

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20070296**

**1. ACTION REQUESTED/PURPOSE:** 1. Request Board discuss, and if directed, authorize the creation of a subsidiary account for the immediate use by the County Attorney's Office to secure and employ outside counsel and expert witnesses necessary to participate in the Florida Power and Light (FPL) Glades Power Park site certification proceedings. 2. Request the transfer of an initial amount of \$100,000 into this account from the General Fund Reserves.

**2. FUNDING SOURCE:** General Fund Reserves.

**3. WHAT ACTION ACCOMPLISHES:** Provides the County Attorney's Office with necessary funds to pursue participation in the Power Plant Siting Act (PPSA) process for the proposed FPL Glades Power Park.

**4. MANAGEMENT RECOMMENDATION:** Provide the requested funds to pursue participation in the PPSA process, if the Board so directs.

**5. Departmental Category:** A12B **6. Meeting Date:** MARCH 13, 2007

|   |  |   |
|---|--|---|
| <b>7. Agenda:</b><br><input type="checkbox"/> Consent<br><input checked="" type="checkbox"/> <b>Administrative</b><br><input type="checkbox"/> Appeals<br><input type="checkbox"/> Public<br><input type="checkbox"/> Walk-On | <b>8. Requirement/Purpose: (specify)</b><br><input type="checkbox"/> Statute<br><input type="checkbox"/> Ordinance<br><input type="checkbox"/> Admin. Code<br><input type="checkbox"/> Other | <b>9. Request Initiated:</b><br><b>Commissioner</b> _____<br><b>Department</b> <u>County Attorney</u><br><b>Division</b> _____<br><b>By:</b> <u>David M. Owen</u><br><u>County Attorney</u> |
|---|--|---|

**10. Background:** At the January 23, 2007 Board meeting, the Board directed staff to look into the proposed FPL Glades Power Park with respect to the potential environmental and other potential impacts to Lee County and the possibility of Lee County participating in the permitting process for the facility.

On December 22, 2006, FPL filed a Site Certification Application for the Glades Power Park with the Florida Department of Environmental Protection (DEP). Florida's PPSA designates the DEP as the lead agency responsible for coordinating the interagency review and certification of the proposed site. There are several opportunities within the PPSA process for the County to participate and address its concerns. The attached letter from David Dee, Esquire outlines five of those opportunities.

Considering the potential human health and environmental impacts to Lee County, funding is being requested to begin participation in the PPSA process. Because of the nature and complexity of the legal issues in this matter, outside counsel and experts will be necessary to effectively participate in the PPSA process.

Attachments: 2/20/07 Glades Power Park letter and 2/9/07 letter of engagement from David S. Dee of the Young van Assenderp, P.A. law firm.

**11. Review for Scheduling:**

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney    | Budget Services |                   |                |                   | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|--------------------|-----------------|-------------------|----------------|-------------------|------------------------------|
|                     |                         |                 |       |                    | Analyst         | Risk              | Grants         | Mgr               |                              |
|                     |                         |                 |       | <i>[Signature]</i> | <i>RK 2/22</i>  | <i>MP 2/22/07</i> | <i>2-22-07</i> | <i>MP 2/23/07</i> | <i>[Signature] 2-27-07</i>   |

**12. Commission Action:**

- Approved
- Deferred
- Denied
- Other

CO. ATTY.  
FORWARDED  
TO CO. ADMIN.  
2-21-07

RECEIVED BY  
COUNTY ADMIN: *[Signature]*  
2/21 3:35 MP  
COUNTY ADMIN  
FORWARDED TO:  
*[Signature]* 4:30 MP  
2/21 to PR



YOUNG VAN ASSENDERP, P.A.

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GEORGE ANN C. BRACKO  
EXECUTIVE DIRECTOR

February 20, 2007

David Owen, Esq.  
County Attorney  
Lee County  
2115 Second Street  
Ft. Myers, FL 33902-0398

Re: FPL's Glades Power Park

Dear Mr. Owen:

Based on our recent telephone conversations, it is my understanding that Lee County ("County") may wish to have the law firm of Young van Assenderp, P.A.,<sup>1</sup> assist the County with its evaluation of the "Glades Power Park"—a new coal-fired electric generating station that Florida Power and Light Company ("FPL") intends to construct and operate in Glades County, Florida. This memorandum contains a general description of the issues and regulatory proceedings that may be of interest to the County.

