

**MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT,
THE U.S. NATIONAL PARK SERVICE, SOUTHEAST REGION,
AND
THE U.S. NUCLEAR REGULATORY COMMISSION, OFFICE OF NEW REACTORS
ON
THE ENVIRONMENTAL REVIEW RELATED TO THE ISSUANCE OF AUTHORIZATIONS TO
BUILD AND OPERATE TURKEY POINT NUCLEAR PLANT, UNITS 6 AND 7**

The U.S. Army Corps of Engineers (USACE), the U.S. National Park Service (NPS), and the U.S. Nuclear Regulatory Commission (NRC), as parties to this memorandum of agreement (MOA), hereby acknowledge and declare as follows:

I. Introduction

The USACE, NPS, and NRC developed this MOA to streamline the respective regulatory processes associated with the authorizations required in connection with the construction and operation of Turkey Point Nuclear Plant, Units 6 and 7.

II. Purpose and Regulatory Background

On June 30, 2009, Florida Power and Light (FPL) submitted an application to the NRC for combined licenses (COLs) for two new nuclear units (designated as Units 6 and 7) at the Turkey Point site. On the same day, FPL submitted an application to the USACE for a permit for the new units and associated ancillary facilities (e.g., transmission lines). Both agencies have responsibilities under the National Environmental Policy Act of 1969 (NEPA), as amended, to develop an environmental impact statement (EIS) in relation to their respective actions. On December 10, 2009, the USACE accepted an invitation from the NRC to become a cooperating agency and develop a single EIS for both agencies, with the NRC as the lead agency. The agencies relied on the September 12, 2008, memorandum of understanding (MOU) (Agencywide Document Access and Management System Accession No. ML082540354), between the USACE and the NRC as a framework for their cooperation.

On April 22, 2011, the NPS accepted an invitation to become a cooperating agency for the EIS being prepared by the NRC and USACE. The NPS has not identified a specific regulatory action to take at this time. However, where facilities associated with the project cross into either Everglades National Park or Biscayne National Park, NPS will continue to examine whether the proposed impact requires NPS regulation. But while NPS has not identified an action on its part, it does have special expertise regarding the environment in and around its national parks. The NPS also has considerable expertise related to the Comprehensive Everglades Restoration Project (CERP), a major, multifaceted program affecting most of southern Florida, and the Modified Water Deliveries to Everglades National Park (Mod Waters) project. Building and operating Turkey Point Nuclear Plant, Units 6 and 7 and associated ancillary facilities may potentially impact some portions of the CERP and Mod Waters project. This MOA will allow the NRC, as the lead Federal agency, to draw on the expertise of the NPS.

The purpose of this MOA is to establish a framework for early coordination and participation among the signatories to this agreement to ensure the timely review of actions associated with proposed Turkey Point Nuclear Plant, Units 6 and 7. Cooperation between the USACE and the NRC will ensure that each agency's review responsibilities under the NEPA, and other related statutes are met in connection with the authorizations required to construct and operate Turkey Point Nuclear Plant, Units 6 and 7. Nothing in the MOA will be construed as overriding the protocols established in the 2008 MOU between the USACE and the NRC.

III. Statutory Background

- A. **NEPA (42 USC § 4321 et seq.)** requires all agencies of the Federal Government to use a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences in planning and decisionmaking that may have an impact on man's environment. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved.
- B. **Section 10 of the Rivers and Harbors Act of 1899 (33 USC § 403)** requires authorization from the Secretary of the Army, acting through the USACE, for the construction of any structure in or over any navigable water of the United States. Structures or work outside the limits defined for navigable waters of the United States require a Section 10 of the Rivers and Harbors Act of 1899 permit if the structure or work affects the course, location, or condition of the water body. The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States, and it applies to all structures, from the smallest floating dock to the largest commercial undertaking. It further includes, without limitation, any wharf, dolphin, weir, boom breakwater, jetty, groin, bank protection (e.g., riprap, revetment, bulkhead), mooring structure such as a piling, aerial or subaqueous power transmission line, intake or outfall pipe, permanently moored floating vessel, tunnel, artificial canal, boat ramp, aid to navigation, and any other permanent or semipermanent obstacle or obstruction.
- C. **Section 404 Clean Water Act (CWA) (33 USC § 1344)** requires authorization from the Secretary of the Army, acting through the USACE, for the discharge of dredged or fill material into all waters of the United States, including wetlands. Discharges of fill material generally include, without limitation, placement of fill that is necessary for the construction of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and subaqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. A USACE permit is required whether the work is permanent or temporary. Examples of temporary discharges include

dewatering of dredged material prior to final disposal, and temporary fills for access roadways, cofferdams, and storage and work areas.

