

Florida Power & Light's Forney Power Project

Background: Consistent with current concerns regarding the reliability of the electrical grid, FPL Energies ("FPLE") has been developing the largest independent power project in Texas, a state of the art 1750 MW combined-cycle, natural gas fired power plant to be located in Kaufman County. Once operational, the plant will transmit power to an adjacent electrical substation for distribution to the power grid and to help avoid power outages during times of peak usage. The power facility will principally service customers in the Dallas-Fort Worth metroplex and northern portions of the Electric Reliability Council of Texas. An eleventh-hour opinion offered by the Fish and Wildlife Service to the Army Corps of Engineers may now endanger the project.

Why is this plant being built?

- * New power generation capacity is needed within the DFW metroplex;
- * Texas Public Utility Commission and the ERCOT Independent System Operator have expressed concerns that adequate local generation is required to ensure a continued supply of high quality electrical service;
- * DFW's electrical grid imports most of its power from generation plants located outside of the DFW metroplex;
- * Electrical transmission lines used to import power into DFW are full during peak load conditions and will not allow additional power to be imported to serve local growth;
- * Shutdown of existing, old generation plants within DFW is anticipated; and
- * Forney Project's location is directly adjacent to the existing TXU Forney Substation, allowing electrical power to be injected into the 345kV loop that surrounds the DFW metroplex without requiring additional transmission lines.

What is the likely economic impact of the facility?

- * Total project costs are estimated at hundreds of millions of dollars;
- * Operating needs are expected to include 35 full-time employees and basic services from vendors within the local community; and
- * Annual property and sales taxes to the City of Forney and Kaufman County are in the range of \$16-20MM from the Forney Power Project.

How has the community reacted to the project?

- * Several approvals from local agencies have required public review and comment, and no opposition or objections to the Project have been filed;
- * Monthly updates are provided to the City Council on the progress of the Project; and
- * No opposition from the public was expressed during the comment period for the wetlands permit.

What is the environmental impact of the facility?

- * The Forney Power Project will use state of the art air pollution control systems governed by the most current regulatory programs and the Project is expected to displace older, less efficient units;
- * Air emissions will be lowered by the burning of natural gas (a clean fuel) and by use of a combined cycle generator;

- * The Forney Site, approximately 20 miles from downtown Dallas, represents a compromise between adding electrical generation in the immediate DFW area and not exacerbating the metroplex's air pollution problem.

How has the permitting process transpired?

- * The United States Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands.
- * In February, 2001, FPLE submitted a Section 404 permit application to the Corps of Engineers to discharge dredged and fill material associated with the construction of the power plant. At that time, FPLE also began corresponding with other agencies, including FWS, to request their comments on the permit application.
- * On March 9, 2001, FWS completed a site visit and, thereafter, did not express any concerns related to wetlands delineation or mitigation under the permit application.
- * On June 5, 2001, a one month public notice period was initiated for FPLE's Section 404 permit application to discharge dredged and fill material associated with the construction of the power plant.
- * On June 19, 2001, an FWS Field Supervisor issued a recommendation that the permit application not be granted based on wetlands delineation issues.

What roles do the Corps and FWS play in the permitting process?

- * Under the Corps' regulations and in accordance with the Fish and Wildlife Conservation Act, District Engineers must consult with FWS and the Corps must give full consideration to the views of FWS on fish and wildlife matters in deciding on the issuance, denial, or conditioning of individual permits. 40 C.F.R. 320.4(c).
- * The Corps' District Engineer determines whether or not the permit should be issued based on a balancing of public interest factors, including serious consideration of the recommendations from other consulting agencies. *See e.g., Texas Committee on Natural Resources v. Marsh*, 736 F. 2d 262 (5th Cir. 1984); *Sierra Club, Mobile Bay Audubon Society et al. v. United States Army Corps of Engineers*, 935 F. Supp. 1556 (S.D. Ala. 1996). A Statement of Facts or similar document is prepared by the District Engineer that incorporates a discussion of any recommendations from consulting agencies.

Why should even the shortest delay be avoided?

- * The Forney Project's completion is expected to provide vital power to the DFW metroplex grid just before the peak period in 2003 and there is little, if any, flexibility in the construction schedule to make up lost time.
- * Delay to FPLE's construction contract will cause substantial penalties that accrue against FPLE on a daily basis, as well as lost profits.
- * In coordination with the Corps, FPLE commenced clearing activities using a staged approach that first involved only upland areas. FPLE relied on this coordination in providing its construction contractor with a notice to proceed, and thereby incurred very significant payment obligations under its construction contract.

What can be done to facilitate decisionmakers?

- * Request status reports from the Corps and FWS to determine how FWS's recommendation is viewed and what anticipated reaction may be.
- * In the strongest terms, the Corps must be encouraged to proceed with the Project, taking into account fully their statutory obligations. For its part, FWS should be encouraged to be flexible, particularly in consideration of the high priority now placed on expediting energy projects. The Executive Order of May 18, 2001, makes clear that expediting energy projects is a priority for the Administration.