

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA POWER AND LIGHT COMPANY Case No. 15-1559EPP
TURKEY POINT POWER PLANT UNITS
3-5 MODIFICATION TO CONDITIONS
OF CERTIFICATION

RECOMMENDED ORDER

The final hearing in this matter was held on December 1-4, 2015, in Miami, Florida, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Florida Power and Light Company ("FPL"):

Peter C. Cunningham, Esquire
Gary V. Perko, Esquire
Douglas S. Roberts, Esquire
Jonathan Harrison Maurer, Esquire
Hopping, Green and Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314

Peter Cocotos, Esquire
Florida Power and Light Company
215 South Monroe Street, Suite 810
Tallahassee, Florida 32301

For Department of Environmental Protection ("DEP"):

Sarah M. Doar, Esquire
Department of Environmental Protection
Office of General Counsel
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

For South Florida Water Management District ("SFWMD"):

Carlyn H. Kowalsky, Esquire
South Florida Water Management District
Mail Stop Code 1410
3301 Gun Club Road
West Palm Beach, Florida 33406

For Intervenor Atlantic Civil, Inc. ("ACI")

Andrew J. Baumann, Esquire
Alfred J. Malefatto, Esquire
Rachel B. Santana, Esquire
Lewis, Longman and Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the Governor and Cabinet, in their capacity as the Siting Board and pursuant to the Florida Electrical Power Plant Siting Act ("PPSA"), should approve FPL's request to modify the Conditions of Certification for Units 3, 4, and 5 of the Turkey Point Power Plant in southeast Miami-Dade County.

PRELIMINARY STATEMENT

On September 5, 2014, FPL filed a petition with DEP pursuant to the PPSA, chapter 403, Part II, Florida Statutes, to modify the Conditions of Certification for Turkey Point Units 3, 4, and 5 to authorize three "system improvement projects," including the construction and operation of up to six new production wells to withdraw 14 million gallons per day ("mgd") of Upper Floridan Aquifer ("UFA") water for use in the Turkey Point cooling canal

system ("CCS") for salinity and temperature management purposes. On December 23, 2014, DEP issued notice of its intent to modify the Conditions of Certification to authorize the three projects proposed by FPL. All required public notices were published by FPL and DEP.

On March 19, 2015, DEP issued a final order authorizing the requested modifications for which no objections had been raised.

Miami-Dade County, Tropical Audubon Society, Inc., and SFWMD each filed notices of their intent to be parties to the modification proceeding. Miami-Dade County and Tropical Audubon Society, Inc., later voluntarily withdrew from the proceeding.

On March 24, 2015, ACI filed a Motion to Intervene, which was opposed by FPL. The motion to intervene was denied for failing to include an adequate explanation of ACI's alleged injury, but ACI was granted leave to file another motion to intervene. On April 3, 2015, ACI filed an Amended Motion to Intervene, which was granted. On October 30, 2015, ACI filed a Second Amended Motion to Intervene, which was granted over the objection of FPL.

At the final hearing, Joint Exhibits 1-6 were admitted into evidence. FPL presented the testimony of: Steven Scroggs, Senior Director of Project Development for FPL, who was accepted as an expert in power plant engineering, design, and siting; Peter Andersen, P.E., who was accepted as an expert in

groundwater hydrology and groundwater flow and transport modeling; and Gregory Powell, Ph.D. FPL also submitted pre-filed expert testimony of: Dr. Powell, James Andersen, Karl Bullock, Kerri Kitchen, Kennard Kosky, and James Lindsay. FPL Exhibits 1-6, 12-13, 19-22, 44, 46, 48, 54-59, and 61 were admitted into evidence.

DEP presented the testimony of: Ann Seiler, an Environmental Specialist III within DEP's Siting Coordination Office; Justin Green, a former Program Administrator for the Siting Coordination Office; and Phillip Coram, a DEP Program Administrator who was accepted as an expert in environmental engineering. DEP Exhibits 23 and 28 were admitted into evidence.

