STATE OF FLORIDA
SITING BOARD

FLORIDA POWER AND LIGHT COMPANY **TURKEY POINT POWER PLANT UNITS 3 – 5 MODIFICATION TO CONDITIONS OF CERTIFICATION**	)	**OGC CASE NO. 14-0510** **DOAH CASE NO. 15-1559EPP**

FINAL ORDER

This proceeding arose under the Florida Electrical Power Plant Siting Act (PPSA)[1] and requires the Siting Board to take action on Florida Power & Light's (FPL) application to modify Condition XII of the Conditions of Certification of the existing Site Certification for Turkey Point Power Plant Units 3, 4, and 5, located in Southeast Miami-Dade County.[2] The modification to Condition XII authorizes construction and operation of 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 reduction and management purposes.

BACKGROUND

FPL filed a petition for modification of Condition XII with the Department of Environmental Protection (DEP or Department) on September 5, 2014. *See* Joint Ex. 2. The petition for modification sought to authorize three system improvement projects related to water use: (1) construction and operation of the new UFA production wells for

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[1] Sections 403.501 *et seq.*, Florida Statutes.

[2] Condition XII contain the South Florida Water Management District conditions for water use. *See* § 403.511, Fla. Stat. (2015) (reflecting that Site Certification is the sole license of the state and any affected agency).

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 United States (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emergency cooling water supplies for the nuclear-fueled Units 3 and 4; and (3) re-allocation of authorized water withdrawn from an existing production well for Unit 5 (Well No. PW-3) as a source of process water for Units 3 and 4. *See* Joint Ex. 2.

On December 23, 2014, DEP issued a notice of intent to modify Condition XII to authorize the three proposed projects. All required public notices were published by FPL and DEP. 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 to Condition XII. *See* Joint Ex. 1.[3] This modification proceeding involves only the proposal to construct and operate new UFA production wells to discharge water into the CCS.

Miami-Dade County, Tropical Audubon Society, Inc., and South Florida Water Management District (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. Atlantic Civil, Inc. (ACI), filed a Motion to Intervene on March 24, 2015, which was denied. 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.

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[3] Rule 62-17.211(1)(b)5, Florida Administrative Code, provides that if written objections only address a portion of the requested modification, the Department shall issue a final order approving the portion to which no objections were filed, unless that portion is substantially related to or necessary to implement the portion to which written objections were filed.

The final hearing was held on December 1-4, 2015, in Miami, Florida. No member of the public requested the opportunity to offer testimony on the proposed modification, and no written comments were received from the public. The parties were allowed to file proposed recommended orders and the Transcript of the final hearing was filed with the Division of Administrative Hearings (DOAH). On January 25, 2016, an administrative law judge (ALJ) with the DOAH submitted a Recommended Order (RO). The RO shows that copies were served on counsel for FPL and DEP. The RO also shows that it was served to counsel for the Intervenor ACI, and counsel for the SFWMD. A copy of the RO is attached hereto as Exhibit A. On February 9, the DEP filed its Exception to the RO, and ACI also filed Exceptions to the RO. FPL, DEP, and SFWMD, on February 19, filed their joint response to ACI's Exceptions.

This matter is now before the Governor and Cabinet, sitting as the State of Florida Siting Board, for final action under the PPSA, Sections 403.501 *et seq.*, Florida Statutes.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Siting Board enter a Final Order approving the modification as proposed by the Department on December 23, 2014, with an additional condition that was stipulated by the parties. (RO at page 24). The ALJ found that FPL provided reasonable assurance that the proposed modification would comply with all applicable water use regulatory criteria. (RO ¶¶ 55, 58-60, 67, 69, 71). The ALJ also concluded that the proposed modification met the PPSA criteria for approval in Section 403.509(3)(a) through (g). (RO ¶¶ 61, 69).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), prescribes that an agency reviewing a recommended order (here the Governor and Cabinet sitting as the Siting Board) 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." § 120.57(1)(l), Fla. Stat. (2015); *Charlotte Cnty. v. IMC Phosphates Co.*, 18 So. 3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

