

October 26, 2010

Don Hambrick, Senior Project Manager
U. S. Department of the Army
Jacksonville District Corps of Engineers
Gordon.a.hambrick@usace.army.mil
850/763-0717 ext. 25

Douglas Bruner, Project Manager
Nuclear Regulatory Commission
Douglas.Bruner@nrc.gov
Levy.COLEIS@nrc.gov
800/368-5642 and 301/415-2730
<http://www.federalregister.gov/articles/2010/08/13/2010-20005/notice-of-availability-of-the-draft-environmental-impact-statement-for-the-combined-licenses-for>

Re: Request for 60-day extension to submit comments and preliminary comments on Draft EIS (DEIS) of Proposed Combined Licenses for Levy Nuclear Plant Units 1 and 2 Docket Nos. 52-029 and NRC-2008-0558
Project No. SAJ-208-00490 (IP-GAH)

Dear Project Managers Hambrick and Bruner:

The purpose of this letter is to submit preliminary comments on the proposed Combined Licenses for Levy Nuclear Plant Units 1 and 2 (“project”) referenced above and to request a 60-day extension of time to submit more detailed comments on the proposed project referenced above. I have a visual impairment which constitutes a disability pursuant to the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12131) and ADA 28 CFR Parts 35.101, 35.104 and 35.149.

My visual impairment prevented me from attending the public meetings that were held for the proposed project to obtain public comments as described in the Notice for the proposed project published on Friday, August 13, 2010 in Vol. 75, No. 158, pages 49539-49540 of the Federal Register. My visual impairment also has prevented me from being able to complete a thorough review of the DEIS for the proposed project and to prepare comprehensive comments to submit by the deadline, therefore necessitating my request for accommodation by providing me a 60-day extension of time to submit detailed comments on the proposed project. The ADA prohibits discrimination against people with physical disabilities, including visual impairment. See ADA 28 CFR Parts 35.101, 35.104 and 35.149.

PRELIMINARY COMMENTS:

1. INCOMPLETE DEIS - The DEIS for the proposed project provides incomplete and limited information that does not allow submittal of comprehensive comments.
2. PRACTICABLE ALTERNATIVES - Corps' regulation **40 C.F.R. 230.10(3)** specifies that, unless there is no "practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem..." the discharge of dredge and fill material is not permitted for an activity that is not water dependent. The rule further establishes that "practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise." The rule also provides, "In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.").

The production of energy/electricity is not a water-dependent activity. For example, comparable amounts of energy/electricity could be produced by roof-top solar installed in the metropolitan areas that would be using the energy proposed for production at the rural Levy County project site panels – without dependency of project-site water.

Because the DEIS lacks a meaningful discussion of practicable alternatives, the proposed project should be denied. Considering the significant size of the proposed project and the large adverse impacts to wetlands and potential adverse impacts to federally endangered and threatened species, a detailed analysis of practicable alternatives must be provided, in accordance with Regulatory Guidance Letter, No. 93-2, "Guidance on Flexibility of the **404(b)(1) Guidelines and Mitigation Banking**" 11 (August 23, 1993), which provides in relevant part that "The amount of information needed to make such a determination and the level of scrutiny required by the [Section 404(b)(1) Guidelines] is commensurate with the severity of the environmental impact and the scope/cost of the project." It also provides that "[g]enerally, as the scope/cost of the project increases, the level of analysis should also increase." The rules require detailed analysis of alternatives for this proposed project before further consideration of this application.

In this case, "practicable alternatives" clearly are available. For example, the Florida Solar Energy Center promotes roof-top solar as an environmentally sound alternative to producing electricity.

3. AVOIDANCE AND MINIMIZATION – Considering practicable alternatives that are NOT water dependent also should have been addressed in the DEIS as an initial step for avoidance and minimization of adverse impacts.
4. MITIGATION – The subject of mitigation cannot be broached when there has been no determination made that all "potential impacts have been avoided to the maximum extent practicable. Only at that point are unavoidable impacts then mitigated to the extent appropriate and practicable by requiring steps to minimize impacts, and finally, compensate for aquatic resource values." See the Memorandum of Agreement (MOA) between EPA and Corps dated November 15, 1989.

Disregarding the inadequacies above, the DEIS does not appear to include a detailed mitigation plan. The DEIS for the proposed project will not be complete until such time as a detailed and complete mitigation plan has been developed and submitted for review as part of the EIS review process. Please note that the mitigation plan should include extensive hydrologic

data pertaining to the natural and existing hydroperiods of the proposed project site, in addition to wetlands offsite that the project may adversely affect.