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<sup>1</sup> The members of this law firm have considerable experience with the environmental and other regulatory requirements applicable to electrical power plants. For example, I have been responsible for obtaining the state and federal environmental permits for at least thirteen (13) major construction projects involving electrical power plants, including nine (9) new electrical power plants on "green field" sites.

### FPL's Project<sup>2</sup>

FPL's Glades Power Park will be located on a 4,900-acre site that is approximately 4 miles north of the town of Moore Haven. FPL plans to build two electric generating units (Unit 1 and Unit 2) with a combined net capacity of 1,960 megawatts ("MW"). FPL's primary fuel will be coal, but up to 20% of the fuel may consist of petroleum coke. The two electric generating units will use "ultra-supercritical pulverized coal" technology to generate electricity. The Glades Power Park also will include related facilities and infrastructure.

The Glades Power Park is being built to supply electricity to FPL's customers in Southeast Florida. FPL will need to install approximately 172 miles of new electrical transmission lines (500 kilovolt) to deliver electricity from the Glades Power Park to FPL's customers.

### Issues of Interest to Lee County

It is our understanding that Lee County is concerned about the potential impacts of the Glades Power Park on human health and the environment. For example, the County is concerned about the potential impacts of the FPL project on: (a) air quality in Lee County and the Everglades, which may be affected by FPL's airborne emissions of mercury, sulfur dioxide, and other pollutants; (b) greenhouse gases and global warming; (c) the quality and quantity of ground water and surface waters, including the Caloosahatchee River and the Everglades; (d) wetlands, including any wetlands that may be filled during the construction of the Glades Power Park and the associated electrical transmission lines; and (e) threatened and endangered species. The County also has asked whether the Glades Power Park should generate electricity by using integrated gasification combined cycle ("IGCC") units, rather than pulverized coal units.

### Opportunities to Address the County's Concerns

We believe there will be at least five opportunities for Lee County to present its concerns about FPL's project. Each of these opportunities is discussed in the following paragraphs.

First, the County may be able to present some of its concerns to the Florida Public

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<sup>2</sup>The following information about the Glades Power Park was extracted from the Petition filed by FPL on February 1, 2007 at the Florida Public Service Commission.

David Owen  
February 20, 2007  
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Service Commission ("PSC"). The PSC will conduct a formal hearing pursuant to Section 403.519, Florida Statutes, to determine whether the Glades Power Park is needed, cost-effective, and in compliance with other PSC criteria. The PSC "determination of need" hearing for the Glades Power Park is scheduled for April 16 and 17, 2007.

The PSC currently is evaluating the evidence in a contested hearing concerning a proposed coal-fired power plant that will be built near Perry, in Taylor County, Florida. Among other things, the PSC is considering whether the Taylor County project should be required to use IGGC technology, rather than pulverized coal technology, to generate electricity. The PSC staff recommended approval of the Taylor County facility, but the PSC members deferred their decision until mid-March. The PSC decision in the Taylor County case may indicate how the PSC will rule on FPL's proposal for the Glades Power Park. On the other hand, the PSC decision in the Taylor County case may not be an important precedent because two new members will join the PSC in the near future, after the Taylor County case is decided.

As a second option, the County may be able to participate in the proceedings that will be conducted pursuant to the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501-.518, Florida Statutes. The PPSA establishes a process for evaluating all of the benefits and adverse impacts associated with a proposed electrical power plant. These issues are considered by an Administrative Law Judge ("Judge"), based on the evidence presented in a formal administrative hearing. The hearing is similar to a civil trial conducted without a jury. The Judge submits findings and recommendations to the Governor and Cabinet, who sit as the Siting Board. The Siting Board must balance a project's benefits and adverse impacts when the Siting Board decides whether to grant approval for a new power plant.

FPL's application currently is being reviewed by the Department of Environmental Protection ("DEP") and other agencies in accordance with the PPSA. The formal PPSA hearing concerning the Glades Power Park is scheduled to begin on September 11 and continue through October 5, 2007. Given this schedule, we assume the Judge's recommendations will be submitted to the Siting Board during the first quarter of 2008.

