is our opinion that the reversal ***does not affect*** the Stipulation between the SFRPC and FPL. As indicated above, the SFRPC did not involve itself in the transmission line portion of the certification, and the appellate court did not reverse on any issues relating to the Physical Plant portion of the certification, which formed the premise for the Stipulation between the SFRPC and FPL.

Note that the Opinion ***is not final at this time***. A Motion for Rehearing can be filed ***before May 5, 2016***. If none is filed, the opinion will then become final. However, if a Motion for Rehearing is filed, then the opinion will not be final until the appellate court decides the motion. At this time, it does not appear that the Florida Supreme Court would have jurisdiction to review the decision of the Third District Court of Appeal, but a decision on a Motion for Rehearing could provide such jurisdiction if the appellate court were to certify questions of great public importance to the Florida Supreme Court.

Finally, at the April 4, 2016, Council meeting, the Council adopted a motion to continue to participate in the dialogue and conversations on the certification of the Turkey Point reactors, including on the issue of sea level rise. Given the current posture of the certification in light of the Third District Court of Appeal opinion, it may be appropriate at this time to request representatives of Miami-Dade County and FPL to attend a future Council meeting and update the Council.

Our office will continue to monitor the progress of this matter and will update you as warranted. In the meantime, should you have any questions or require any additional information, please contact our office.

Environment

April 20, 2016 1:43 PM

Court tosses plans for FPL's Miami power lines, finds Scott and Cabinet erred

Appeals court finds governor, cabinet failed to consider development rules in Miami Judges say the state could have ordered FPL to bury the controversial lines State also should have considered county environmental rules protecting Everglades On Wednesday, a Florida appeals court threw out Florida Power & Light's plans for two massive power line corridors running from Turkey Point through southern Miami-Dade County. The designs would differ from this corridor in Broward. Walter Michot Miami Herald Staff



By Jenny Staletovich - jstaletovich@miamiherald.com

A Florida appeals court on Wednesday found [Gov. Rick Scott and his Cabinet erred](#) in approving two massive Florida Power & Light transmission lines cutting through some of Miami-Dade County's most affluent cities and fragile wetlands.

In its ruling, the Third District Court of Appeal found Scott and the Cabinet — acting as the state siting board, which oversees power plants — failed to consider the city of Miami's development rules when it signed off on allowing the utility to string 88 miles of line atop towers standing 80 to 150 feet high. Scott and his cabinet also failed to take into account the damage done to wildlife and Everglades marshes by buildings roads and concrete pads in a corridor that would cross fragile wetlands.

The board also erred, judges said, when it concluded it did not have the authority to order FPL to pay to bury the lines.

The siting board [signed off](#) on the two controversial lines and a backup plan in May 2014 as part of an approval for two proposed new nuclear reactors at Turkey Point. The decision immediately [drew challenges](#) from the county and cities of Miami, South Miami and Pinecrest, which argued the board ignored local rules.

Wednesday's decision to send the order back, said Miami City Attorney Victoria Méndez "is a huge victory for the City in our position against FPL on this issue."

Under the plan, one 230 kilovolt line would stretch along U.S. 1 from Cutler Bay, through Pinecrest, South Miami and Coral Gables to a substation in Coconut Grove. A second 500 kilovolt line would run along the county's western edge. The utility wanted to build the line across Everglades marshes, including inside the park. But the siting board asked FPL to also try to find land that didn't crisscross wetlands.

The ruling effectively puts an end to a wetlands corridor. In reviewing the Everglades corridor, the judges said the siting board failed to consider Miami-Dade County's environmental rules. And even if they had, the court found FPL "presented no competent, substantial evidence," to justify over-riding them.

"The court agreed with the county that the record in this case did not show that FPL's transmission line corridor could satisfy the rigorous environmental requirements," said assistant county attorney Dennis Kerbel.

FPL spokesman Peter Robbins said in an email the utility believed the siting board made a "well-reasoned decision" and was disappointed with the ruling. Company officials were reviewing the opinion, he said, and would be evaluating legal options.

