



L-2013-122
10 CFR 52.3

April 2, 2013

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D.C. 20555-0001

Re: Florida Power & Light Company
Proposed Turkey Point Units 6 and 7
Docket Nos. 52-040 and 52-041
Response to NRC Schedule Letter - Alternative Sites

Reference:

1. NRC Letter to FPL dated February 28, 2013, Turkey Point Units 6 and 7 Combined License Application Review of Alternative Sites

In its letter to FPL (Reference 1), the U.S. Nuclear Regulatory Commission ("NRC") staff stated that FPL considers the alternative water balance scenarios for the three inland alternative sites that were identified in its draft response to eRAI 6353, 9.3.1-11 (the "alternative water scenarios") to be "prohibitively expensive." As a result, the NRC letter concludes that those sites cannot be considered reasonable alternatives for its analysis under the National Environmental Policy Act ("NEPA"). As suggested in the NRC's letter, FPL wishes to schedule a public meeting at which we can:

- Clarify FPL's position regarding the cost of the alternative water scenarios;
- Further discuss the differences between the 404(b)(1) process and the NEPA alternatives review; and
- Outline potential paths forward relying on FPL's existing site selection study.

We will briefly discuss these issues below, in preparation for the future meeting.

First, we believe the NRC staff's concern arises from a misunderstanding of statements made by FPL at a December 7, 2012 public meeting between FPL, the NRC, and the U.S. Army Corps of Engineers ("USACE"). FPL's remarks at the December public meeting were framed by its draft response to eRAI 6879, Questions 1 and 2, in which FPL had acknowledged that cost would be one of the factors in its Clean Water Act Section 404(b)(1) evaluation of the non-traditional water sources, and that some of the scenarios could be expensive. Clearly, there are added costs from use of multiple non-traditional water sources for cooling. As we have noted, this is simply one

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of many factors that must be weighed in the 404(b)(1) context beyond the permitting question of whether these sources are licensable. But this discussion was not intended to reflect a determination that those scenarios would be so expensive as to render the sites altogether unreasonable under NEPA.

The NRC's February 28 letter cites *Airport Neighbors Alliance v. United States*, 90 F.3d 426 (10th Cir. 1996), for the proposition that reasonable alternatives under NEPA must not be "prohibitively expensive." But the fact that one alternative may present a higher cost does not *per se* render that alternative infeasible under NEPA. See *South Carolina Electric & Gas Co. and South Carolina Public Service Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 23-24 (citing *Consumers Power Co.* (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 163 n.25 (1978)).

Unlike the *Airport Neighbors Alliance* situation, where the rejected alternative would have dramatically increased the scale of the project, the added expense associated with the alternative water balance scenarios at the inland sites would represent an incremental addition to a multi-billion dollar project. This added cost would appropriately be one of several factors to be considered in the 404(b)(1) practicability analysis, but would not, on its own, necessarily lead to a determination that a site is not practicable or not reasonable.

When FPL submitted its 404(b)(1) analysis in 2011, the highly detailed alternative water scenarios had not yet been developed. However, on March 14, 2013, FPL received a request for additional information from USACE that asked FPL to clarify its 404(b)(1) analysis in light of the newly identified water balance scenarios. FPL's response to the USACE request will describe how the alternative water scenarios impacted its 404(b)(1) analysis for these sites in the context of all the practicability factors.

Second, we would also like to further discuss why a NEPA analysis may consider a broader range of alternatives than those considered practicable under 404(b)(1). The EPA's implementing regulations make this clear at 40 C.F.R. § 230.10(a)(4), noting "[o]n occasion, these NEPA documents may address a broader range of alternatives than required to be considered under [the 404(b)(1) Guidelines]". This is consistent with the recent Environmental Impact Statements published jointly by NRC and USACE for the Fermi 3 and Levy County reactor projects, each of which evaluated a set of reasonable alternatives in Section 9.3 that was broader than the alternatives identified by the applicant as practicable under the 404(b)(1) process. For these reasons, FPL does not believe a discrepancy exists when alternatives that are not considered practicable in the 404(b)(1) analysis are nonetheless considered as reasonable alternatives for review under NEPA.

Finally, FPL would like to discuss paths forward for the NRC review in the event the NRC continues to question the current viability of the three inland alternative sites. NRC guidance calls for a review of those alternative sites that are "among the best that

can reasonably be found” in the ROI. The NRC may determine that FPL’s five candidate sites continue to meet this standard today, as they did in 2006, and that it can continue to review those sites on this basis. In any event, the NRC maintains the discretion to proceed with its analysis with only two candidate sites (Turkey Point and St. Lucie). NUREG-1555 is clear that “there can be no specific criteria for determining that an adequate number of candidate sites have been identified,” but that “the reviewer should make such a determination, based on the ROI, the number of candidate areas, and the number and type of alternative sites evaluated by the applicant.” NUREG-1555 (Draft Rev. 1) at 9.3-10. If the NRC concludes that a large section of the inland portion of South Florida cannot support a reasonable alternative site under current water restrictions, then it should factor that conclusion into its consideration of how many alternative sites are necessary. Thus, in this scenario, the NRC could analyze either the currently identified five candidate sites on the basis that they remain among the best to be found in the region of interest or only the smaller number of sites that it deems reasonable today. Either approach would be fully in keeping with the NRC’s existing guidance on alternative sites review.

As stated above and in accordance with your letter, FPL requests a public meeting with the NRC and the USACE to discuss these issues and related matters, which we wish to schedule at your earliest convenience. If you have any questions, or need additional information, please contact me at 561-691-7490.

Sincerely,



William Maher
Senior Licensing Director – New Nuclear Projects

WDM/RFO

cc:

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