STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PALM BEACH COUNTY ENVIRONMENTAL COALITION, PETER TSOLKAS, ALEXANDRIA LARSON, and MICHAEL CHRISTENSEN,

Petitioners,

vs.

FLORIDA POWER AND LIGHT COMPANY and DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

OGC CASE NOS. 07-1810
07-1899
07-1752

DOAH CASE NOS. 07-5047
07-5062
07-5063

FINAL ORDER

On March 3, 2008, an Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order ("RO") to the Department of Environmental Protection ("Department") in these consolidated cases. The RO indicates that copies were served to counsel for the Petitioners, Palm Beach County Environmental Coalition ("Coalition") and Peter Tsolkas ("Tsolkas"). Copies were also served to Petitioners, Alexandria Larson ("Larson") and Michael Christensen ("Christensen"). Copies of the RO were served to counsel for the Co-Respondents, Florida Power & Light Company ("FPL") and the Department. A copy of the RO is attached hereto as Exhibit A. On March 18, 2008, Co-Respondents, FPL and the

Department filed Exceptions to the RO. The Petitioners did not file any Exceptions, nor did the Petitioners respond to the Exceptions of the Co-Respondents. The matter is now before me for final agency action.

BACKGROUND

FPL is Florida's largest electric utility. It provides service to over 4.4 million customer accounts in 35 counties. By Final Order Approving Certification dated December 26, 2006, the Siting Board granted full and final certification to FPL for the location, construction, and operation of the West County Energy Center (WCEC) project, Units 1 and 2, to an immediate capacity of 2500 megawatts and to an ultimate capacity of 3300 megawatts. Units 1 and 2 at the WCEC will be combined cycle power plants. The certification issued by the Siting Board authorizes Applicant to power the plant by natural gas or ultra-low sulfur light fuel oil. The certification describes, but does not itself authorize, an onsite wastewater disposal process using a deep well injection system consisting of two 3200-feet deep injection wells and a dual zone monitoring well.

The WCEC Units 1 and 2 would be the first power units operated by FPL to use deep well injection for the disposal of wastewater associated with the production of power. Other plants operated by FPL use cooling ponds, such as a 6000-acre cooling pond at its power plant in Martin County. The WCEC sits on only 220 acres, so FPL could not have constructed a sufficiently large onsite pond to accept the wastewater from the operation of Units 1 and 2.

The WCEC is in west Palm Beach County, 20 miles due west from the Atlantic Ocean and 25 miles southeast of Lake Okeechobee. Draining Lake Okeechobee, the

L-10/L-12 canal passes immediately adjacent to the WCEC site on the south side of State Road 80, which runs along the southern border of the WCEC site. Immediately across State Road 80 from the WCEC site, about 1000 feet to the south, is the Arthur R. Marshall Loxahatchee National Wildlife Refuge ("National Wildlife Refuge"). The WCEC abuts a quarry operated by Palm Beach Aggregates ("PBA Quarry"). Already located adjacent to the WCEC is FPL's Corbett transmission substation and high-voltage transmission lines.

On April 25, 2007, FPL applied to the Department for the conversion and operational testing of existing Exploratory Well 2 ("EW-2") into Injection Well 1 ("IW-1"), construction and operational testing of new Injection Well 2 ("IW-2"), and incorporation of the separately permitted Dual Zone Monitoring Well ("DZMW-1") into an injection well system for the disposal of industrial wastewater at the WCEC. On September 13, 2007, the Department noticed its intent to issue Permit No. 247895-007-UC ("Permit").

On October 25, 2007, the Coalition and Tsolkas filed an Amended Petition to rescind the proposed issuance of "the permit" to construct and operationally test IW-1, IW-2, and DZMW-1, although the only relief that they sought was directed to the permit for IW-1 and IW-2. The Amended Petition was assigned DOAH Case No. 07-5047.