The PPSA process may provide the County with its best opportunity to contest the factual and policy issues that underlie FPL's proposal. Under the PPSA, the Siting Board may require FPL to take additional steps to minimize the impacts of its project, even if FPL demonstrates that the project satisfies the substantive standards adopted by DEP and the other agencies. Thus, the Siting Board may require FPL to install air pollution controls and take other measures that respond to the County's concerns. The Siting Board also has the authority to deny approval to a proposed project. For example, the Siting Board denied FPL's application to burn "orimulsion" (a liquid, tar-like fuel) in FPL's power plant in

Manatee County, largely because of the widespread public opposition to the orimulsion project.

As a third option, the County may be able to raise its concerns about air pollution within the context of the DEP program for the prevention of significant deterioration ("PSD") of air quality. In the PSD review process, DEP will evaluate the impact of FPL's airborne emissions on ambient air quality. The DEP's analysis will include an assessment of FPL's impacts on visibility and related values in the Everglades National Park. This analysis already is underway. Indeed, the U.S. Department of the Interior, National Park Service, has expressed the Park Service's concern that FPL's emissions of mercury, sulfur dioxide, and other pollutants may jeopardize the threatened and endangered species in the Everglades National Park.

During the PSD review process, the DEP will determine whether FPL's proposed emissions are consistent with the use of the best available control technology ("BACT"). The PSD review process may provide a forum for discussing whether IGCC technology should be used by FPL at the Glades Power Park.

As a fourth option, the County may wish to ask the Florida Legislature to consider FPL's proposal. The Legislature may be interested in discussing the appropriateness of locating large coal-fired power plants in relatively close proximity to the Everglades. This issue is timely and relevant because the Legislature has been appropriating large sums of money for the restoration of the Everglades. The Legislature also may wish to address the appropriateness of using IGCC technology in coal-fired power plants. It is our understanding that at least one electric utility (Tampa Electric Company) is encouraging the Legislature to amend state law to make it easier for electrical utility companies to install IGCC technology. If our understanding is correct, the County may wish to support the adoption of new legislation that would promote the use of IGCC technology.

As a fifth option, the County may wish to discuss its concerns directly with FPL. It is likely that FPL can demonstrate that its project will comply with most if not all of the applicable regulations and, therefore, FPL may be able to quickly and informally resolve some of the County's concerns. It also is likely that FPL will agree to reasonable permit conditions or other requirements that will reduce the impacts associated with its project.<sup>3</sup> Of course, we recognize it is unlikely that FPL will agree to abandon its project or abandon the use of coal at its site.

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<sup>3</sup> FPL expects to spend approximately \$5.7 billion on the Glades Power Park. The cost of any prudently incurred environmental compliance measures will likely be passed on to FPL's ratepayers, rather than paid by FPL. Given these facts, FPL may be willing to accept reasonable proposals that address the County's concerns.

David Owen  
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In addition to the five opportunities identified in the preceding paragraphs, it should be noted that the Glades Power Park will be required to undergo other regulatory review processes. For example, FPL will need to obtain a permit from the U.S. Army Corps of Engineers, pursuant to Section 404 of the Clean Water Act, if the project will involve any significant filling activities in wetlands that are under the jurisdiction of the Corps. Given the magnitude of FPL's project, it is likely that a Corps permit will be required. FPL also may be required to demonstrate, pursuant to Section 7 of the Endangered Species Act, that the project will not jeopardize any threatened or endangered species. A permit also may be required under the National Pollutant Discharge Elimination System ("NPDES") program if there will be any discharges of stormwater or industrial wastewater from the Glades Power Park. The County may have meaningful opportunities to participate in one or more of these regulatory review proceedings.

#### Legal Standing

The County will need to demonstrate that it has "standing" if the County wishes to participate as a "party" in the PSC determination of need hearing, the PPSA hearings, or any formal hearing resulting from the PSD review process. To establish standing, a person normally must demonstrate that its interests will be substantially and adversely affected by the proposed project. In this case, the County may be able to demonstrate that its interests will be substantially and adversely affected by the airborne emissions from the Glades Power Park. The County's interests also may be affected in other ways. Even if the County is not substantially affected, it may be possible to establish the County's standing pursuant to Section 403.412, Florida Statutes. In any case, we anticipate that FPL will contest the County's standing and thus attempt to prevent the County from participating as a party in the hearings concerning the Glades Power Park. We do not have enough information at this time to predict accurately whether the County will be able to successfully establish its standing.