In reviewing the eastern corridor, judges determined that FPL cannot be exempted from local development rules or comprehensive plans drawn up by the cities.

While the decision puts the eastern corridor back in play, it's still not clear what Scott and the cabinet will do. The politically powerful utility has spent \$17 million in campaign contributions to influence politicians and the political process in the last six years. Of that, \$3.9 million went to political committees for Associated Industries and Florida Chamber of Commerce, which then transferred FPL money to the political committees of Scott and Chief Financial Officer Jeff Atwater, Attorney General Pam Bondi and Agriculture Secretary Adam Putnam.

FPL has also given \$805,000 directly to Scott's Let's Get to Work Political Committee and \$50,000 to Bondi's Justice for All political committee.

The board could send the order back to an administrative law judge to correct the mistakes, or make their own decision.

South Miami Mayor Philip Stoddard is hoping the board opts for a rehearing and a decision to bury the lines.

"Putting transmission lines through an urban corridor produces an industrial look and feel that reduces land values," he said. "If you look at the loss in property value, it's considerable and that wasn't taken into account by FPL, the [administrative law judge] or the siting board."

The ruling comes as FPL faces increasing challenges to its operations at Turkey Point. In February, a Tallahassee administrative judge tossed out the state's management plan of troubled cooling canals connected to the plant's two existing Turkey Point reactors, saying state environmental officials failed to adequately address a saltwater plume emanating from the canals and threatening nearby drinking water supplies.

The worsening conditions drew increased scrutiny and calls for better management, including requests for oversight from federal environmental regulators from Rep. Jose Javier Rodriguez, D-Miami, and Miami-Dade Commissioner Dennis Moss.

In a letter to Rodriguez this week, Environmental Protection Agency regional administrator Heather McTeer Toney said officials have met with the county, state and FPL to collect data. Spokeswoman Dawn Harris-Young also said Wednesday EPA officials have so far made one trip to the canals and are planning to return before the end of April.

Reporters Mary Ellen Klas and David Smiley contributed to this report.

Read more here: <http://www.miamiherald.com/news/local/environment/article72863687.html#storylink=cpy>

Environment

April 26, 2016 6:15 PM

Florida cites FPL for Turkey Point cooling canal violations

State says utility has 21 days to provide information on saltwater plume

Clean-up plan must be hammered out in 60 days

FPL has 15 days to set up meeting to address leaks into Biscayne Bay

Matt Raffenberg, FPL's environmental services director, talks about how FPL is working on ways to better control water temperature and salinity in the 39 cooling canals at the Turkey Point power plant. Emily Michot emichot@miamiherald.com

By Jenny Staletovich - jstaletovich@miamiherald.com

Days after issuing a [controversial plan](#) for managing the troubled cooling canal system at Turkey Point, state

environmental officials have cited Florida Power & Light for threatening nearby drinking water supplies and ordered the utility to hammer out a fix to stop the spread of an underground plume of saltwater.



In a notice to FPL officials Monday, the Department of Environmental Protection gave the utility 21 days to provide any information about how the 40-year-old canals have seeped into the Biscayne aquifer over the years and enter negotiations to come up with a clean-up plan. If the two sides fail to agree, the agency may come up with its own measures in 60 days, the notice said.

DEP Water Resource Management Director Frederick Aschauer also warned FPL that a new problem — in March Miami-Dade County [detected canal water](#) in Biscayne Bay — may be violating other state laws, for which the utility may be liable for damages. Aschauer gave FPL 15 days to set up a meeting.

500 feet per year - The pace of movement of the saltwater front west of the cooling canals

The two notices come years late for critics, who say there has long been compelling evidence that the massive one-of-a-kind cooling canal system was degrading water quality far beyond the borders of the nuclear power plant along southern Biscayne Bay.

After DEP signed off on a December 2014 uprating project that expanded power output from the plant's twin reactors, rock miner Steve Torcise, Tropical Audubon and neighboring cities including Miami sued, saying state regulators did too little to address a growing underground plume that has pushed saltwater inland about four miles. An administrative judge in February agreed, faulting DEP for not citing the agency for violations and ordering state officials to redo the plan.