SFWMD presented the testimony of: Simon Sunderland, SFWMD's Section Leader for Lower East Coast Planning, Permitting, and Compliance; and Jefferson Giddings, a Principal Scientist at SFWMD who was accepted as an expert in groundwater modeling. SFWMD Exhibits 1, 2, 10, and 13 were admitted into evidence.

ACI presented the testimony of: Steve Torcise, Jr., who is ACI's President; Marc Harris, a DEP employee responsible for issuing National Pollution Discharge Elimination System permits for power plants; Steven Krupa, who is in charge of the hydrogeology section in the SFWMD's Water Supply Department and who was accepted as an expert in hydrogeology and geology; William Nuttle, Ph.D., who was accepted as an expert in coastal

wetlands hydrology with emphasis in the area of water and salt budgets; Elezier Wexler, who was accepted as an expert in groundwater hydrology and groundwater transport modeling; and Edward Swakon, who was accepted as an expert in groundwater resources and groundwater monitoring. ACI Exhibits 9-11, 14-16, 18, 24-26, 28, 31, 34-36, 38, 42, 48-50, 50A, 51, 52, 57, 61, 63, and 65 were admitted into evidence.

No member of the public requested the opportunity to offer testimony on the proposed modification. No written comments were received from the public.

The six-volume Transcript of the final hearing was filed with DOAH. The parties filed proposed recommended orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. FPL is a subsidiary of NextEra Energy and a regulated Florida utility. It provides electric service to 4.7 million customers in 35 counties. The Turkey Point Power Plant in southeast Miami-Dade County is one of 14 generating facilities operated by FPL.

2. DEP is the state agency charged with administering the PPSA pursuant to chapter 403, Part II.

3. SFWMD is a regional agency created by chapter 373, Florida Statutes, with regulatory authority over water use

permitting within its geographic jurisdiction, which includes the Turkey Point Power Plant site.

4. ACI owns 2,598 acres of land in southeast Miami-Dade County approximately four miles west of the Turkey Point CCS. ACI has used its property for agriculture and limerock mining for many years and continues to do so.

5. ACI withdraws and uses water from the Biscayne Aquifer pursuant to two SFWMD water use permits. ACI also has a Life-of-the-Mine Environmental Resource Permit issued by DEP for its mining activities. The Life-of-the-Mine permit requires that mining be terminated if monitoring data indicate the occurrence of chloride concentrations greater than 250 milligrams per liter ("mg/L") in the mine pit.

The Requested Modifications

6. FPL is requesting to modify the Conditions of Certification to authorize three projects related to water use: (1) construction and operation of the new UFA production wells for use in the CCS; (2) utilization of one of the new production wells as a dual purpose well to comply with a recent order of the U.S. Nuclear Regulatory Commission related to providing emergency cooling water supplies for the nuclear-fueled Units 3 and 4; and (3) re-allocation of authorized water withdrawn from an existing production well for Unit 5 (Well No. PW-3) as a source of process water for Units 3 and 4.

7. DEP received three written objections to the proposed production wells to provide water for use in the CCS. No objections were raised regarding the two other FPL projects and DEP issued a final order approving those two modifications. This proceeding involves only the proposal to construct and operate new UFA production wells to discharge water into the CCS.

Turkey Point

8. FPL's Turkey Point property covers approximately 9,400 acres in unincorporated Miami-Dade County, located 25 miles south of the City of Miami and along the coastline adjacent to Biscayne Bay.

9. Five electrical generating units were built at Turkey Point. Units 1 and 2 were built in the 1960s. Unit 2 ceased operating as a power generation facility in 2010. Units 3 and 4 are Florida's first nuclear generating units, which FPL constructed in the 1970s. Unit 5 is a natural gas combined cycle generating unit brought into service in 2007.

10. Units 1 through 4 pre-date the PPSA and were not certified when they were built. However, Units 3 and 4 were certified pursuant to the PPSA in 2008 when FPL applied to increase their power output, referred to as an "uprate." Unit 5 was built after the PPSA and was certified under the Act.

The CCS

11. The Turkey Point CCS is a 5,900-acre network of canals, which provides a heat removal function for Units 1, 3, and 4, and receives cooling tower blowdown from Unit 5.