On October 29, 2007, Petitioner Larson filed an Amended Petition to rescind "the permit" for IW-1, IW-2, and DZMW-1. The Amended Petition was assigned DOAH Case No. 07-5062. On October 16, 2007, Petitioner Christensen filed an Amended Petition to rescind "the permit" for IW-1, IW-2, and DZMW-1. The Amended Petition was assigned DOAH Case No. 07-5063.

By Order Consolidating Cases entered November 7, 2007, these three cases were consolidated with DOAH Case Nos. 07-3881 and 07-4744, which had been commenced by Southern States Land and Timber, LLC. However, after a voluntary dismissal filed by the petitioner in each of these cases, DOAH Case Nos. 07-3881 and 07-4744 were dismissed by Order Closing Files entered November 21, 2007. In this Order, the Administrative Law Judge relinquished jurisdiction over the proposed permit for the DZMW-1, and DEP has since issued the permit for the construction and operational testing of DZMW-1. The above-styled cases therefore involve only the Permit, which pertains exclusively to the construction and operational testing of IW-1 and IW-2.

On December 21, 2007, FPL filed a Motion to Strike and Motion in Limine directed to four allegations in the petitions: cumulative "affects," global warming, risk analysis, and air pollution. By Order entered January 15, 2008, the ALJ granted the motion. At the hearing counsel for Petitioners, Coalition and Tsolkas stated that he had not received notice of FPL's motion. The ALJ allowed the parties a rehearing on the Motion to Strike and Motion in Limine. After extensive argument on all four issues, the ALJ again granted FPL's Motion to Strike and Motion in Limine.

On January 15, 2008, the parties filed a Pre-Hearing Stipulation and, on January 18, 2008, they filed an Amended Pre-Hearing Stipulation ("Stipulation"). The Stipulation states that these cases involved challenges to the proposed permit for IW-1 and IW-2. The ALJ conducted the administrative hearing on January 22-25, 2008, in West Palm

Beach. The parties filed their proposed recommended orders by February 12, 2008. The ALJ subsequently entered his RO on March 3, 2008.

THE RECOMMENDED ORDER

The ALJ stated that the issue for hearing was whether FPL "is entitled to Permit No. 247895-007-UC for the conversion of an exploratory well to an injection well, the construction of a second injection well, and the operational testing of both wells, which are intended to inject industrial wastewater from a power plant into the Boulder Zone of the Upper Floridan Aquifer." (RO p. 2). In concluding that FPL had provided reasonable assurance for issuance of the Permit, the ALJ identified "two minor exceptions," and suggested that the Department "may easily revise the Permit to address these two flaws." (RO pp. 68-69, ¶145). However, since the ALJ had concluded that none of the Petitioners proved their standing to maintain the administrative proceeding, he acknowledged that the Department may enter a final order issuing the Permit without the recommended revisions. (RO pp. 54-58, 72, ¶¶113-119 and Recommendation).

The ALJ found that the Petitioner Coalition is a member-based, unincorporated association that, among other things, coordinates public education and outreach regarding environmental threats and environmental protection. (RO p. 10, ¶7). The Coalition and its members participate in recreational activities involving regional natural resources, such as the National Wildlife Refuge. (RO pp. 10-11, ¶¶7-9). Petitioner Tsolkas is the chairperson of the Coalition and also participates in member activities. (RO p. 11, ¶10). The ALJ found that Petitioner Christensen resides approximately 3 miles from the WCEC site and that he has hiked and observed wildlife in the National

Wildlife Refuge. (RO p. 12, ¶12). The ALJ then concluded that these Petitioners' claims of standing based on alleged impacts to the National Wildlife Refuge from 3000-foot deep injection well system failed the first prong of the Agrico[1] standing test. (RO p. 55, ¶114). In other words, these Petitioners did not show that they have suffered an injury in fact of sufficient immediacy to entitle them to the administrative hearing. (RO p. 54, ¶113).