- D. **Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1413)**, as amended, requires authorization from the Secretary of the Army, acting through the USACE, for the transportation of dredged material for the purpose of dumping it in ocean waters. Discharges of dredged or fill materials into territorial seas also require authorization under Section 404 of the CWA.
- E. **Outer Continental Shelf Lands Act (43 USC § 1333)** extends the authority of the Secretary of the Army, acting through the USACE, to the prevention of obstruction to navigation in the navigable waters of the United States due to the construction of artificial islands and fixed structures on the outer continental shelf beyond the territorial sea.
- F. **The Energy Reorganization Act of 1974 (Pub. Law 93-438 (88 Stat. 1233))** abolished the Atomic Energy Commission, and Section 201 of that Act created the NRC and transferred to the NRC all the licensing and related regulatory functions of the Atomic Energy Commission. Pursuant to the Energy Reorganization Act of 1974; Chapters 6, 7, 8, 10, and 16 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et. seq.; and the rules and regulations issued pursuant thereto, the NRC is authorized to license and regulate the construction and operation of, among other things, nuclear power plants from the standpoint of the common defense and security and public health and safety.

IV. **Roles and Responsibilities**

NRC. The NRC licenses nuclear power plants in accordance with its regulations such that the utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public.

USACE. The USACE administers a regulatory program to protect the Nation's aquatic resources, including wetlands, under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the CWA. Proposed nuclear power plants and ancillary facilities may require one or more permits from USACE under these statutes.

NPS. The NPS manages the national parks but has not identified a specific regulatory action to take at this time. However, NPS does have special expertise regarding the environment in and around its national parks and can provide data and information to the NRC and USACE regarding the potential impacts of the proposed Turkey Point Nuclear Plant, Units 6 and 7 and its ancillary facilities on Biscayne National Park and Everglades National Park. This data and information will assist the NRC and USACE as they develop the EIS for Turkey Point Nuclear Plant, Units 6 and 7.

NEPA Lead Federal Agency. NEPA is the overarching environmental statute requiring the identification of impacts to the quality of the human environment, consideration of alternatives, and public involvement in the process. A primary objective of NEPA is to ensure that environmental information is available to public officials and citizens before

irretrievable commitments of resources are made. This agreement supports these principles, and the NRC and USACE acknowledge their respective responsibilities for complying with the requirements of NEPA. To prevent the duplication of efforts by Federal agencies and to encourage information sharing and integration of agency processes, NEPA allows for the designation of a lead Federal agency for the preparation of environmental impact statements (EISs) when EISs are required. Other agencies that have an action on the same project may serve as cooperating agencies on the EIS.¹

The issuance by the NRC of a license to construct and operate a nuclear power plant is an action that normally requires the preparation of an EIS.² As the agency with the approval/disapproval authority for the licensing of nuclear power plants, the NRC shall serve as the lead agency for the preparation of the EIS. This MOA encourages early involvement among the NRC, USACE, and NPS and with the public and other government agencies during the NEPA evaluation process.

This MOA acknowledges that it is critically important that the NRC, USACE, and NPS share project-specific information on the environmental impacts of building and operating the proposed new units at Turkey Point (including offsite ancillary facilities) at key stages of project development to foster an efficient procedure to develop documentation in accordance with both the NRC's and the USACE's disclosure and decision making procedures. This Agreement establishes a process to facilitate timely licensing and permitting decisions regarding the applications submitted in connection with the Turkey Point Nuclear Plant, Units 6 and 7 projects, whereby all three agencies will do the following:

- Work together and consider input from the applicant and other stakeholders, as appropriate.
- Identify and resolve issues as quickly as possible.
- Attempt to build a consensus among governmental agencies and their stakeholders.
- Provide for the effective and efficient environmental review for Turkey Point Nuclear Plant, Units 6 and 7.

Project Purpose and Need Coordination. As the lead agency under NEPA responsible for the preparation of the analysis and decisions regarding whether to license new and expanded nuclear power plants, the NRC is responsible for determining the purpose and need of the energy project for purposes of the NRC's NEPA document and the NRC licensing process.³ The NRC should coordinate early on the scope of the NEPA analysis for all activities under Federal purview and ensure that the purpose and

¹ Title 10 of the *Code of Federal Regulations* (CFR), Part 51.10, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions—Scope"; 40 CFR 1501.5, "NEPA and Agency Planning—Lead Agencies"; 40 CFR 1501.6, "NEPA and Agency Planning—Cooperating Agencies"

² 10 CFR 51.20, "Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Impact Statements"

³ 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," Subpart A, "National Environmental Policy Act—Regulations Implementing Section 102(2)"

need, the suite of alternatives, and the evaluation presented in the NEPA document consider the views of the USACE (e.g., defining project purpose per Section 404 of the CWA ["basic" for water dependency and "overall" for geographic scope of alternative analysis]). The NRC should also coordinate to obtain information available from the NPS (e.g., addressing impacts to the natural values of the Parks). The Corps will complete an independent permit decision in carrying out its regulatory responsibilities.