12. FPL constructed the CCS in compliance with a 1971 consent judgment with the U.S. Department of Justice in order to terminate direct discharges of heated water into Biscayne Bay.

13. The CCS is not a certified facility under the PPSA, but it is an "associated facility," which means it directly supports the operation of the power plant.

14. The CCS functions like a radiator, which uses evaporation, convective heat transfer, and radiated heat loss to lower the water temperature. When cooling water enters the plant, heat is transferred to the water by flow-through heat exchangers and then discharged to the "top" or northeast corner of the CCS. Circulating water pumps provide counter-clockwise flow of water from the discharge point, down (south) through the 32 westernmost canals, across the southern end of the CCS, and then back up the seven easternmost canals to the power plant intake.

15. The full circuit through the CCS from discharge to intake takes about 48 hours and results in a reduction in water temperature of about 10 to 15 degrees Fahrenheit.

16. The CCS canals are unlined, so they have a direct connection to the groundwater. Makeup water for the CCS comes from process water, rainfall, stormwater runoff, and groundwater infiltration to replace water lost by evaporation and seepage.

17. When the CCS was first constructed, FPL and SFWMD's predecessor, the Central and Southern Florida Flood Control District, entered into an agreement to address the operation and management of the CCS. The agreement has been updated from time to time. The original agreement and updates called for monitoring the potential impacts of the CCS.

18. Operation of the CCS is also subject to a state industrial wastewater permit and National Pollution Discharge Elimination System ("NPDES") permit administered by DEP. The state industrial wastewater/NPDES permit is incorporated into the Conditions of Certification.

Hypersaline Conditions

19. The original salinity levels in the CCS were probably the same as Biscayne Bay.

20. However, because the salt in saltwater is left behind when the water evaporates, the water in the CCS becomes saltier. Salinity levels in the CCS are also affected by the amount of rainfall, air temperature, water temperature, the volume of flow from the power plant, and the rate of water circulation.

21. In 2008, when FPL applied for certification of the uprate of Units 3 and 4, it reported average salinity to be 50 to 60 Practical Salinity Units ("PSU"). This is a "hypersaline" condition, which means the salinity level is higher than is typical for seawater, which is about 35 PSU.

22. Higher salinity makes water denser, so the hypersaline water in the CCS sinks beneath the canals and to the bottom of the Biscayne Aquifer, which is about 80 feet beneath the CCS. At this depth, there is a confining layer that separates the Biscayne Aquifer from the deeper Upper Floridan Aquifer. The confining layer stops the downward movement of the hypersaline "plume" and it spreads out in all directions.

23. The 2008 Conditions of Certification included a Section X, entitled "Surface Water, Ground Water, Ecological Monitoring," which, among other things, required FPL and SFWMD to execute a Fifth Supplemental Agreement regarding the operation and management of the CCS. New monitoring was required and FPL was to "delineate the vertical and horizontal extent of the hyper-saline plume that originates from the cooling canal system" and "detect changes in the quantity and quality of surface and ground water over time due to the cooling canal system."

24. In response, FPL installed 14 clusters of groundwater monitoring wells, each cluster allowing data to be collected from shallow, middle, and deep zones of the Biscayne Aquifer.

25. In late 2013, salinity levels in the CCS began to spike, reaching a high of 92 PSU in the summer of 2014.

26. FPL presented evidence to show the salinity spikes in recent years are attributable in part to lower than normal rainfall and to higher turbidity in the CCS caused by algal blooms.

27. In addition, the retirement of Unit 2 and the uprate of Units 3 and 4 during this time-period reduced flow and circulation in the CCS, which contributed to increased temperatures in the CCS, more evaporation, and higher salinity levels.

28. ACI contends the uprate of Units 3 and 4 is the primary cause of recent, higher water temperatures and higher salinity. In support, ACI points to FPL's uprate application, which predicted the uprate would increase CCS water temperature and salinity, as well as other data indicating a correlation between the uprate and higher temperature and salinity. However, the uprate application was filed before Unit 2 was decommissioned in 2010. FPL presented evidence that elimination of the thermal output from Unit 2 offset the thermal output from the uprate of Units 3 and 4, so that the total thermal output is now about four percent less. ACI did not refute this thermal output calculation.

