

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
SOUTHEAST DISTRICT

Petitioner,

v.

OGC File No.: 16-0241

FLORIDA POWER & LIGHT
COMPANY, INC.,

Respondent.

NOTICE OF VIOLATION AND
ORDERS FOR CORRECTIVE ACTION

To: Florida Power & Light Company, Inc.
c/o J. E. Leon, Registered Agent
4200 West Flagler Street
Suite 2113
Miami, Florida 33134

Certified Return Receipt No. 7013 2630 0001 2651 6074

Pursuant to the authority of section 403.121(2), Florida Statutes, the State of Florida Department of Environmental Protection (Department) gives notice to Florida Power & Light Company, Inc. (Respondent) of the following findings of fact and conclusions of law with respect to violations of chapter 403, Florida Statutes.

FINDINGS OF FACT

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to

administer and enforce the provisions of chapter 403, Florida Statutes, and the rules promulgated thereunder in title 62, Florida Administrative Code.

2. Respondent is an active Florida corporation, registered to conduct business in the State of Florida. Respondent is a regulated Florida Utility providing electric service to 4.7 million customers in 35 counties.

3. Respondent owns and operates the Turkey Point Power Plant located on approximately 9,400 acres in unincorporated Miami-Dade County, Florida along the coastline adjacent to Biscayne Bay (Turkey Point), with a permitted address of 9670 S.W. 344 Street, Florida City, Miami-Dade County, Florida.

4. Turkey Point consists of five electrical generating units and also includes a cooling canal system (CCS). The CCS is made up of a 5,900-acre network of canals providing a heat removal function for the five electrical generating units.

5. Respondent is the permittee of National Pollutant Discharge Elimination System Industrial Wastewater Permit Number FL0001562 (Permit). Respondent operates the CCS under the Permit.

6. The CCS canals are unlined and have a direct connection to the groundwater.

7. On or about December 23, 2014, the Department issued an Administrative Order related to the CCS at Turkey Point.

8. On or about February 9, 2015, the Administrative Order was petitioned and subsequently referred to the Division of Administrative Hearings (DOAH) (Consolidated Case Numbers 15-1746 and 15-1747).

9. On February 15, 2016, the Administrative Law Judge issued a Recommended Order in DOAH Case Numbers 15-1746 and 15-1747 (Recommended Order).

10. On April 21, 2016, the Recommended Order, as modified in part, was adopted by the Department in Final Order Number 16-0111.

11. The following findings in the Final Order are hereby incorporated in this Notice of Violation:

- a. The CCS is the major contributing cause to the continuing westward movement of the saline water interface;
- b. The CCS groundwater discharge of hypersaline water contributes to saltwater intrusion;
- c. Rule 62-520.400, Florida Administrative Code, prohibits a discharge in concentrations that impair the reasonable and beneficial use of adjacent waters;
- d. Saltwater intrusion into the area west of the CCS is impairing the reasonable and beneficial use of adjacent G-II groundwater and therefore, is a violation of the minimum criteria for groundwater in rule 62-520.400, Florida Administrative Code.

12. Condition IV. 1. of the Permit requires that Respondent's discharge to groundwater shall not cause a violation of the minimum criteria for groundwater as specified in rules 62-520.400 and 62-520.430, Florida Administrative Code.

13. Section 403.161(1)(b), Florida Statutes, states, in part, it is a violation to fail

to comply with a permit issued by the Department.

CONCLUSIONS OF LAW

14. The Department has evaluated the Findings of Fact with regard to the requirements of chapter 403, Florida Statutes, and title 62, Florida Administrative Code. Based on the foregoing facts, the Department has made the following conclusions of law.

15. Respondent is a "person" as defined in section 403.031(5), Florida Statutes.
16. Respondent is the permittee of the Permit.
17. Respondent operates the CCS under the Permit.
18. The facts set forth above constitute a violation of section 403.161(1)(b),

Florida Statutes, for failing to comply with Condition IV. 1. of the Permit.