#### Practical Considerations

The County should consider its basic goals, objectives, and strategy before the County decides to participate in the proceedings concerning the Glades Power Park. Each of these proceedings will involve a multitude of complex issues. The County will need consultants and other technical experts to assist the County with its analysis of these issues. The County will need to commit a significant amount of time, energy and money if the County wishes to address the full array of issues involved in these proceedings.

David Owen  
February 20, 2007  
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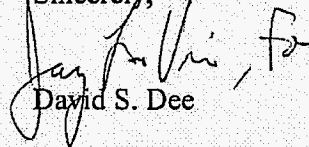
County wishes to address the full array of issues involved in these proceedings.

The County may have a positive effect on FPL's project if the County participates in the regulatory review processes for the Glades Power Park. For example, the County's activities may result in the imposition of permit conditions and requirements that will reduce the environmental impacts of FPL's project. However, the County should recognize that applications for electrical power plants are rarely denied in Florida. The County's goals and expectations should be tempered accordingly.

Conclusion

We would be delighted to assist the County with its review of the Glades Power Park. We look forward to discussing this project with you in more detail in the near future. In the interim, please call me at (850) 222-7206 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "David S. Dee", with a flourish extending to the right.

David S. Dee



# YOUNG VAN ASSENDERP, P.A.

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EXECUTIVE DIRECTOR

February 9, 2007

Via Federal Express

David Owen, Esq.  
County Attorney  
Lee County  
2115 Second Street  
Ft. Myers, FL 33902-0398

2007 FEB 13 AM 9:00  
RECEIVED BY  
LEE CO. ATTORNEY

Re: FPL's Glades Power Park

Dear Mr. Owen:

Based on our recent telephone conversations, it is my understanding that Lee County would like the law firm of Young van Assenderp, P.A., to assist the County with its evaluation of the environmental law issues associated with Glades Power Park proposed by Florida Power and Light Company ("FPL"). The County also may wish to have us represent the County in the regulatory review processes that will be conducted pursuant to the Florida Electrical Power Plant Siting Act ("PPSA") for the Glades Power Park.

We would be delighted to assist the County with these issues. We also will be available to assist the County with other issues, if requested to do so. Accordingly, we have prepared this engagement letter, which describes the general principles that will govern our work for the County.

Qualifications and Case Management

With the County's approval, I will take primary responsibility for assisting the County and I will personally perform or supervise our work for the County. I have more than 27 years of experience working in the area of environmental law, including the PPSA. My qualifications are described in more detail in my resume, which is attached to this letter.

The firm will work closely with you and the other representatives of the County to ensure that the County's case is staffed appropriately. We want the County's work to be

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performed in the most efficient and cost-effective manner possible, while fully utilizing the firm's expertise.

#### Fees and Billing Practices

We normally charge our clients an hourly rate for our legal services. My billing rate for new private clients is \$300 per hour. The other senior attorneys in this firm charge similar amounts.

For Lee County, the firm is willing to reduce my billing rate for this project to \$235 per hour. The maximum rate for our other senior attorneys also will be reduced to \$235. The rates that will be charged to the County are shown on Exhibit A, which is attached to this letter.

We are sensitive to the costs of legal services and we understand that every client wishes to avoid unnecessary expense. Accordingly, we will use our best efforts to ensure that the County's work is performed as efficiently as possible. When it is appropriate, we will assign tasks to attorneys, paralegals, or clerks with lower billing rates so that we can maximize our cost effectiveness.

Our clients are responsible for all reasonable costs that we incur during our representation of them. Such costs include long distance telephone calls, computer research services, copying charges, travel and out-of-pocket expenditures. Our requests for reimbursements from the County for meals, per diem, and travel, if any, will be limited to conform with the restrictions contained in Section 112.061, Florida Statutes, for state employees.

We will provide the County with an itemized monthly invoice for our services. The invoice will identify each task that has been performed during the month, the person that performed the work, the date on which the work was performed, and the amount of our costs. Our invoices will include receipts or other appropriate documentation for our costs.

We recognize that the County may have its own limitations on reimbursements for costs and out-of-pocket expenditures. We will comply with any reasonable limitations imposed by the County, but we ask that such limitations be identified now so we can avoid confusion and misunderstandings later.