Last week, the Miami Herald reported that FPL knew about super salty canal water pushing inland since at least 2010 when it conducted its own in-house study. The study found adding fresh water alone, a fix FPL sought repeatedly as canals grew hotter after the expansion, would likely worsen the plume.

VIDEO IN ARTICLE

FPL's president says Turkey Point does not endanger our drinking water

Eric Silagy, president and CEO of FPL, defends the company's environmental record in a recent meeting with the Miami Herald Editorial Board

Luisa Yanez Lyanez@MiamiHerald.com

In addition to the cooling canals, FPL is also facing challenges over plans to build two new reactors at the plant. Last week, a Florida appeals court rejected an approval by Gov. Rick Scott and the cabinet of two massive transmission lines. The lines, needed to carry additional power, would run north from the plant along Dixie Highway to Coconut Grove, through South Miami, Pinecrest and Miami. Appellate judges sided with the cities, who fought to have the lines buried and argued they violated local development codes.

In Monday's order, DEP concluded that the 5,900-acre network of canals has contributed to the inland spread of saltwater and have asked for any studies FPL conducted along with any plans for cleaning it up. Spokeswoman Dee Ann Miller on Wednesday could not specifically say how far back the agency was looking, but said the request was intended to ensure DEP has "access to the work already conducted by FPL."

As scrutiny has increased, FPL officials went on the defensive, writing editorials and meeting repeatedly with local agencies. On Wednesday, officials said the utility is working quickly to address the problems and already making progress.

"We take our responsibility to manage the cooling canal system very seriously."

Mike Sole, FPL's vice president of governmental affairs who served as DEP's secretary from 2006 to 2010

"We take our responsibility to manage the cooling canal system very seriously," said Mike Sole, FPL's vice president of governmental affairs who served as DEP's secretary from 2006 to 2010.

A well dug east of the canals to remove salty water with elevated levels of ammonia and phosphorus that could harm marine life has already helped return water to normal bay conditions in two of four locations, Sole said. FPL also is considering filling one canal at Turtle Point and still looking at options at a second site.

The utility, which is also under orders to come up with a clean-up plan for Miami-Dade County by May 15, is nearly done modeling a system of "extraction wells" to the west of the canals, he said. The wells would remove salty water and pump it into a 3,000-foot deep injection well away from drinking water supplies. Over time, as the utility also adds up to 14 million gallons of day of brackish water from the Floridan aquifer, the super salty plume should shrink and stop pushing the saltwater front west, he said.

"The challenge we've had over the 40-year operation is because it's a closed loop...[the canals were] slowly becoming more and more hypersaline and it is that hypersalinity that is the focus we need to correct and fix to insure continued safe operation," he said.

But focusing on the hypersaline water and not addressing the forward edge of the front may not fix the problem fast enough, said engineer Ed Swakon, who Torcise hired to investigate the plume because it also threatens

mining operations. Hypersaline water has spread just two miles from the plant, while the salt front extends nearly four miles.

“It’s the western edge that’s consuming the aquifer. It’s the one pushing out in front and taking potable water and making it non-potable.”

Ed Swakon, president of EAS Engineering

“It’s the western edge that’s consuming the aquifer. It’s the one pushing out in front and taking potable water and making it non-potable,” he said. “We want the movement to the west stopped.”

Problems, which escalated over the summer of 2014 when high temperatures forced the plant twice to power down reactors, have also caught the attention of state lawmakers. South Florida lawmakers have called for a joint meeting of senate committees for public utilities and environmental matters.

“Changes occurring in Biscayne Bay and the Biscayne Aquifer suggest that legislative scrutiny of the cooling pools and their impact on the water supply of those in Miami-Dade County and the Florida Keys is warranted,” Sen. Anitere Flores, R-Miami, who called for the meeting, said in a statement.

The meeting begins at 4 p.m. Friday at Miami Dade College’s Homestead campus.

Read more here: <http://www.miamiherald.com/news/local/environment/article74044347.html#storylink=cpy>