Thus the Siting Board may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep't of Health,* 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Envtl. Prot.,* 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.,* 652 So. 2d 894 (Fla. 2d DCA 1995). Also, the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g., Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.,* 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009). Therefore, if the DOAH record discloses any competent substantial evidence

supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof'l Eng'rs,* 946 So. 2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co. v. Dyer,* 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts,* 498 So. 2d 622 (Fla. 1st DCA 1986). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd.,* 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997); *North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

Section 120.57(1)(l), authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *See Barfield v. Dep't of Health,* 805 So. 2d 1008 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward County*, 746 So. 2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140 (Fla. 2d DCA 2001). However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" in order to modify or overturn what it may view as an unfavorable finding of fact. *See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224 (Fla. 1st DCA 2007).

Thus, the Siting Board's review of legal conclusions in a recommended order is restricted to those that concern matters within the agency's field of expertise or "substantive jurisdiction." *See, e.g., Charlotte County v. IMC Phosphates Co.*, 18 So. 3d

1089 (Fla. 2d DCA 2009); *G.E.L. Corp. v. Dep't of Envtl. Prot.*, 875 So. 2d 1257, 1264 (Fla. 5th DCA 2004). Deference should be accorded to an agency's interpretation of statutes and rules within its regulatory jurisdiction, and such agency interpretation should not be overturned unless "clearly erroneous." *See, e.g., Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Dep't of Envtl. 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. Dep't of Envtl. Prot.,* 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

Agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." *See Martuccio v. Dep't of Prof'l Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Siting Bd.*, 693 So. 2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. *See Martuccio,* 622 So. 2d at 609.

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, e.g., Comm'n on Ethics v. Barker,* 677 So. 2d 254, 256 (Fla. 1996); *Henderson v. Dep't*

of Health, Bd. of Nursing, 954 So. 2d 77 (Fla. 5th DCA 2007); *Fla. Dep't of Corrs. 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." *Envtl. Coal. of Fla., Inc. v. Broward County*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.,* 847 So. 2d 540, 542 (Fla. 4th DCA 2003).

Limited Scope of PPSA modification

The scope of this modification proceeding is not in the nature of a challenge to the existing Site Certification (Uprate).[4] The issue in the instant proceeding is not whether the 2008 Uprate was properly evaluated, but whether the proposed modification meets the applicable conditions for issuance. The Siting Board's review includes only that portion of the 2008 Uprate that is proposed to be modified or is affected by the modification. *See Conservancy of S.W. Fla. v. G.L. Homes of Naples Assoc. II, Ltd,* Case No. 06-4922 ¶109 (DOAH May 15, 2007; SFWMD July 18, 2007). It is well established that a modification does not burden the applicant with providing "reasonable assurances" anew with respect to the original permit. *See Friends of the Everglades v. Dep't of Envtl. Regulation,* 496 So. 2d 181, 183 (Fla. 1st DCA 1986) (reflecting that the agency's interpretation of the scope of a modification application was a permissible one). This modification proceeding is limited to whether the application to modify Condition XII meets the applicable water use regulatory criteria and PPSA

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[4] *See In Re: Fla. Power & Light Co. Turkey Point Unit 3 and 4 Uprate Power Plant Siting Application No. PA74-02,* Case No. 08-0378EPP (Fla. DEP October 29, 2008).

criteria. Similarly, standing is based upon whether there is sufficient evidence to demonstrate that, if the adverse impacts of the proposed modification were proven,[5] ACI's substantial interests would be affected by the final agency action.

The ALJ found that FPL provided reasonable assurance that the proposed modification would comply with all applicable water use regulatory criteria. (RO ¶¶ 55, 58-60, 67, 69, 71). The ALJ also concluded that the proposed modification met the PPSA criteria for approval in Section 403.509(3)(a) through (g). (RO ¶¶ 61, 69). In addition, as the ALJ pointed out in paragraph 73, this modification proceeding is not an enforcement proceeding.

