

**STATE OF FLORIDA  
SITING BOARD**

IN RE: FLORIDA POWER & LIGHT )	
TURKEY POINT UNIT 5 POWER PLANT )	OGC CASE NO. 03-2062
SITING APPLICATION NO. PA03-45 )	DOAH CASE NO. 03-4391EPP

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**FINAL ORDER OF CERTIFICATION**

On November 18, 2004, an administrative law judge with the Division of Administrative Hearings (“DOAH”) submitted his Recommended Order in this site certification proceeding. The Recommended Order indicates that copies were served upon counsel for Florida Power & Light Company (“FPL”), Florida Department of Environmental Protection (“DEP”), Miami-Dade County (“County”), South Florida Water Management District (“District”), and other designated state and regional agencies. A copy of the Recommended Order is attached as Exhibit A. The matter is now before the Governor and Cabinet, sitting as the “Siting Board,” for final agency action under the Florida Electrical Power Plant Siting Act (“PPSA”) embodied in §§ 403.501-403.518, Florida Statutes.

**BACKGROUND**

FPL, the largest electric utility in Florida, serves more than four million customers and a population of eight million people in 35 counties along the eastern seaboard and the southern and southwestern portions of the State of Florida. FPL operates various electrical power plants in Florida, including its existing Turkey Point Power Plant in Miami-Dade County (the “Plant”). The Plant site, approximately 11,000 acres in size, is located south of Miami and east of Homestead in an unincorporated area of the County. The nearest residential neighborhood is over five miles away from the Project site.

The existing Units 1 and 2 at the Plant site are fossil fuel-fired steam generating units, with an electrical output of approximately 400 megawatts each. These two units burn residual fuel oil and/or natural gas. The existing Units 3 and 4 at the Plant site are nuclear-fueled steam electric generating units, with a capacity of approximately 700 megawatts each. The Plant site has a current total generating capacity of approximately 2,200 megawatts.

This proceeding involves an application by FPL for the addition of a new combined-cycle generating unit at the existing Plant site (“Unit 5” or the “Project”). The new Unit 5 will consist of four combustion turbines, four heat recovery steam generators, and a steam turbine having a

total generating capacity of approximately 1,150 megawatts. The primary fuel for Unit 5 will be natural gas, and ultra-low-sulfur light oil will be used as a backup fuel. The Project site encompasses approximately 90 acres of land located north of existing Units 1-4 within the current Plant site. The Florida Public Service Commission issued an order pursuant to § 403.519, Florida Statutes, determining the need for the Unit 5 Project as proposed by FPL.

#### DOAH PROCEEDINGS

In April of 2004, Administrative Law Judge, J. Lawrence Johnston (the “ALJ”), held a land use hearing pursuant to subsections 403.508(1) & (2) of the PPSA. On May 7, 2004, the ALJ entered a Recommended Land Use Order concluding that the Project is consistent and in compliance with the applicable land use plans and zoning ordinances of the County. The ALJ’s Recommended Land Use Order was subsequently approved in its entirety by the Siting Board.

On July 14, 2004, DEP issued its Staff Analysis Report on the Project incorporating the reports of other reviewing agencies and recommending certification of Unit 5, subject to certain Conditions of Certification. On September 1, 2004, a Prehearing Stipulation addressing the Unit 5 certification issues was filed with DOAH on behalf of FPL, DEP, the County, the District, the Florida Department of Transportation, and the Florida Department of Community Affairs (the “Parties”). The Parties to this Prehearing Stipulation supported certification of the Project, subject to appropriate Conditions of Certification. The appropriate Conditions of Certification were agreed to by all of the Parties, except for the County. The County contended that the Conditions of Certification in the Prehearing Stipulation needed to be revised and supplemented.

On September 20-21, 2004, the ALJ held a duly-noticed site certification final hearing on the Project as required by § 403.508(3) of the PPSA. The purpose of the certification hearing was to receive evidence on the issue of whether the Project is entitled to site certification pursuant to the criteria set forth in §§ 403.502 of the PPSA. Among the evidence presented by the Parties at the certification hearing was a Joint Exhibit 1 containing revised and updated Conditions of Certification agreed to by the Parties. However, the County asserted at the commencement of the certification hearing that the Conditions of Certification in Joint Exhibit 1 should be supplemented. The County proposed that FPL be required to perform more groundwater modeling to further assess the impact on existing legal users of FPL’s proposed withdrawals from the Upper Floridan Aquifer.

On November 18, 2004, the ALJ entered a Recommended Order in this proceeding. The ALJ found that FPL's proposed withdrawals from the Upper Floridan Aquifer will not adversely impact any existing legal users, including the County, and thus no additional groundwater modeling is required. The ALJ also concluded that, based on the evidence presented at the final hearing, FPL had demonstrated that the Project meets all the criteria for certification under the PPSA. The ALJ ultimately recommended that the Siting Board grant final certification of the Unit 5 Project, subject to the Conditions of Certification contained in Joint Exhibit 1.

#### CONCLUSION

The record is devoid of any objections to site certification of FPL's Unit 5 Project by any state, regional, or local agency, except for the County. Furthermore, no Exceptions to the Recommended Order of certification were filed by any of the Parties or other entities. Consequently, the County failed to object to the portions of the ALJ's Recommended Order rejecting the County's contention that FPL should be required to perform more modeling to further assess the impact of the proposed withdrawals from the Upper Floridan Aquifer. Based on a review of the record in this proceeding, the Siting Board concludes that site certification of the Unit 5 Project meets the criteria established in Section 403.502 of the PPSA, and that site certification should be approved.

It is therefore ORDERED:

- A. The ALJ's Recommended Order of certification (Exhibit A) is adopted in its entirety and incorporated by reference herein .
- B. Certification of the location, construction, and operation of the Unit 5 Project, as described in FPL's certification application and in the evidence presented at the final hearing, is APPROVED, subject to the Conditions of Certification set forth in Joint Exhibit 1, which are incorporated by reference herein.
- C. Authority to assure and enforce compliance by FPL and its agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP, except that any proposed modification to burn a fuel other than natural gas and/or ultra-low sulfur light oil shall be reviewed by the Siting Board.

Any party to this proceeding has the right to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of

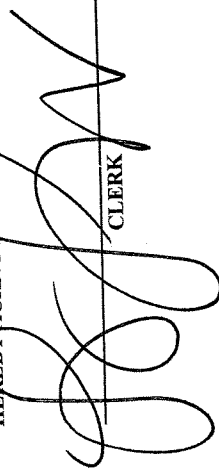
General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 7<sup>th</sup> day of February 2005, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on February 1<sup>st</sup>, 2005.

THE GOVERNOR AND CABINET  
SITTING AS THE SITING BOARD

  
THE HONORABLE JEB BUSH  
GOVERNOR

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.

  
CLERK

2/8/2005  
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Certification Order has been sent by United States Postal Service to:

James V. Antista, Esquire  
Florida Fish and Wildlife  
Conservation Commission  
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Ann Cole, Clerk and  
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and by hand delivery to:

Scott A. Goorland, Esquire  
Department of Environmental Protection  
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Mail Station 35  
Tallahassee, FL 32399-3000

this 8<sup>th</sup> day of February, 2005.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
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Assistant General Counsel

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