



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

BOB MARTINEZ CENTER
2600 BLAIRSTONE ROAD
TALLAHASSEE, FLORIDA 32399-2400

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

July 23, 2013

Sent by Electronic Mail – Document Access Verification Requested

Matthew Raffenberg
Director of Environmental Licensing
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408

RE: Riviera Beach Energy Center (PA 09-54)
Amendment Request (AM13-052)
Aquatic Organism Return System

Dear Mr. Raffenberg:

On June 27, 2013, the Florida Department of Environmental Protection (Department), Siting Coordination Office received a request from Florida Power & Light Company (FPL) for a post-certification amendment to the Riviera Beach Energy Center (RBEC) Site Certification Application (SCA). The amendment request is to seek approval for the construction of an aquatic organism return system (AORS). The RBEC's National Pollution Discharge Elimination System permit requires the construction of the AORS to capture aquatic organisms prior to the intake structures and return them to their native habitat. FPL is also seeking verification that the project qualifies for a Letter of Consent pursuant to Chapter 18-21.005(c)(6), Florida Administrative Code (F.A.C.).

Based on a review of the information submitted on June 27, 2013, the Department has determined that this proposal is an amendment to RBEC's SCA pursuant to subsection 62-17.205(1), (F.A.C.). Additionally, the Department's Environmental Resource Permitting Section notes that the activity is located on submerged lands owned by the State of Florida. It therefore requires authorization from the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, Section 253.77, Florida Statutes (F.S.), and Chapter 18-21, F.A.C. As staff to the Board of Trustees, the Department has determined that the activity qualifies for a Letter of Consent.

The Department has no objection to the proposed activity and hereby approves the amendment request, provided that FPL:

- Continues to comply with the existing Conditions of Certification for CCEC; and
- Performs the work within the boundaries described in the application, which shall be consistent with the attached 1-page General Consent Conditions provided herein.

The Department's order shall become final unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, F.S., within **21** days of receipt of this order. The procedures for petitioning for a hearing are set forth below.

Persons affected by this order have the following options:

If you choose to accept the above decision by the Department concerning the post-certification amendment you do not have to do anything. This order is final and effective as of the date on the top of the first page of this order.

If you disagree with the decision, you may do one of the following:

1. File a petition for administrative hearing with the Department's Office of General Counsel within **21** days of receipt of this order; or
2. File a request for an extension of time to file a petition for hearing with the Department's Office of General Counsel within **21** days of receipt of this order. Such a request should be made if you wish to meet with the Department in an attempt to informally resolve any disputes without first filing a petition for hearing.

Please be advised that mediation of this decision pursuant to Section 120.573, F.S., is not available.

How to Request an Extension of Time to File a Petition for Hearing

For good cause shown, pursuant to subsection 62-110.106(4), F.A.C., the Department may grant a request for an extension of time to file a petition for hearing. Such a request must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida, 32399-3000, within **21** days of receipt of this order. Petitioner, if different from the addressee, shall mail a copy of the request to the addressee at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be made.

How to File a Petition for Administrative Hearing

A person whose substantial interests are affected by this order may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida, 32399-3000, within **21** days of receipt of this order. Petitioner, if different from the addressee, shall mail a copy of the petition to the addressee at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under Sections 120.569 and 120.57, F.S.

Pursuant to Sections 120.54(5)(b)4 and 120.569(2), F.S. and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

- a) The name, address, and telephone number of each petitioner, the name, address, and telephone number of the petitioner's representative, if any, the site owner's name and address, if different from the petitioner, the DEP certification number for the facility, and the name and address of the facility;
- b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

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- c) An explanation of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;
- d) A statement of the material facts disputed by the petitioner, or a statement that there are no disputed facts;
- e) A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;
- f) A statement of the specific rules or statutes the petitioner contends requires reversal or modification of the Department's action or proposed action; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

This order is final and effective as of the date on the top of the first page of this order. Timely filing a petition for administrative hearing postpones the date this order takes effect until the Department issues either a final order pursuant to an administrative hearing or an order responding to supplemental information provided to the Department pursuant to meetings with the Department.

Judicial Review

Any party to this order has the right to seek judicial review of it under Section 120.68, F.S., by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, MS 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 thirty days after this order is filed with the clerk of the Department (see below).

Questions

Any questions regarding the Department's review of this amendment request should be directed to Bobby Bull at (850) 717-9111. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 245-2257. Contact with any of the above does not constitute a petition for administrative hearing or request for an extension of time to file a petition for administrative hearing.

Sincerely,



Cindy Mulkey
Administrator,
Siting Coordination Office

July 23, 2013

CC by email:

Jill Creech, DEP SED: jill.creech@dep.state.fl.us

Paul Wierzbicki, DEP SED: paul.wierzbicki@dep.state.fl.us

Stacy Foster, FPL: stacy.foster@fpl.com

Kristin Peekstok, FPL: kristin.peekstok@fpl.com

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52
Florida Statutes, with the designated
Department Clerk, receipt of which is
hereby acknowledged.



Clerk



Date

July 23, 2013

Service List: *Sent by Electronic Mail – Document Access Verification Requested*

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GENERAL CONSENT CONDITIONS

Chapter 18-21.004(7), F.A.C., General Conditions for Authorizations:

(1) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(2) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(3) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.

(4) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(5) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.

(6) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(7) Structures or activities shall not create a navigational hazard.

(8) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(9) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.