Specific Agency Obligations. The NRC and the USACE may develop additional guidance to ensure that the USACE's decision document is prepared concurrently with the EIS to the maximum extent practicable. When the NRC provides, to the NPS and USACE, its preliminary draft NEPA documents, the NPS and USACE shall review and provide written comments on the relevant portions of those documents, as appropriate, in accordance with the timelines established under this MOA. Preliminary draft NRC NEPA documents include advance copies of the purpose, need, and alternatives sections of the NRC NEPA documents, as well as advance copies of the draft and final NEPA documents. NPS and USACE reviews of NRC NEPA documents will be completed and coordinated with the NRC as stated in the NRC EIS schedule for this project.

The NPS, USACE, and the NRC hereby agree to work with each other and with other participating agencies or entities, as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. Specifically, each agency agrees to do the following (note that NRC and USACE have already completed Part A and Part B, 1 and 2):

A. Commit to Early Involvement

1. Conduct an early initial review. As soon as practicable after this MOA is signed, NPS will assess its role in the review.
 - a. Identify agency contacts for the proposed project. The initial agency contacts are the following:

U.S. Army Corps of Engineers
Ms. Ingrid Sotelo, Chief
Miami Permitting Section
U.S. Army Corps of Engineers
9900 SW 107th Avenue, Suite 203
Miami, FL 33176-2785

Ms. Megan Clouser
Senior Project Manager
U.S. Army Corps of Engineers
9900 SW 107th Avenue, Suite 203
Miami, FL 33176-2785

National Park Service

Ben West, Chief
Planning and Compliance Division
Southeast Regional Office
National Park Service
100 Alabama Street, 1924 Building
Atlanta, GA 30303

Mr. Dan Kimball, Superintendent
U.S. National Park Service
Everglades National Park
40001 State Road 9336
Homestead, FL 33034-6733

Mr. Brian Carlstrom, Superintendent
U.S. National Park Service
Biscayne National Park
9700 SW 328th Street
Homestead, FL 33033-5634

U.S. Nuclear Regulatory Commission

Mr. Ryan Whited, Chief
Environmental Technical Support Branch
Division of Site Safety and Environmental Analysis
Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Mr. Andrew Kugler, Senior Project Manager
Environmental Technical Support Branch
Division of Site Safety and Environmental Analysis
Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Ms. Alicia Williamson, Environmental Project Manager
Environmental Projects Branch 1
Division of New Reactor Licensing
Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

- b. Meet with the applicant and other agencies, when requested by the applicant, the NRC, or at its own initiative, to identify areas of potential concern to other agencies and to assess the need for and availability of agency resources to address issues related to the proposed project. If the NRC is not involved in a meeting, the NPS and/or the USACE will inform the NRC of any significant results from the meeting.

- c. Consult with the NRC, as the lead agency, regarding the schedule for the review. Regarding this schedule, the NRC, USACE, and the NPS will strive to ensure that the individual permitting processes and related permit review activities occur on a concurrent, rather than sequential, basis, with the objective of avoiding unnecessary delays in the process and the schedule established by the NRC. If at any point during the consultation process the NPS, USACE, or the NRC anticipates an inability to comply with the agreed-upon schedule, it will communicate the reason for this inability to the other agencies as soon as possible. The agencies will then work together to help avoid the anticipated delay when appropriate.
- B.** Proactive participation. As soon as possible after this MOA is signed, the NPS and USACE will do the following:
1. Identify and inform the NRC and the applicant which statutes, regulations, and policies apply to the USACE permit decision.
 2. Identify the issues and concerns related to the proposed project that need to be addressed in order for the USACE to meet its obligations.
 3. Provide the applicant, and/or other agency with relevant studies, data (such as maps showing features over which the agency may have jurisdiction), and any other information concerning the status of matters the agency considers relevant (including matters that may be under consideration, such as the results of threatened and endangered species consultation, or essential fish habitat consultation).
 4. Identify issues and concerns and attempt to resolve them while draft documentation is being developed.
- C.** Sharing of data. The agencies will share the information gathered, considered, and relied upon by each of them with all other relevant agencies. Specifically, the NRC, USACE, and the NPS agree to do the following:
1. Cooperate in the preparation of requests for additional information, studies or data to avoid duplicative requests and to compile a consistent set of information on which all of the agencies will rely.
 2. Cooperate in identifying and developing the information at the level of detail required to complete environmental and cultural resources project review.