Therefore, based on the foregoing reasons, paragraphs 63 and 64 of the Final Order are amended as follows:

> 63. ACI has standing in this proceeding because the alleged potential harm encompasses legal uses of the water resource, like ACI's uses, that could be affected by the addition of 14 mgd of water to the CSS. ACI alleges the modification will interfere with its legal use of groundwater, and that saline intrusion from the proposed modification would degrade the water quality of the Biscayne Aquifer which they use for industrial purposes.
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> 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. ACI contends that the proposed modification will exert a greater westward push on the hypersaline plume towards ACI's property. The injury to ACI is immediate in the sense that it is predictable based on current conditions, as affected by the proposed modification, and does not require the occurrence of other intervening events or forces.

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[5] The ALJ found that while "ACI contends the FPL proposal would worsen groundwater conditions ... 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." (RO ¶ 54).

ACI's Exceptions

Exception No. 1

ACI takes exception to paragraph 28 of the RO, where the ALJ found that ACI did not refute FPL's 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." (RO ¶ 28). The competent substantial evidence that supports this finding was in the form of expert testimony from an FPL witness (Scroggs, T. Vol. I, p. 54, lines 4-10). ACI argues that the ALJ's finding "should be rejected and modified to find that operation of Units 3 and 4 in their uprated conditions have been the primary cause of increased average temperature and salinity in the CCS since 2011." *See* ACI's Exceptions at pages 6-7. However, ACI did not take exception to paragraph 29 where the ALJ found that "the recent spike in salinity and the relative influence of contributing factors shows it is a complex subject . . ." *See Envtl. Coal. Of Fla., Inc. v. Broward County*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991) (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."). ACI argues that there's a difference between the testimony of FPL's witness and the ALJ's description of it, and that the testimony of ACI's witness should be accepted. *See* ACI's Exceptions at pages 4-7. Thus, ACI wants the Siting Board to reweigh the evidence and make additional findings of fact.

As outlined in the standard of review, the Siting Board may not reweigh the evidence, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep't of Health,* 920 So. 2d 27, 30 (Fla. 1st DCA 2005). Also, the ALJ's

decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting the decision. *See e.g., Peace River/Manasota Reg'l Water Supply Auth. V. IMC Phosphates Co.,* 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009). In addition, the Siting Board has no authority to make independent or supplemental findings of fact. *See, e.g., Fla. Power & Light Co. v. Siting Bd.,* 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

Therefore, based on the foregoing reasons, ACI's Exception No. 1 is denied.

Exception No. 2

ACI takes exception to paragraphs 49 and 50 of the RO, on the basis that "[n]o expert for any party" testified that the hypersaline plume would freshen, shrink, and eventually disappear. *See* ACI's Exceptions at page 7. ACI also argues the phrase "eventually disappear" overlooks or misstates the collective expert opinions offered by all parties in the final hearing. *See* ACI's Exceptions at page 7.

Contrary to ACI's argument, paragraph 49 (reflecting that FPL presented evidence to show "that the hypersaline plume would begin to shrink and eventually disappear") and paragraph 50 (reflecting that "the [FPL] model's prediction that groundwater in the area would steadily freshen and the hypersaline plume would shrink and eventually disappear"), are fully supported by the testimony of FPL's expert groundwater modeling witness, Peter Andersen (Andersen, T. Vol. II, p. 136, lines 4-5; FPL Ex. 22). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a

contrary finding. *See, e.g., Arand Construction Co. v. Dyer,* 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts,* 498 So. 2d 622 (Fla. 1st DCA 1986).

Therefore, based on the foregoing reasons, ACI's Exception No. 2 is denied.