29. It is undisputed that evaporation is the main cause of hypersalinity in the CCS, but the testimony about the recent spike in salinity and the relative influence of contributing factors shows it is a complex subject due to the number of factors, most of which vary by season and even daily. The relative contribution of the factors affecting salinity in the CCS is one that scientists can disagree about because the analyses that have been conducted to date are not comprehensive or meticulous enough to end reasonable disagreement.

30. FPL has taken action to reduce salinity within the CCS by adding stormwater from the L-31E Canal (pursuant to emergency orders), adding water from shallow saline water wells, and removing sediment build-up in the canals to improve flow. These actions, combined with more normal rainfall, have decreased salinity levels in the CCS to about 45 PSU at the time of the final hearing.

Saltwater Intrusion

31. Historical data shows that when the CCS was constructed in the 1970s, saltwater had already intruded inland along the coast due to water withdrawals, flood control structures, and other human activities.

32. An interceptor ditch was constructed just west of and adjacent to the CCS to restrict the movement of saline water west of the ditch. This was supposed to be accomplished by pumping

water out of the ditch as necessary to keep its water level lower than the water level in the more western L-31E Canal so that a hydraulic gradient toward the east was maintained.

33. The "front" or westernmost line of saltwater intrusion is referred to as the saline water interface. More specifically, the saline water interface is where groundwater with chloride concentration of 10,000 mg/L or greater meets groundwater with a lower chloride concentration. DEP classifies groundwater with a chloride concentration less than 10,000 mg/L as G-II groundwater, and groundwater with a chloride concentration equal to or greater than 10,000 mg/L as G-III groundwater, so the saline water interface can be described as the interface between G-II and G-III groundwaters.

34. In the 1980s, the saline water interface had moved just west of the CCS interceptor ditch. Now, the saline water interface is four or five miles west of the CCS, and it is still moving west.

35. The groundwater that comes from the CCS can be identified by its tritium content because tritium occurs in greater concentrations in CCS process water than occurs naturally in groundwater. CCS water has been detected four miles west of the CCS.

36. CCS saline waters have also been detected northwest of the CCS, moving in the direction of Miami-Dade County's public water supply wellfields.

37. The hypersaline plume pushes the saline water interface further west. Although Respondents indicated there are other factors that affect saltwater intrusion, the preponderance of the evidence shows the CCS is now the primary reason the saltwater interface in this area is continuing to move inland.

38. Section X of the Conditions of Certification provides that, if monitoring data indicate harm or potential harm to the waters of the State, then additional measures shall be required by DEP to evaluate or to abate such impacts. DEP determined that the CCS is harming waters of the State by contributing to saltwater intrusion. Saltwater intrusion reduces the amount of fresh groundwater available for natural resources and water users.

39. ACI estimated that, with each day that passes, the westward march of the saltwater interface is causing the loss of 855,000 more gallons of fresh groundwater from the Biscayne Aquifer. Even if the amount is only half as much, it is a substantial loss.

40. The Biscayne Aquifer is the main source of potable water in Miami-Dade County and is designated by the federal

government as a sole source aquifer under the Safe Drinking Water Act.

41. When FPL applied to renew its NPDES permit, DEP was concerned about the effect the CCS was having on saltwater intrusion. DEP decided to administratively extend the NPDES permit, rather than renew it, while the agency determined what action should be taken to deal with the problem.

42. On December 23, 2014, DEP issued an Administrative Order ("AO") that requires FPL to prepare and submit for review and approval a Salinity Management Plan to reduce hypersaline conditions and their effect on saline water intrusion. The AO was challenged in a separate administrative proceeding and is not yet in effect.

