



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

FFB 10 1994

REF: 4WM/WOWB/ML

Colonel Terrance C. Salt  
District Engineer  
U.S. Army Corps of Engineers  
Jacksonville, Florida 32232-0019

Dear Colonel Salt:

This is in response to a letter dated January 31, 1994, from Dr. Dickey, the Acting Assistant Secretary of the Army (Civil Works), regarding the higher level review of issues related to a Department of Army permit being considered by the Army Corps of Engineers Jacksonville District. The permit would allow Florida Power Corporation (FPC) to construct a 44-mile 500kv transmission line near Tampa, Florida. According to FPC, approximately 0.07 acres of wetlands will be directly impacted. Secondary impacts for right-of-way clearing will impact approximately 241 acres of forested wetlands. Compensatory mitigation was offered in the form of purchasing 350 acres of forested wetlands, and 137 acres of uplands in Pasco County within the same drainage basin as a section of the proposed transmission line.

Region IV appreciates the Corps review of the project thus far and commend and agree with Dr. Dickey's conclusion that the wetland areas associated with the Hillsborough River system are an aquatic resource of national importance. I continue to believe that our concerns regarding the project, as outlined in our previous letters, are valid concerns.

Procedurally, EPA raised several concerns regarding the manner in which the Corps arrived at a decision on this permit. I believe the public record substantiates the overriding factors that would indicate the need for more thorough public interest review in evaluating the zoning and land use matters regarding the permit. The Corps deferred these issues to the Transmission Line Siting Act (TLSA) approval of the project which is over ten years old and may not reflect the current greenway planning and watershed objectives regarding the Hillsborough River. Further, the Record of Decision documents the extreme controversy surrounding the project and specifically references community cohesion, community services, and property values. In my opinion, these factors could have prompted the Corps to perform an independent economic review of this project.

When considering further EPA action regarding the permit, I must consider the intent of the Congress in granting EPA 404(c) authority, and the environmental aspects of the project as compared to previous EPA 404(c) actions. Section 404(c) provides that the Administrator can prohibit or restrict the discharge of dredged or fill material at a site whenever he determines that such discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. The term "unacceptable" in the statutes refers to the significance of the adverse impact - e.g. is it one that the aquatic and wetland ecosystem cannot afford. Previous 404(c) actions have considered this view and have been used to veto projects with considerable adverse impacts to the environment and have established guidelines for future 404(c) actions. Because of the specific language of the statute, EPA cannot consider human health under 404(c) except to the extent that it is implied by the factors listed. Therefore, EPA cannot use a 404(c) action to veto a permit based on such issues as Electromagnetic Field (EMF) hazards or devaluation of property caused by permitting the project. Further, policy issues regarding interpretation of the regulatory guidelines cannot be considered under Section 404(c). When considered in light of the Congressional intent of 404(c) and in comparison to previous 404(c) actions, I do not believe the project warrants recommendation for veto under EPA's 404(c) authority.

We understand that FPC has agreed to maintain the vegetation in the right-of-way (ROW) as described in the permit application through easement conditions and will preclude other uses of the ROW which would degrade wetlands.

I also believe that EPA, the Corps, and the state, should develop procedures to coordinate the respective agencies' comments into the Transmission Line Siting Act (TLISA) process at the earliest possible stages. This may have alleviated many of the issues raised by this permit. We could adopt an approach similar to what we are currently using for highway projects, which involves all of the relevant regulatory agencies early in the permit process. I remain concerned about the project's environmental impacts and also the impacts of future linear projects in the State of Florida. I would like to work with you and the Corps in determining how we can develop an approach to ensure the minimization of wetland impacts in the siting of these linear facilities. I recommend that we work with the existing interagency group of local, state, and federal agencies that are developing the greenway plan to examine the Hillsborough River watershed and develop specific guidance regarding projects in the area in an effort to protect this valuable resource.

I look forward to working with you in the future to protect the Nation's aquatic resources and the public interest. Should you have any questions or comments regarding my decision in this case, please call me at (404) 347-4728.

Sincerely,



John H. Hankinson, Jr.  
Regional Administrator