



Florida Department of Environmental Protection

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Secretary

December 28, 2011

Sent by Electronic Mail – Received Receipt Requested

Barbara Linkiewicz
Director of Environmental Licensing
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

RE: Cape Canaveral Energy Center
Modification to Conditions of Certification
DEP Case Number PA 08-53A
OGC Case Number 11- 1398

FINAL ORDER MODIFYING CONDITIONS OF CERTIFICATION

Dear Ms. Linkiewicz:

On October 27, 2011 the Florida Department of Environmental Protection (Department) received a request from the Florida Fish and Wildlife Conservation Commission (FWC) to modify the Conditions of Certification (Conditions) for the Florida Power & Light (FPL) Cape Canaveral Energy Center (CCEC). The request included changes to the biological monitoring requirements set forth in the Conditions of Certification (Conditions) for manatees at the facility, as well as the inclusion of a condition for Manatee Protection Zones. Pursuant to Section 403.516(1)(c), Florida Statutes, (F.S.), the Department has initiated a modification to the CCEC Conditions to incorporate the changes requested by the FWC.

On November 8, 2011, all parties to the certification proceeding were provided notice by electronic mail of the Department's intent to modify the Conditions for CCEC, along with a draft copy of the proposed order modifying the Conditions. On November 23, 2011, notice of the Department's intent to modify CCEC's Conditions was also published in the Florida Administrative Weekly (FAW).

Pursuant to Section 403.516, F.S., and Rule 62-17.211, Florida Administrative Code (F.A.C.), all parties to the certification proceeding have **45 days** from the issuance of notice by mail to such party's last address of record in which to file a written objection to the modification. Pursuant Section 403.516, F.S., and Rule 62-17.211, Florida Administrative Code (F.A.C.), any person who is not already a party to the certification proceeding and whose substantial interests will be

affected by the requested modification has **30 days** from the date of publication of the public notice in the FAW to object in writing. Failure to act within the 30 day time frame constitutes a waiver of the right to become a party. The Department will issue an order modifying the Conditions for this facility if no written objections are received by the Department.

These timeframes have expired and no objections to the modification have been received by the Department. Therefore, the Conditions for CCEC are hereby modified as follows:

Section B. Specific Conditions

I. through III. No Change

IV. FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Any reference within Florida Fish and Wildlife Conservation Commission Conditions to 'V.' has been changed to 'IV.' to reflect numbering correction.

A. *West Indian Manatee*

1. – 2. NO CHANGE

3. Biological Monitoring

a. The following monitoring requirements for manatee distribution and abundance are applicable to the interim warm-water refuge and two year post-commercial operation of CCEC:

(1) By June 15 of the year when the CCEC conversion commences which is expected to be 2010 the Licensee shall submit to the DEP Siting Office and FWC, a Biological Monitoring Plan. The Biological Monitoring Plan shall include at a minimum the following components:

i. Monitor the winter (October 15 through March 31) distribution and abundance of manatees during the time frame that includes the operation of the interim warm-water heating system. Monitor the winter (November 15 through March 31) distribution and abundance of manatees during the two years' post-conversion at the CCEC warm-water refuge.

ii. Biological monitoring shall at a minimum be conducted through aerial surveys and telemetry tagged manatees.

iii. Specific aerial survey paths, sampling frequencies, and methodologies for aerial surveys. At a minimum, Until the converted CCEC is in operation, aerial survey flights paths shall encompassing known manatee winter habitat including travel corridors and passive warm water sites throughout Brevard County shall be conducted on a weekly basis during the interim period during the winter months (October 15 through March 31) unless weather or mechanical difficulties require the cancellation of a flight; however, in no case shall less than 3 surveys be conducted per month. Once the converted CCEC is in operation the aerial surveys shall be conducted on a twice a month basis for two years post commercial operation during the winter months. After the first year of post conversion surveys FWC will discuss the results with the Licensee and determine if the second year's surveys can be reduced to one survey per month.

iv.- vi. NO CHANGE

(2) NO CHANGE

(3) The manatee observer will be required to conduct a daily visual assessment of the condition and general distribution of manatees using the interim warm-water refuge during the winter months. Visual assessments will be done once per week from October 15 through October 31 and daily from November 1 through March 31 (~~October 15 through March 31~~) during the interim period. The visual assessments shall be conducted for a sufficient length of time to assess most of the manatees present at the plant and accessible to the observer on that day. If an approved observer is not available, licensee shall notify FWC as soon as possible, but no later than 48 hours, to coordinate actions necessary to resume the observation program.

(4) – (8) NO CHANGE

4. – 7. NO CHANGE

8. Access to Manatee Protection Zones

For all activities necessary to perform essential operations, including in-water maintenance and inspection of equipment, emergency operations, and environmental monitoring within a No Entry or Motorboats Prohibited Manatee Protection Zone as defined by 68C-22, F.A.C., the following requirements are applicable. These requirements supplant the need for Licensee to obtain a permit to access these zones pursuant to 68C-22.003, F.A.C.

a. Vessels used to access the zone should be of the smallest size and horsepower needed to accomplish the required tasks, and all vessels should be clearly marked as belonging to the Licensee or authorized contractor performing the work on behalf of the Licensee. Whenever practicable, vessels should be equipped with a propeller guard. Vessel operation within the zone must be at no greater than Idle Speed.

b. At least one person on each vessel must be designated as a manatee observer. Said observer must have experience in manatee observation and be equipped with polarized sunglasses to aid in observation. The observer must be on the vessel at all times, maintain a vigilant watch, and advise all personnel as to the presence and location of nearby manatees.

c. Except in emergency situations, no in-water activity may be performed within 50 feet of a manatee. Manatees may not be approached, pursued, fed, watered, touched, or otherwise interacted with in any manner that causes disruption of their normal behavior. If one or more manatees are observed within 50 feet, all in-water activities must be stopped and may only be resumed after all manatees have moved away of their own volition.

d. Except in emergency situations, no in-water work may be performed before sunrise or after sunset (when the ability to see manatees is minimal).

e. All personnel entering the zone must be informed of the possible presence of manatees, the characteristics used to identify the presence of manatees, and the conditions and requirements set forth herein. All personnel must be advised that there are civil and criminal penalties for harming, harassing, or killing manatees, which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.

f. Any collision with and/or injury to a manatee must be reported immediately to the FWC Division of Law Enforcement (888-404-3922) and the FWC Imperiled Species Management Section (850-922-4330; fax: 850-922-4338).

g. The Licensee shall maintain records onsite detailing the nature and scope of all activities conducted within the restricted area during the previous year, including dates of

activity and the number of vessels involved as well as the type and configuration of the vessels, by date. These records should be made available to FWC upon request.

V. - VIII – Numeric order change to headings due to scrivener error.

A complete set of the Conditions (including attachments) can be viewed and downloaded from the following website:

http://www.dep.state.fl.us/siting/files/certification/pa08_53_ModA_2011.pdf. Copies of the Conditions and/or attachments may also be obtained by contacting the Department of Environmental Protection, Siting Coordination Office, 3900 Commonwealth Blvd., M.S. 48, Tallahassee, Florida 32399-3000, (850) 245-2002.

Pursuant to Section 120.68, F.S., any party to this order has a right to seek judicial review, by filing a Notice of Appeal, pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department of Environmental Protection 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 order is filed with the Clerk of the Department of Environmental Protection.

Sincerely,



Cindy Mulkey
Administrator,
Siting Coordination Office

CC by email:

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FILING AND ACKNOWLEDGMENT

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

 12-28-11
Clerk Date

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