Our invoices are payable upon receipt. If our invoices are not paid within 45 days, we may charge interest on the outstanding balance at the rate of 1.0% monthly (12% per annum), which is consistent with the requirements established by the Florida Legislature in the Florida Prompt Payment Act, Sections 218.70 et seq., Florida Statutes.

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Page 3

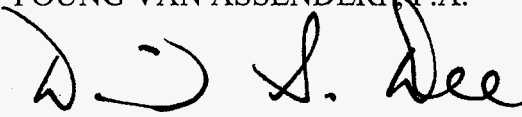
Conclusion

We hope that our proposal is acceptable to the County. If it is, the appropriate County official should sign in the space provided below and then return a copy of this letter to me.

Please call me if you have any questions. We look forward to a pleasant and successful relationship with you and Lee County.

Sincerely,

YOUNG VAN ASSENDERP, P.A.

By:   
\_\_\_\_\_  
David S. Dee  
For the Firm

Attachments

Accepted and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2007.

Lee County

By: \_\_\_\_\_

EXHIBIT A

YOUNG VAN ASSENDERP, P.A.

|                     | <u>RATE</u>    |
|---------------------|----------------|
| TASHA O. BUFORD     | \$215 per hour |
| DAVID S. DEE        | \$235 per hour |
| RONALD A. LABASKY   | \$175 per hour |
| JOHN T. LAVIA       | \$175 per hour |
| PHILIP PARSONS      | \$235 per hour |
| TIMOTHY R. QUALLS   | \$135 per hour |
| KENZA VAN ASSENDERP | \$215 per hour |
| ROBERT S. WRIGHT    | \$215 per hour |
| ROY C. YOUNG        | \$235 per hour |
| LAW CLERKS*         | \$ 50 per hour |

\*not an attorney

## DAVID S. DEE

David S. Dee is a shareholder (partner) in the law firm of Young van Assenderp, P. A., and he has 27 years of experience working in the areas of environmental, land use, administrative, and governmental law.

Mr. Dee routinely handles cases involving environmental permits, agency enforcement proceedings, agency rulemaking, and litigation. He has worked extensively with local, regional, state, and federal environmental agencies. He has represented counties, municipalities, environmental organizations, and private developers in a wide variety of cases throughout Florida. Mr. Dee has successfully handled major, complex cases involving electrical power plants, resource recovery (refuse-to-energy) facilities, cogeneration facilities, landfills, CERCLA (Superfund) sites, marinas, industrial and domestic wastewater treatment plants, mines, ports, groundwater contamination, and dredge and fill activities.

Mr. Dee has considerable experience with the Florida Electrical Power Plant Siting Act and many of the other environmental regulations applicable to electrical generating facilities. He has handled the permitting of 13 major construction projects involving electrical generating facilities, including nine new facilities on "green field" sites.

Mr. Dee received a Bachelor of Arts degree in 1974 from Emory University and a Juris Doctor degree with high honors in 1979 from Florida State University. He is a member of several honorary organizations, including Phi Beta Kappa, Omicron Delta Kappa, and the Order of the Coif. He has been selected for inclusion in several Who's Who publications, Outstanding Young Men in America, Leading Florida Attorneys, The Best Attorneys Network, America's Leading Lawyers for Business, Florida Super Lawyers and The Best Lawyers in America.

He is admitted to practice in all of the state and federal courts in Florida, plus the U.S. Courts of Appeals for the 11th Circuit and the District of Columbia. He has an "Av" rating in the Martindale-Hubbell legal directory.

Mr. Dee has lectured at more than 100 environmental law seminars, including programs conducted by the Florida Bar Association, the Florida Chamber of Commerce, and other state and national organizations. He has contributed many articles for the Environmental Network, a publication of the Florida Chamber of Commerce.

Mr. Dee was the Chairman of the Environmental and Land Use Law Section of the Florida Bar Association. He served on the Section's Executive Council for eight years. Mr. Dee is a graduate of the Leadership Tallahassee and Leadership Florida programs, which are sponsored by the Tallahassee and Florida Chambers of Commerce, respectively. He was president of the Board of Directors of Goodwill Industries of the Big Bend, Inc., and a member of the Board of Directors for the Tallahassee Chapter of the American Red Cross. He currently serves on the Advisory Board for the University of Florida's Center for Solid and Hazardous Waste Management. Mr. Dee was a volunteer in the American Peace Corps in Nepal and Ethiopia.