43. A DEP administrator stated that DEP has not been able to identify a specific violation of state water quality standards attributable to the CCS, but his explanation did not reconcile the undisputed evidence that the CCS has a groundwater discharge of hypersaline water that is contributing to saltwater intrusion. Florida Administrative Code Rule 62-520.400, entitled "Minimum Criteria for Ground Water," prohibits a discharge in concentrations that "impair the reasonable and beneficial use of adjacent waters."

44. As explained in the Conclusions of Law, this is not an enforcement proceeding. However, Respondents thought it was

relevant to assert that FPL's proposal is not a response to a water quality violation. If so, it is relevant for the Administrative Law Judge to state that the record evidence and applicable law indicate FPL is in violation of the minimum criteria for groundwater in rule 62-520.400.

Effect of the Proposed Modification on Saltwater Intrusion

45. Respondents emphasize that the FPL proposal is better than a "no action" alternative. However, the Conditions of Certification require FPL to take action because operation of the CCS is harming water resources. Asserting that FPL's proposal is better than taking no action is no more meaningful than asserting that FPL's proposal would be beneficial.

46. FPL estimated that the addition of 14 mgd of water from the UFA, which has a salinity of about 2 PSU, would reduce salinity in the CCS to the salinity in Biscayne Bay, about 35 PSU, or even lower. ACI's evidence did not refute this estimate.

47. Adding UFA water to the CCS would also reduce water temperatures in the CCS. That is important in order to avoid exceeding the temperature limit imposed by the Nuclear Regulatory Commission on operation of the nuclear units, Units 3 and 4. The temperature limit is 104 degrees Fahrenheit and, if exceeded, would require Units 3 and 4 to be shut down.

48. The FPL proposal would remove the source of the hypersaline water. Hypersaline water would no longer be sinking beneath the CCS.

49. FPL presented evidence to show the low saline water would begin to mix with the hypersaline water already in the Biscayne Aquifer, the groundwater in the area would steadily "freshen," and the hypersaline plume would begin to shrink and eventually disappear.

50. ACI pointed out that the salt in the CCS and in the Biscayne Aquifer would not disappear, but ACI did not explain the significance of that fact. ACI did not explain how the modeling efforts by FPL failed to account for salt or explain how the presence of salt undermines the model's prediction that groundwater in the area would steadily freshen and the hypersaline plume would shrink and eventually disappear.

51. The testimony of ACI's expert hydrologists was persuasive in showing the two-dimensional groundwater model used by FPL and SFWMD to analyze and predict the effect of adding UFA water to the CCS was not the best tool for the task. A two-dimensional model cannot account for some of the factors affecting water movement and salinity. A three-dimensional model produces more reliable results and is a better predictive tool for these purposes. Nevertheless, differences between the results obtained from the two-dimensional modeling by FPL and the

three-dimensional modeling by ACI do not affect the recommendation to the Siting Board.

52. FPL and SFWMD estimated that the addition of 14 mgd of water into the CCS would reduce the rate of westward movement of CCS hypersaline saline waters in the Biscayne Aquifer and this, in turn, would slow the westward movement of the saline water interface.

53. No party believes the FPL proposal will halt the westward movement of the saline water interface.

54. ACI contends the FPL proposal would worsen groundwater conditions because adding water to the CCS would increase the hydraulic "head" in the CCS and exert a greater westward push on groundwaters in the Biscayne Aquifer, and a greater push on the existing hypersaline plume. However, the water in the CCS would be less dense after the UFA water is added, which Respondents' experts said would offset the increase in volume. ACI did not show how water density was accounted for in its own analyses. In addition, ACI's Exhibits 38, 39, 42, 51, and 63 appear to support Respondents' contention that the FPL proposal would slow the rate of saltwater intrusion.

55. The effect of the FPL proposal on the hypersaline plume is the most difficult question in the case. The evidence presented necessarily relied on many assumptions about physical features and processes, some of which had to be simplified for

practical analysis. FPL's evidence does not create certainty, but FPL met its *prima facie* burden to demonstrate that the proposed water use would be consistent with the public interest because the modification would improve current groundwater conditions. ACI's evidence raises serious questions, but was not sufficient to rebut FPL's showing.