Exception No. 3

ACI takes exception to paragraph 68 of the RO by arguing that it "must be rejected." *See* ACI's Exceptions at page 9. In paragraph 68, the ALJ concluded that:

> 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.

ACI concedes that "the ALJ is correct that no specific allegation regarding FPL's failure to demonstrate an open-ended need for five billion gallons per year, and the District's failure to consider mitigative measures were not raised in those specific words in ACI's Petition." *Id.* at page 10. However, ACI asserts "that the issues were identified and raised in the proceeding" by virtue of generic references to various regulatory and statutory provisions in ACI's original and amended petitions to intervene, its [amended] statement of issues, and the prehearing stipulation. However, none of those references contain any specific allegations regarding FPL's "need" for UFA water or consideration of "mitigative measures." Thus, the ALJ's statement in paragraph 68 is accurate.

In addition, paragraph 68 is the type of evidentiary ruling of the ALJ that is not within the substantive jurisdiction of the Siting Board. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." *See Martuccio v. Dep't of Prof'l Regulation*, 622 So. 2d 607,

609 (Fla. 1st DCA 1993); *Fla. Power & Light Co. v. Siting Bd.*, 693 So .2d 1025, 1028 (Fla. 1st DCA 1997). Also, an agency has no authority to reweigh the evidence and make independent or supplemental findings of fact. *Id.*

ACI asserts that these determinations are important in evaluating whether or not the proposed use of water is a reasonable beneficial use, which is one of the water use regulatory criteria. However, ACI did not take exception to the ALJ's findings in paragraphs 60 and 61 that FPL's proposal meets all applicable water use regulatory criteria and applicable PPSA criteria. *See Envtl. Coal. Of Fla., Inc. v. Broward County*, 586 So. 2d 1212 (Fla. 1st DCA 1991).

Therefore, based on the foregoing reasons, ACI's Exception No. 3 is denied.

Exception No. 4

ACI takes exception to paragraph 69 of the RO, where the ALJ concluded:

> 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.

ACI contends that this conclusion constitutes an unreasonable and incorrect application of the applicable statutes and rules because under the water use permitting three-prong test in Section 373.223(1), "[a] proposed water use must be both a reasonable and beneficial use and in the public interest." *See* ACI's Exceptions at page 12. ACI cites to the definition of "reasonable beneficial use" in Section 373.019(16), and acknowledges

that the definition also includes that the water use must be consistent with the public interest. However, without citation to any authority, ACI argues that these are two separate and distinct public interest requirements such that the SFWMD's interpretation is unreasonable. *See* ACI's Exceptions at pages 12-13.

Contrary to ACI's argument the case law shows that the same evidence and analysis is frequently used to satisfy both the "consistent with the public interest" requirement that is part of the definition of "reasonable beneficial use," and the seemingly separate "consistent with the public interest" third prong of the three-prong statutory test. *See, e.g., Sierra Club, Inc., et al v. Sleepy Creek Lands, LLC,* Case No. 14-2608 ¶¶ 314-323, 346 (DOAH April 29, 2015; SJRWMD July 14, 2015). In this case, the ALJ found in paragraph 60 that the proposed modification met all applicable water use regulatory criteria, to which ACI did not take exception. In addition, the competent substantial record evidence also demonstrates that the SFWMD reviewed the proposed modification for compliance with the applicable reasonable-beneficial use criteria (Sunderland, T. Vol. IV, pp. 410, 430, 431-432, 440, 441, 445).

Deference should be accorded to an agency's interpretation of statutes and rules within its regulatory jurisdiction, and such agency interpretation should not be overturned unless "clearly erroneous." *See, e.g., Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Dep't of Envtl. 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. Dep't of Envtl. Prot.,* 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

Therefore, based on the foregoing reasons, ACI's Exception No. 4 is denied.