The ALJ further found that Petitioner Larson lives about 2.5 miles east of the WCEC site on a 1.63-acre lot. Larson relies for her potable water on a well drilled about 125 feet into the surficial aquifer. (RO p. 12, ¶11). The ALJ concluded that Larson did not prove standing because the claimed impact on her well from a 3000-foot deep injection well system also failed the first prong of the two-pronged standing test. (RO p. 56, ¶¶115-116). The ALJ determined that "the small amount of additional pressure, the vastness of the Boulder Zone, the thickness of the Middle Floridan Confining Unit, the lack of another well into the Boulder Zone that might require corrective action within miles of the WCEC, and the presence of another confining unit between the Middle Floridan and Petitioner Larson's well preclude the possibility that Petitioner Larson has proved any injury in fact." (RO p. 56-57, ¶116).

However, the ALJ acknowledged that "subsequent review may determine that one or more petitioners have standing." (RO p. 58, ¶119). Therefore, the RO contains

---

[1] Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478. 482 (Fla. 2d DCA 1981) (holding that for standing, challengers must show that (1) they have suffered an injury in fact of sufficient immediacy to entitle them to a Section 120.57(1) hearing, and (2) their substantial injury is of a type or nature that the proceeding was designed to protect).

findings of fact and conclusions of law on all issues that were addressed in the full evidentiary hearing. This approach "would serve administrative efficiency and likely render any erroneous standing determinations harmless error." (RO p. 58, ¶119).

The ALJ's recommended permit revisions were based on two issues that he characterized as minor deficiencies. (RO p. 48, ¶100; p. 54, ¶111). The two issues identified by the ALJ were the rate of injection and the identification of hazardous waste. (RO p. 48, ¶100; p. 51, ¶106). The ALJ concluded that the Permit did not explicitly set the maximum rate of injection for the injection well system or the two injection wells individually. Thus, it was not clear whether the maximum injection rate of 10 feet per second ("ft/sec") during normal operation (12 ft/sec during emergencies) applied to each well resulting in a combined maximum of 20 ft/sec (24 ft/sec during emergencies). (RO p. 47-48, ¶¶98-99). In addition, the ALJ interpreted the applicable rule provision that allows an increased rate of 12 ft/sec for planned testing, maintenance, or emergency conditions, in a manner that would allow FPL to pump at the rate of 12 ft/sec only during an emergency. (RO p. 48, ¶¶99-100).

The ALJ stated that the other minor deficiency involved how FPL "is to determine that the wastewater disposed into the injection wells is free of hazardous waste. (RO p. 48, ¶101). The ALJ found that the Permit addressed hazardous wastes by stating that the "injectate shall be non-hazardous in nature at all times." (RO p. 50, ¶104). The ALJ concluded that FPL could use actual testing or "process knowledge" to determine if a substance is hazardous. However, the ALJ concluded that using "process knowledge" is not within the part of the Code of Federal Regulations that the Department has

incorporated into a rule. (RO p. 70, ¶151). The ALJ acknowledged that if "process knowledge" was incorporated in a Department rule then FPL could simply rely on it. (RO p. 71, ¶152). The ALJ further concluded that FPL can provide reasonable assurance as to hazardous waste using the procedures he described in the RO. The ALJ found that FPL should prepare, implement, and document a plan for periodically obtaining reliable data and conducting valid analysis, or obtaining such data and analysis from other parties such as reliable vendors or governmental agencies, to determine whether a discrete wastestream is a hazardous waste. (RO p. 51, ¶¶106-107).

STANDARDS OF REVIEW

Section 120.57(1)(l), Florida Statutes, provides that an agency reviewing a DOAH recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." § 120.57(1)(l), Fla. Stat. (2007); Wills v. Florida Elections Commission, 955 So.2d 61 (Fla. 1st DCA 2007); Heifetz v. Dept. of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985) (holding that agency may not reject an ALJ's findings of fact, which are supported by competent, substantial evidence, nor is it authorized to reweigh the evidence, resolve conflicts in testimony, draw inferences, judge credibility of witnesses, or otherwise interpret the evidence).