56. Respondents estimate that it would take about 25 years for the saline water interface to reach ACI's property if the FPL proposal is implemented.

57. ACI's analysis focused, instead, on the movement of an advancing contour of much lower salinity, 250 mg/L, because this lower level is a limit in ACI's permit and would disrupt ACI's mining operations. This "too saline" water will reach ACI's property in 10 years, even with the FPL proposal.

Water Use Regulatory Criteria

58. ACI did not raise any issues regarding FPL's compliance with SFWMD water use criteria associated with the proposed withdrawal, itself. ACI does not contend that the proposed withdrawal of 14 mgd of water from the UFA would interfere with existing legal uses, cause saltwater intrusion, harm wetlands and surface waters, or adversely affect off-site land uses.

59. SFWMD reviewed the proposed use of the UFA water in the CCS for consistency with the public interest and determined that

the use was consistent because it would improve current conditions in the CCS and Biscayne Aquifer.

60. FPL provided reasonable assurance that the FPL proposal meets all applicable water use regulatory criteria.

PPSA Criteria for Approval

61. For the reasons stated above, the record evidence supports an affirmative determination by the Siting Board regarding the certification criteria in section 403.509(3)(a) through (g).

CONCLUSIONS OF LAW

Standing

62. Section 403.508(3)(e) describes the parties to a PPSA certification proceeding as including persons whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene.

63. ACI has standing in this proceeding because the Conditions of Certification acknowledge and address the potential for harm to water resources caused by the CCS. The harm encompasses legal uses of the water resources, like ACI's uses, that will be affected by the operation of the CCS.

64. Respondents cite Agrico v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), in support of their argument that ACI has not demonstrated standing because the proposed modification does not present an immediate threat to

ACI's property. The injury to ACI is immediate in the sense that it is predictable based on current conditions and does not require the occurrence of intervening events or forces. ACI's injury is no less immediate than the injury that would be suffered by anyone downstream of a pollution source, when the timing of the "impact" and the concentration of the pollution at the time of impact can be calculated by accepted scientific methods.

Burden and Standard of Proof

65. Respondents state that FPL, as the applicant for certification, has the ultimate burden of persuasion to demonstrate entitlement to the requested modifications, citing In re: Progress Energy Florida Levy Nuclear Project Units 1 and 2, 2009 Fla. ENV LEXIS 151 at *114; and Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981). However, those cases pre-date the amendment of chapter 120, Florida Statutes, to create section 120.569(2)(p). This section now places the ultimate burden of persuasion on the challenger in all licensing proceedings arising under chapter 403 after the permit applicant has introduced the permit file constituting its *prima facie* case. This is a licensing proceeding arising under chapter 403. Therefore, ACI has the ultimate burden of persuasion in this proceeding.

66. The standard of proof is a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat. (2015). FPL must demonstrate by a preponderance of the evidence that it has provided reasonable assurances of its compliance with all applicable regulatory criteria. Reasonable assurance contemplates a "substantial likelihood that the project will be successfully implemented." Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). It does not require absolute guarantees.

Nonprocedural Agency Requirements

67. Section 373.223(1) provides that "[t]o obtain a [water use] permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water: (a) Is a reasonable-beneficial use as defined in s. 373.019; (b) Will not interfere with any presently existing legal use of water; and, (c) Is consistent with the public interest."

68. ACI claims in its Proposed Recommended Order that FPL failed to demonstrate a need for the amount of water it requested and did not consider mitigative measures, but these issues were not raised in ACI's amended petition to intervene.

69. ACI claims the proposed use of the 14 mgd of water, in contrast to the withdrawal of the water, was not properly reviewed by SFWMD under the reasonable-beneficial use criteria. However, SFWMD reviewed the proposed use of the water under the

public interest test, which is consistent with its rules and practices. The FPL proposal is consistent with the public interest because it would likely improve current groundwater conditions. It would also reduce water temperature in the CCS to avoid the shutdown of the nuclear generating units pursuant to Nuclear Regulatory Commission requirements.

