

October 15, 2001

Mr. J. A. Stall
Senior Vice President, Nuclear and
Chief Nuclear Officer
Florida Power and Light Company
P.O. Box 14000
Juno Beach, Florida 33408-0420

SUBJECT: ST. LUCIE, UNITS 1 AND 2, AND TURKEY POINT, UNITS 3 AND 4
SAFETY EVALUATION FOR THE PROPOSED TRANSFER OF THE
NONQUALIFIED DECOMMISSIONING TRUST FUNDS FROM FLORIDA
POWER AND LIGHT COMPANY TO KPB FINANCIAL CORPORATION
(TAC NOS. MB0978, MB0979, MB0980, AND MB0981)

Dear Mr. Stall:

By letter dated November 28, 2000, as supplemented December 22, 2000, and August 2, 2001, Florida Power and Light Company (FPL) notified the U.S. Nuclear Regulatory Commission (NRC) of a proposed transfer of FPL's nonqualified decommissioning funds for St. Lucie, Units 1 and 2, and Turkey Point, Units 3 and 4, to a wholly owned subsidiary of FPL, KPB Financial Corporation (KPB), a Delaware Corporation.

The NRC staff has completed its review of the above submittals. Based on its review, the staff finds that, as stated in the enclosed Safety Evaluation (SE), FPL will continue to provide reasonable assurance of decommissioning funding for the St. Lucie and Turkey Point facilities. Therefore, subject to the conditions modifying the decommissioning trust agreement for the nonqualified funds as specified in the enclosed SE, the staff has no objection to the transfer of the nonqualified decommissioning trust funds from FPL to KPB.

Sincerely,

/RA/

Kahtan N. Jabbour, Senior Project Manager, Section 2
Project Directorate II
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-335, 50-389, 50-250,
and 50-251

Enclosure: Safety Evaluation

cc w/encls: See next page

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SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
PROPOSED TRANSFER OF FLORIDA POWER & LIGHT COMPANY'S
NONQUALIFIED DECOMMISSIONING FUNDS TO KPB FINANCIAL CORPORATION
ST. LUCIE UNITS 1 AND 2
TURKEY POINT UNITS 3 AND 4
DOCKET NOS. 50-335, 50-389, 50-250 AND 50-251

1.0 INTRODUCTION

By submittal dated November 28, 2000, Florida Power & Light Company (FPL), notified the U.S. Nuclear Regulatory Commission (NRC) of a proposed transfer of FPL's "nonqualified" decommissioning funds for St Lucie, Units 1 and 2, and Turkey Point, Units 3 and 4, to a wholly owned subsidiary of FPL, KPB Financial Corporation (KPB), a Delaware corporation.

The submittal states that "KPB was formed by FPL in 1993 in order to provide a vehicle for financial holdings under Delaware law which provides advantageous tax treatment over Florida law in various circumstances. Transferring the nonqualified decommissioning funds would result in a reduced state tax expense that will increase the after-tax earnings of the funds, ultimately resulting in reduced decommissioning charges to FPL's customers."

2.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

FPL, an electric utility as defined in Title10, *Code of Federal Regulations* (10 CFR), Section 50.2, provides financial assurance for decommissioning St. Lucie, Units 1 and 2, and Turkey Point, Units 3 and 4, through a series of external sinking funds in the form of a trust into which deposits are made at least annually. The application states that "the trust agreement for the St. Lucie and Turkey Point plants was established in 1988. The agreement established a single trust for each nuclear unit that is 'qualified' under Section 468A of the Internal Revenue Code and IRS implementing regulations, and a single trust for all 4 units that contains funds that are not 'qualified' under Section 468A (the 'nonqualified trust'). All of the trusts are funded by collections from Florida customers as determined by the Florida Public Service Commission (FPSC)."

ENCLOSURE

The submittal provided the following table showing expected fund balances at the end of plant life:

	Adjusted Certification Amount	Projected Fund Balance w/ NonQualified Funds¹	Excess/ (Deficiency)	Projected Fund Balance w/o NonQualified Funds¹	Excess/ (Deficiency)
St. Lucie 1	297,939,168	759,352,127	461,412,959	643,847,296	345,908,128
St. Lucie 2	253,859,366	792,380,545	538,521,179	732,372,757	478,513,391
Turkey Pt. 3	287,320,032	460,386,811	173,066,779	349,282,147	61,962,115
Turkey Pt. 4	287,320,032	571,771,858	284,451,826	443,785,505	156,465,473

The last Decommissioning Fund Status Report was submitted by FPL on March 27, 2001. The amounts in the trusts as of December 31, 2000, were:

St. Lucie 1 - \$313,953,154

St. Lucie 2 - \$235,704,337 (for FPL's 85.2051% share)