Florida law defines "competent substantial evidence" as "such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to

support the conclusion reached." DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1975); Gulf Coast Elec. Co-op v. Johnson, 727 So.2d 259, 262 (Fla. 1999). Furthermore, an agency may not create or add to findings of fact because an agency is not the trier of fact. Friends of Children v. Dept. of Health and Rehabilitative Services, 504 So.2d 1345 (Fla. 1st DCA 1987). The decision to accept one expert's testimony over that of another is left to the discretion of the administrative law judge and cannot be altered absent a complete lack of competent, substantial evidence from which the finding could reasonably be inferred. Florida Chapter of Sierra Club v. Orlando Utility Commission, 436 So.2d 383, 389 (Fla. 5th DCA 1983). Furthermore, "[r]ejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact." § 120.57(1)(l), Fla. Stat. (2007).

With respect to the standard of review regarding an ALJ's conclusions of law, Section 120.57(1)(l), Florida Statutes, provides that an agency may reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction" whenever the agency's interpretation is "as or more reasonable" than the interpretation made by the ALJ. See Deep Lagoon Boat Club Ltd. v. Sheridan, 784 So.2d 1140 (Fla. 2d DCA 2001). Florida Courts have consistently applied this section's "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the ALJ's application of legal concepts such as collateral estoppel, res judicata, and hearsay, but not from reviewing conclusions of law that are based upon the ALJ's application of an agency's administrative rules or procedures. Id.

An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. See, e.g., Public Employees Relations Commission v. Dade County Police Benevolent Association, 467 So.2d 987, 989 (Fla. 1985); Florida Public Employee Council, 79 v. Daniels, 646 So.2d 813, 816 (Fla. 1st DCA 1994). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless "clearly erroneous." See, e.g., Falk v. Beard, 614 So.2d 1086, 1089 (Fla. 1993); Dept. of Environmental Regulation v. Goldring, 477 So.2d 532, 534 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. See, e.g., Suddath Van Lines, Inc. v. Dept. of Environmental Protection, 668 So.2d 209, 212 (Fla. 1st DCA 1996).

RULINGS ON EXCEPTIONS

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See Couch v. Commission on Ethics, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." Environmental Coalition of Florida, Inc. v. Broward County, 586 So.2d 1212, 1213 (Fla.

1st DCA 1991). The ALJ's RO found that the Petitioners did not prove their standing to maintain this proceeding. The Petitioners did not file any Exceptions to the RO. Therefore, those findings are uncontested. Having considered the applicable law, the ALJ's findings and conclusions regarding the Petitioners' lack of standing are adopted in this Final Order. However, subsequent judicial review may determine that one or more of the Petitioners had standing. Therefore, for appellate purposes, I will rule on the Exceptions filed by the Co-Respondents.

RULINGS ON CO-RESPONDENTS' EXCEPTIONS

a) Rate of Injection

Respondent FPL takes exception to the ALJ's finding of fact paragraph 100 contending first that the paragraph is really a conclusion of law. Second, FPL argues that the ALJ recommended revising permit Specific condition 5.b.4 to clarify that the maximum rate of pumping is 10 ft/sec (12 ft/sec in an emergency) whether one or both injections wells are pumping at any given time; and the unavailability of one of the wells (such as outage for routine service) is not an emergency that would allow pumping at the rate of 12 ft/sec. FPL suggests that the basis for the ALJ's recommendation is that the ALJ interpreted Specific condition 5.b.4 of the Permit as implying that an emergency arises when one of FPL's two injections wells requires service and FPL "can no longer obtain a combined rate of 20 feet per second out of both wells, so it may then at least obtain 12 feet per second out of the well that remains." (RO ¶98). FPL contends that the ALJ has incorrectly interpreted the applicable Department rule in Fla. Admin. Code R. 62-528.415(1)(f), which provides:

(f) Injection Fluid Velocity.

1. The maximum velocity of injected fluid shall not exceed the point where the mechanical limits of the well design or structure of the formation will be adversely affected.