Exception No. 5

In this exception ACI argues that paragraph 70 must be rejected because it is "directly contradicted by . . . [paragraphs] 43 and 44." *See* ACI's Exceptions at page 14. In making this argument ACI confuses existing conditions with the expected effects from the proposed modification. As stated above, ACI did not take exception to the ALJ's findings in paragraphs 60 and 61 that FPL's proposal meets all applicable water use regulatory criteria and applicable PPSA criteria. Likewise, paragraph 49 (reflecting that FPL presented evidence to show "that the hypersaline plume would begin to shrink and eventually disappear") and paragraph 50 (reflecting that "the [FPL] model's prediction that groundwater in the area would steadily freshen and the hypersaline plume would shrink and eventually disappear"), are fully supported by the testimony of FPL's expert groundwater modeling witness. Based upon these facts and the ALJ's conclusion that the FPL proposal will "likely improve current groundwater conditions" there is no basis to suggest that the modification is inconsistent with the industrial wastewater/NPDES permit.

For these reasons, ACI's Exception No. 5 is denied.

Exception No. 6

ACI takes exception to paragraph 71 of the RO, where the ALJ concluded that "FPL provided reasonable assurance that the proposed modification would comply with all applicable water use regulatory criteria." For the reasons outlined in the rulings on Exception Nos. 3, 4, and 5, this exception is denied.

Exception No. 7

ACI takes exception to paragraph 72 of the RO, where the ALJ states:

> 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.

ACI argues that paragraph 72 "somehow [improperly] places the burden on ACI to formulate conditions for the modification." *See* ACI's Exceptions at pages 15-17.

It is well established that once FPL provided a *prima facie* showing of "reasonable assurances," it was incumbent on ACI to present "contrary evidence of equivalent quality" to show why the proposed modification should be rejected or additional conditions imposed. *See Fla. Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 789 (Fla. 1st DCA 1981); *see also* § 120.569(2)(p), Fla. Stat. (2015). The ALJ had previously concluded in paragraph 71 that "FPL provided reasonable assurances that the proposed modification would comply with all applicable water use regulatory criteria." The ALJ also found in paragraphs 60 and 61 that "FPL provided reasonable assurance that the FPL proposal meets all applicable water use regulatory criteria" and "that the record evidence supports an affirmative determination by the Siting Board regarding the certification criteria in section 403.509(3)(a) through (g)." Thus, ACI did not show why the proposed modification should be denied or additional conditions imposed.

Therefore, based on the foregoing reasons, ACI's Exception No. 7 is denied.

DEP'S Exception

DEP takes exception to paragraph 33 of the RO, where the ALJ refers to "chloride concentration" when describing how DEP classifies G-II and G-III groundwater. DEP explains that the competent substantial record evidence (Coram, T. Vol. III, p. 348, lines 4-13 and p. 359), and the classifications in Rule 62-520.410(1), Florida Administrative Code, show that the correct reference is to "total dissolved solids." This exception is granted.

CONCLUSION

The ALJ concluded that FPL provided reasonable assurance that the proposed modification would comply with all applicable water use regulatory criteria, and the PPSA criteria for approval in Section 403.509(3)(a) through (g). Thus, the ALJ recommended that the Siting Board enter a Final Order approving the modification as proposed by the Department on December 23, 2014, with the additional condition that was stipulated by the parties.

Having reviewed the matters of record and being otherwise duly advised, the Siting Board adopts the ALJ's recommendation.

It is therefore ORDERED that:

A. The Recommended Order (Exhibit A) is adopted, except as modified by paragraphs 63 and 64, and is incorporated by reference herein.

B. FPL's modification of Condition XII, as proposed by the Department on December 23, 2014, is APPROVED.

C. The additional condition stipulated by the parties set forth on pages 24-25 of the Recommended Order (Exhibit A), is APPROVED.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, 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 1st day of April, 2016, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on March 29, 2016.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD

THE HONORABLE RICK SCOTT
GOVERNOR

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

Lea Crandall — CLERK

4-1-16 — DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order has been sent by electronic mail to:

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this 1st day of April, 2016.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

for Gary Strickland

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