Turkey Point 3 - \$259,646,422

Turkey Point 4 - \$277,986,428

The submittal states that the projected decommissioning fund balances at the expiration of the current license term for each unit (without counting the nonqualified funds) will exceed the adjusted minimum certification amount in Title 10, *Code of Federal Regulations* (10 CFR), Section 50.75(c). The amounts in each of the decommissioning trust funds meet the requirements of the "prepayment" decommissioning funding assurance mechanism in 10 CFR 50.75(e)(1)(i) using the generic formulas in 10 CFR 50.75(c). The current amount required for decommissioning each unit is listed in the table above under the heading "Adjusted Certification Amount." Taking the 2-percent credit in real-dollar terms for future earnings on the funds, each of the trusts could be considered to meet the prepaid funding assurance mechanism. The projected fund balances shown in the table above indicate that each of the funds will be well in excess of the adjusted certification amounts at the end of license dates, even without counting the non-certified funds. Staff calculations adding the 2-percent future earnings credit to the funds indicate that the decommissioning trust funds will be fully funded.

FPL states that "the proposed transfer of the nonqualified decommissioning funds to KPB will not have an adverse impact on FPL's ability to provide reasonable assurance that funds will be

¹ Using a 2% real rate-of-return credit on earnings, as allowed pursuant to 10 CFR 50.75(e)(1)(i).

available to decommission St. Lucie and Turkey Point. Transferring the nonqualified decommissioning funds would result in a reduced state tax expense that will increase the after-tax earnings of the funds, ultimately resulting in reduced decommissioning charges to FPL's customers."

FPL states that in order to implement the new trust arrangement, "FPL will amend the current trust agreement to create a Qualified Trust Agreement, for which FPL will be the grantor, and a Nonqualified Trust Agreement, for which KPB will be the grantor." Once these new trust agreements are completed, FPL shall notify the NRC of completion and provide copies of the new trust agreements to the Director, Office of Nuclear Reactor Regulation.

In addition, FPL made the following commitments in the submittal in order to provide further assurance that the funds in the nonqualified trust will be available for decommissioning at the cessation of permanent operations. FPL committed to not sell any of the common stock of KPB without the prior approval of the Director of the Office of Nuclear Reactor Regulation. A commitment was also made that KPB will make no material changes to the Nonqualified Trust Agreement without the prior approval of the Director of the Office of Nuclear Reactor Regulation.

In response to a request from the NRC staff, FPL forwarded on December 22, 2000, a copy of the Corporate Resolutions of KPB Financial Corporation concerning the proposed transfer of the nonqualified decommissioning trust funds. The KPB board minutes dated December 13, 2000, included the following resolution:

RESOLVED, (i) that the Board of Directors authorizes and approves the transfer of FPL's nonqualified decommissioning trust funds (the "Funds") (for Turkey Point, Units 3 and 4, and St. Lucie Units, 1 and 2) to the Company, conditioned upon FPL's receipt of notice from the United States Nuclear Regulatory Commission ("NRC") that it does not object to said transfer; (ii) that each of the President, Vice-President or the Treasurer of the Company is hereby authorized, in the name and on behalf of the Company, to execute and deliver a nonqualified trust agreement (the "Nonqualified Trust Agreement") pursuant to which the Company shall be the grantor, and further to execute and deliver each of the other documents contemplated therein, or as may be necessary to carry out the purpose of this resolution, such execution and delivery to be conclusive evidence that the same has been authorized and approved by the Board of Directors; (iii) that the Funds may be used only for decommissioning purposes as provided in the Nonqualified Trust Agreement; (iv) that FPL shall be granted immediate access to the Funds upon satisfaction of the conditions in the Nonqualified Trust Agreement; (v) That the Company shall make no material changes to the Nonqualified Trust Agreement without prior written approval of the NRC Director, Nuclear Reactor Regulation; and (vi) that the terms of this resolution shall not be materially changed without prior written approval of the NRC Director, Nuclear Reactor Regulation. . . .

Based upon the commitments made by FPL, the KPB Board action, FPL's status as a rate-regulated electric utility as defined in 10 CFR 50.2, KPB's status as a wholly owned subsidiary of FPL, and the sufficiency of funds contained in the qualified decommissioning funds that will remain with FPL, the NRC staff concludes that upon transfer of the non-qualified decommissioning trust to KPB, FPL will continue to provide reasonable assurance of decommissioning funding.

However, in view of the fact that KPB is not an NRC licensee, the following conditions are incorporated to meet NRC approval:

- (a) The transfer of decommissioning funds from FPL to KPB is limited to nonqualified funds amounts only. The "qualified" funds shall remain with FPL as the grantor.
- (b) FPL shall take all necessary steps to ensure that both the qualified and nonqualified decommissioning trusts are maintained in accordance or consistent with the submittal, this Safety Evaluation, and NRC's requirements.
- (c) FPL shall continue to report on the status of both its qualified and nonqualified funds pursuant to 10 CFR 50.75(f)(1).

3.0 CONCLUSION

Based on the foregoing analysis and FPL's commitments, the staff finds that FPL will continue to provide reasonable assurance of decommissioning funding. The staff has no objection to the transfer of the nonqualified decommissioning trust funds from FPL to KPB.

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Date: October 15, 2001

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