2. Except as provided in 3. below, the maximum injection velocity of a well that begins operation after June 1, 1985, shall not exceed a peak hourly flow of ten feet per second (ft/sec), unless the applicant demonstrates that higher velocities will not compromise the integrity or operation of the well.

3. An injection system may be designed to allow an injection velocity not to exceed a peak hourly flow of 12 ft/sec during planned testing, maintenance, or emergency conditions when one or more wells are taken out of service if the permittee provides the Department with reasonable assurance that the higher velocities will not compromise the integrity or operation of the well(s).

Contrary to FPL's argument the ALJ in paragraph 100 of the RO did not specifically recommend revising Specific condition 5.b.4. The ALJ simply recommended "adding language to the Permit." (RO p. 48, ¶100). The ALJ's recommendation followed from his finding in paragraph 98 that "the Permit nowhere explicitly sets the maximum rate for the injection well system or the two injections wells individually." (RO p. 47, ¶98). A review of the Department's draft Permit shows that the ALJ's finding is correct. (FPL Ex. 23). In finding of fact 98 the ALJ contrasted the contents of the draft Permit document and the Department's other evidence with the evidence presented by FPL. The ALJ found that FPL seeks approval of two injection wells because it needs one well to serve as a back-up and does not intend to operate both wells simultaneously. FPL has proposed that the injection well system have "single-well capacity," even in a situation where both wells may operate simultaneously. (RO p. 46, ¶¶95-96). The ALJ found that FPL does not intend to operate the injection

well system at a rate of more than 10 ft/sec, or 12 ft/sec during emergencies. In other words FPL does not intend to operate at a combined rate of 20 ft/sec or 24 ft/sec. (RO p. 46-47, ¶96). Further, the ALJ found that FPL's intentions are consistent with the testimony of the primary expert on this point. FPL's geologist testified that the Boulder Zone could receive water at the rate of 10 ft/sec or 12 ft/sec during emergencies and that during testing and operation only one well would be pumping at a time. FPL's geologist also calculated the zone of endangering influence using the maximum pumping rate of 10 ft/sec, not 20 ft/sec. (RO p. 47, ¶97).

So by contrast, the Department's evidence in the form of its draft Permit did not explicitly impose on FPL the operating proposal identified in findings of fact 95 through 97. I agree with the ALJ that language should be added to the Permit explicitly identifying FPL's operating proposal such that the maximum rate of pumping for the injection system whether one or both wells are pumping at any given time is 10 ft/sec during normal operations. The basis for my agreement is the rule requirement in Rule 62-528.415(1)(f) that the "maximum velocity of injected fluid shall not exceed the point where the . . . structure of the formation will be adversely affected."[2] Thus, based on the testimony of FPL's geologist, the formation can receive water at the rate of 10 ft/sec or 12 ft/sec during emergencies. (RO p. 47, ¶97).

However, I do not agree with the ALJ's recommended restriction of the circumstances under which a maximum pumping rate of 12 ft/sec may be allowed. Rule

[2] Since I've already adopted the ALJ's findings that none of the Petitioners have proven standing, I'll note that FPL is still required to comply with this rule requirement whether made explicit in the draft Permit or not.

62-528.415(1)(f) clearly provides that 12 ft/sec may be allowed "during planned testing, maintenance, or emergency conditions when one or more wells are taken out of service." It appears that the ALJ has incorrectly interpreted the rule's provisions.[3] A correct and more reasonable interpretation, based on the plain language of the rule, allows FPL to design the injection system to allow up to 12 ft/sec "during planned testing, maintenance, or emergency conditions when one or more wells are taken out of service." It appears that it was the ALJ's intention to somehow restrict FPL's ability to activate the "back-up" well to pump at a maximum rate of 12 ft/sec. every time that the primary well is being serviced. It is true that routine "servicing of the other well is not an emergency." (RO p. 48, ¶99). However, such servicing of a well falls under "maintenance" and would justify operating the activated well at up to 12 ft/sec in compliance with the provisions of Rule 62-528.415(1)(f)3. Thus, the last three sentences of paragraph 99 also contains the ALJ's incorrect interpretation of the provisions of Rule 62-528.415(1)(f)3.[4]

Therefore, based on the foregoing, FPL's exception is granted.

b) Identification of Hazardous Waste

FPL and the Department take exception to the ALJ's proposed permit condition that would require FPL to prepare, implement, and document a plan for their waste streams to determine if they contain hazardous waste. (RO p. 51, ¶106). FPL and the Department contend that the basis for the ALJ's proposed permit condition is an

[3] I agree with FPL that paragraph 100 is a conclusion of law. In addition, the last three sentences of paragraph 99 is also a conclusion of law.