5. **DIRECT, INDIRECT AND CUMULATIVE IMPACTS** - NEPA regulations provide that all effects, including direct and indirect effects, shall be considered by the Corps. **40 C.F.R. 1508.8**. All cumulative impacts also shall be considered. **40 C.F.R. 1508.7**. The DEIS fails to analyze all of the adverse direct, indirect and cumulative impacts that would result from this proposed project. For example the DEIS fails to confirm that comprehensive field evaluations were conducted of the proposed site and adjacent site, where the groundwater wells were relocated, to identify all potential archeological sites and discuss the direct, indirect and cumulative effects of the proposed project on those sites.

6. **ENDANGERED AND THREATENED SPECIES** – The DEIS failed to consider adverse impacts on and un-permitted “takings” of federally endangered and threatened species (“federally listed species”) from off-site, direct, indirect and cumulative impacts from the proposed project. For example, based on information in the DEIS, it appears that the applicant did not even conduct site-specific surveys or provide species-specific data for federally listed species that occur within or utilize the proposed transmission-line corridors. Therefore, any biological assessment prepared in accordance with **Section 7 of the Endangered Species Act (ESA)** could not be valid.

Based on the type of wetlands on and surrounding the proposed project site and knowledge of habitat surrounding the proposed project, examples of un-permitted “takings” of federally listed species resulting from the proposed project could include wood storks, manatees and sea turtles, constituting a violation of the "takings" prohibition of **Section 9 of the ESA**.

7. **SIGNIFICANT DEGRADATION OF THE WATERS OF THE UNITED STATES** – The DEIS of the proposed project is inadequate in its discussion of whether and to what extent this proposed project will "cause or contribute to significant degradation of the waters of the United States," as required by **40 C.F.R. 230.10(c)**. Federal law requires that the cumulative, direct, and indirect impacts of this proposed activity, and its concomitant loss of wetlands and wetland function, on this nationally vital watershed, including the aquifer, must be analyzed comprehensively.

The dewatering of the area resulting from the proposed project also would result in adverse impacts to upland wildlife habitat in surrounding uplands, but those impacts were not addressed. The DEIS also provides no discussion of how wetlands and other wildlife habitat surrounding the proposed site would be fragmented by this proposed project and how the resulting fragmentation would affect the function of those wetlands and other wildlife habitat. The DEIS fails to address how the remaining wetlands could continue to serve other wetlands functions such as provision of water purification.

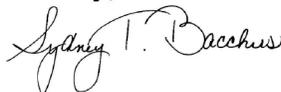
8. **PUBLIC INTEREST REVIEW** - Regarding the Public Interest Review required by **33 C.F.R. 320.4**, the DEIS appears to have the following inadequacies

- a. How does this project serve the public interest considering that other practicable alternatives are available that are not water-dependent and would result in negligible wetland and other environmental impacts?

- b. Does the production of energy from the proposed nuclear power plant units, instead of by less environmentally destructive, water-intensive alternatives serve the public interest?
- c. The value of conserving the wetlands that would be destroyed must be evaluated.
- d. The direct, indirect and cumulative impacts of the proposed project on the floodplain must be evaluated.
- e. The full extent to which the proposed project would degrade water quality in the area must be evaluated.
- f. There is no discussion of how the general welfare of the people of the United States would be improved by the proposed project.
- g. A detailed discussion describing the public need for this project is not provided.
- h. What is the private need for this project, apart from the desire of the applicant to make money?
- i. What benefit does the environment receive from this project?
- j. A detailed discussion should be included regarding what the long-term effect on wetlands and wildlife habitat value in the area would be from the proposed project.
- k. The Clean Water Act provides that conservation of these wetlands is important to the public interest. Therefore, a detailed analysis regarding public interest of conservation must be included.

Thank you for your consideration of my preliminary comments above. I look forward to receiving your response granting the 60-day extension of time to accommodate my visual impairment so that I will be able to submit more detailed comments regarding the inadequacies of the DEIS for the proposed project.

Sincerely,



Sydney T. Bacchus, Ph. D.
Hydroecologist
P.O. Box 174
Athens, GA 30603
appliedenvirserve@gmail.com

cc: Lt. General Robert Van Antwerp, Chief of Engineers, hq-publicaffairs@usace.army.mil
Cindy Dohner, US Fish & Wildlife Service Region 4 Director (fax: 404/679-4006)
Gwendolyn Keys Fleming, USEPA Region 4 Administrator (fax: 404/562-8174)
A. Stanley Meiburg, USEPA Region 4 Deputy Administrator (fax: 404/562-8174)
Jennifer Derby, USEPA Region 4 Regulatory Section Chief, Wetlands & Oceans Division
Tom Welborn, USEPA Region 4 Wetlands Division