70. FPL's proposed modification does not create any inconsistencies with the industrial wastewater/NPDES permit.

71. FPL provided reasonable assurance that the proposed modification would comply with all applicable water use regulatory criteria.

72. However, ACI urges the Siting Board to deny the proposed modification because ACI believes it perpetuates a problem created by the CCS and fails to prevent the eventual contamination of the groundwater resources that ACI relies on for its agricultural and mining operations. ACI does not propose a condition or conditions under which FPL's proposal could be approved.

73. ACI points out that the Conditions of Certification are "fully enforceable," but this is not an enforcement proceeding. Because the preponderance of the evidence demonstrates the FPL proposal would result in an improvement in groundwater conditions, the requested modification, itself, does not fail to comply with the Conditions of Certification.

74. Respondents are probably correct that, in this certification proceeding, it is sufficient for the Siting Board's approval of FPL's proposed modification that the modification would result in an improvement over current groundwater conditions. However, it is appropriate to inform the Siting Board that the operation of the Turkey Point Power Plant, as authorized by the Siting Board under the Conditions of Certification, has caused harm to water resources because of the effects of the CCS, and the modification requested by FPL will not prevent further harm from occurring.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Siting Board enter a final order approving the modifications to the Turkey Point Conditions of Certification as proposed on December 23, 2014, with the addition of the following condition, which was stipulated by the parties:

FPL shall monitor the proposed Floridan production wells (F-1, F-2, F-3, F-4 and F-5) on a quarterly basis for: water level or pressure; temperature; pH, Total Dissolved Solids; specific conductance; major anions/cations (including chlorides); NH₃; total nitrogen; and total phosphorus. This monitoring data shall be made available to Miami-Dade County as well as FDEP and the SFWMD. On a semi-annual basis, Miami-Dade County may collect groundwater samples of the proposed Floridan production wells (F-1, F-2, F-3, F-4 and F-5) for constituents including

but not limited to 018/16 and Strontium
(87Sr/86Sr).

DONE AND ENTERED this 25th day of January, 2016, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of January, 2016.

COPIES FURNISHED:

Sarah M. Doar, Esquire
Department of Environmental Protection
Office of General Counsel
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

Peter C. Cunningham, Esquire
Gary V. Perko, Esquire
Douglas S. Roberts, Esquire
Jonathan Harrison Maurer, Esquire
Hopping, Green and Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314
(eServed)

Peter Cocotos, Esquire
Florida Power and Light Company
215 South Monroe Street, Suite 810
Tallahassee, Florida 32301
(eServed)

Carlyn H. Kowalsky, Esquire
South Florida Water Management District
Mail Stop Code 1410
3301 Gun Club Road
West Palm Beach, Florida 33406
(eServed)

Andrew J. Baumann, Esquire
Alfred J. Malefatto, Esquire
Rachel B. Santana, Esquire
Lewis, Longman and Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, Florida 33401
(eServed)

Abbie Schwaderer Raurell, Esquire
Miami-Dade County Attorney's Office
111 Northwest 1st Street, Suite 2810
Miami, Florida 33128
(eServed)

Anthony Justin Pinzino, Esquire
Florida Fish and Wildlife Conservation Commission
Farris Bryant Building
620 South Meridian Street
Tallahassee, Florida 32399-1600
(eServed)

Adam Teitzman, Esquire
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Samuel S. Goren, Esquire
Goren, Cherof, Doody and Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308-4311

Kimberly Clark Menchion, Esquire
Department of Transportation
Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399
(eServed)

Deena Woodward
Department of State
Division of Historical Resources
RA Gray Building, 4th Floor
500 South Bronough Street
Tallahassee, Florida 32399

Edwin A. Steinmeyer, Esquire
Steinmeyer Fiveash LLP
310 West College Avenue
Tallahassee, Florida 32301
(eServed)

Christina Arzillo Shideler, Esquire
Department of Economic Opportunity
MSC 110
107 East Madison Street
Tallahassee, Florida 32399
(eServed)

Lea Crandall, Agency Clerk
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

Jonathan P. Steverson, Secretary
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

Craig Varn, General Counsel
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.