[4] Related conclusion of law paragraph 146 is also rejected.

erroneous legal conclusion that "process knowledge" cannot be a basis for reasonable assurance. (RO p. 70-71, ¶¶151-152). For the reasons explained below I grant the exceptions to conclusions of law ¶¶151 and 152. However, with regard to the other paragraphs of the RO listed in FPL's (¶¶101, 102, 106) and the Department's (¶¶145, 147, 153) exceptions, I deny the exceptions.

The ALJ concluded that the Department has only adopted by reference 40 C.F.R. Part 261, but not 40 C.F.R. Part 262. (RO p. 70, ¶151). This conclusion prevents reliance by FPL on the "process knowledge" provision in 40 C.F.R. 262.11 as a basis to provide reasonable assurance that the wastestreams will not contain hazardous waste. (RO p. 71, ¶152). Contrary to the ALJ's conclusion that 40 C.F.R. Part 262 is not incorporated into Florida law, Fla. Admin. Code R. 62-730.160(1) specifically adopts by reference all of 40 C.F.R. Part 262, with two exceptions not relevant in this context. This adoption by reference includes 40 C.F.R. 262.11, the "process knowledge" provision. Chapter 62-730, applies with independent force of law to all generators of solid waste, including FPL. As the ALJ noted in paragraph 152, "40 C.F.R. § 262.11 imposes the burden on the person who generates a solid waste, which may include a wastestream, to determine if the waste is a hazardous waste." Therefore, applying the correct interpretation of Florida law allows FPL to "simply rely on a rule authorizing the use of process knowledge." (RO p. 71, ¶151).

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or

in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See Couch v. Commission on Ethics, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." Environmental Coalition of Florida, Inc. v. Broward County, 586 So.2d 1212, 1213 (Fla. 1st DCA 1991). The ALJ's RO found that the Petitioners did not prove their standing to maintain this proceeding. The Petitioners did not file any Exceptions to the RO. Therefore, those findings are uncontested.

Having considered the applicable law in light of the uncontested findings of fact set forth in the Recommended Order, and being otherwise duly advised, it is ORDERED that:

A. The Recommended Order (Exhibit A) is adopted in its entirety and incorporated herein by reference.

B. The Amended Petitions are DISMISSED.

C. Florida Power & Light's application for Permit No. 247895-007-UC is GRANTED.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal

accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 17 day of April, 2008, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Michael Drew for
MICHAEL W. SOLE
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES, WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

Kay Buchanan 4/17/08
CLERK DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

Peter Cocotos, Esquire
Florida Power & Light Company
700 Universe Blvd.
West Palm Beach, FL 33408

Alexandria Larson
16933 West Harlena Drive
Loxahatchee, FL 33470

Claudia Llado, Clerk and
Robert E. Meale, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

Michael Christensen
13758 159th Street North
Jupiter, FL 33478

Barry M. Silver, Esquire
1200 South Rogers Circle
Suite 8
Boca Raton, FL 33487

Eric T. Olsen, Esquire
Paula L. Cobb, Esquire
Gary V. Perko, Esquire
Hopping, Green & Sams
123 South Calhoun Street
Tallahassee, FL 32301

and by hand delivery to:

Cynthia K. Christen, Esquire
Ronald W. Hoenstine, III, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 17th day of April, 2008.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

FRANCINE M. FFOLKES
Senior Assistant General Counsel

3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000
Telephone 850/245-2242