The NRC will be responsible for drafting sections and requesting additional information to the extent that the NRC believes the analysis is needed and would normally be required by the NRC if the USACE were not involved. If the USACE believes that additional analysis is needed, but the NRC does not agree that such analysis would be required under the regulatory procedures of the NRC, such analysis will be the responsibility of the USACE. NRC will assemble the

draft and final EIS with USACE-specific sections prepared by the USACE. The USACE will be asked to concur on the draft and final EIS.

- D. Communicate informally. The agencies agree to informally communicate with each other and other relevant agencies throughout the process to ensure that issues are raised as soon as possible and shared among all agencies. The NRC will coordinate and share information with all relevant participating agencies.

Hearings. On request, each agency will participate in any public meetings or hearings^{4,5} held by the other agency. Particularly in the case of NRC adjudicatory proceedings, the USACE may provide expert testimony, as required, in those areas or sections covered in the NRC EIS in whose preparation the USACE participated and in those areas of special USACE expertise. The NPS may provide expert testimony, as required, in those areas or sections covered in the NRC EIS in whose preparation the NPS participated and in those areas of special NPS expertise. The USACE's participation in the NRC hearing process will be consistent with all relevant laws and regulations and coordinated with appropriate District and Division Commanders or their representatives. NPS' participation in the NRC hearing process will be consistent with all relevant laws and regulations and coordinated with the Superintendents of Everglades National Park and Biscayne National Park, as appropriate.

V. Administration of the MOA

- A. While retaining ultimate responsibility for making determinations and exercising their individual responsibilities in accordance with existing statutory responsibilities, the NRC, the USACE and the NPS will consult with one another to resolve disputes using existing dispute resolution methods and in accordance with this agreement. If no agreement can be reached, any of the agencies may refer the matter to the Council on Environmental Quality in accordance with 40 CFR 1504, "Predecision Referrals to the Council of Proposed Federal Actions Determined to Be Environmentally Unsatisfactory." Notwithstanding any such referral, the NRC reserves the right to make a final decision on any matter within the NRC's regulatory authority.
- B. This MOA may be modified, amended, or terminated upon written request of any party hereto and the subsequent written concurrence of all other participating agencies. Participation in this agreement may be terminated 60 days after providing written notice of such termination to other participating agencies.
- C. Acknowledgement that the authority and responsibilities of the parties under their respective jurisdictions are not altered by the MOA.

⁴ 33 CFR 327.3(a)—Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed Department of the Army permit action, or Federal project, and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects.


⁵ The Atomic Energy Act requires that a public hearing be held before a construction permit is issued for a nuclear power plant. The hearing will be conducted by the Commission or by a presiding officer designated by the Commission pursuant to 10 CFR 2.313, "Designation of Presiding Officer, Disqualification, Unavailability, and Substitution."

1. This MOA is intended only to improve the working relationships of the participating agencies in connection with expeditious decisions with regard to applications filed in connection with the Turkey Point Nuclear Plant, Units 6 and 7 projects and is not intended to, nor does it create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.
2. This MOA is to be construed in a manner consistent with all effective existing laws and regulations.
3. The MOA neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable laws, statutes, or regulations.
4. The terms of this MOA are not intended to be enforceable by any party other than the signatories hereto.
5. The participating agencies intend to fully carry out the terms of this MOA. All provisions in this MOA, however, are subject to available resources. In addition, this MOA does not limit the ability of any of the participating agencies to review and respond to final applications.
6. If the applicant or other person requests a correction of information disseminated pursuant to this MOA, as authorized by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106-554), the process by which such request will be addressed will be that established by the agency that disseminated the information.
7. This MOA cannot be used to obligate or commit funds or as the basis for the transfer of funds.
8. Nothing in this MOA, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement.
9. All provisions in this MOA are subject to the availability of funds.

ACCORDINGLY, the parties have signed this MOA on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.



Gordon Wissinger
Acting Regional Director
Southeast Regional Office
National Park Service



Alan M. Dodd
Colonel, U.S. Army
District Commander
Jacksonville District
U.S. Army Corps of Engineers

7-1-13
Date

15 July 2013
Date



R. W. Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission

5/29/13
Date