ORDERS FOR CORRECTIVE ACTION

19. The Department has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you, Respondent, must do in order to correct and redress the violations alleged in this Notice. The Department will adopt the Orders for Corrective Action as part of its Final Order in this case unless Respondent either files a timely petition for a formal hearing or informal proceeding, pursuant to section 403.121(2)(c), Florida Statutes, or files written notice with the Department opting out of this administrative process, pursuant to section 403.121(2)(c), Florida Statutes. (See Notice of Rights.) If Respondent fails to comply with the corrective actions ordered by the Final Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant

to sections 120.69, 403.121, and 403.131, Florida Statutes.

20. Pursuant to the authority of sections 403.061(8) and 403.121, Florida Statutes, the Department proposes to adopt in its Final Order in this case the following specific corrective actions that will redress the alleged violations.

21. Within 21 days of the effective date of this Order, Respondent shall enter into consultations with the Department to address abatement and remediation measures necessary to address the violation set forth above. At the start of this consultation, Respondent shall provide the following information/ data to the Department:

- a. All final studies and analyses of the effects of the CCS on ground waters.
- b. All final studies and analyses regarding abatement, remediation, modeling and/or prevention of the hypersaline plume, to which the CCS contributes.

22. Respondent and Department shall attempt to enter into an agreeable consent order or equivalent that incorporates corrective actions to abate and remediate the effects of the violation listed above. The consent order or equivalent shall, at a minimum, delineate actions to abate the CCS contribution to the hypersaline plume, reduce the size of the hypersaline plume, and prevent future harm to waters of the State.

23. If parties are unable to enter into a consent order or equivalent incorporating the terms described above, within 60 days of the effective date of this

Order, the Department may issue a comprehensive management plan to, at a minimum, abate the CCS contribution to the hypersaline plume, reduce the size of the hypersaline plume, and prevent future harm to waters of the State. Respondent shall implement the comprehensive management plan as issued by the Department.

24. Except as otherwise provided, all submittals required by this Order shall be sent to Elsa Potts, Program Administrator Water Resource Management, Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

NOTICE OF RIGHTS

25. Respondent's rights to negotiate, litigate or transfer this action are set forth below.

Right to Negotiate

26. This matter may be resolved if the Department and Respondent enter into a consent order, in accordance with section 120.57(4), Florida Statutes, upon such terms and conditions as may be mutually agreeable.

Right to Request a Hearing

27. Respondent has the right to a formal administrative hearing pursuant to sections 120.569, 120.57(1), and 403.121(2), Florida Statutes, if Respondent disputes issues of material fact raised by this Notice of Violation and Orders for Corrective Action (Notice). At a formal hearing, Respondent will have the opportunity to be represented by counsel or other qualified representative, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of fact and orders, and to file exceptions to any

order or administrative law judge's recommended order.

28. Respondent has the right to an informal administrative proceeding pursuant to sections 120.569 and 120.57(2), Florida Statutes, if Respondent does not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondent will have the opportunity to be represented by counsel or other qualified representative, to present to the agency written or oral evidence in opposition to the Department's proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.

29. If Respondent desires a formal hearing or an informal proceeding, Respondent must file a written responsive pleading entitled "Petition for Administrative Proceeding" within 20 days of receipt of this Notice. The petition must be in the form required by rule 28-106.2015, Florida Administrative Code.

- (a) The Department's Notice identification number and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number, and facsimile number (if any) of each respondent;
- (c) The name, address, telephone number, and facsimile number of the attorney or qualified representative of respondent, if any, upon whom service of pleadings and other papers shall be made;
- (d) A statement of when respondent received the Notice; and
- (e) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

A petition is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida, 32399-3000.

Right to Request Mediation

30. Respondent may request mediation after filing a petition for hearing. Requesting mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The mediation will be held if the parties enter a written agreement, which is described below, within 30 days after receipt of the Notice. The mediation must be completed within 60 days of the agreement unless the parties otherwise agree.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) The signatures of all parties or their authorized representatives.

As provided in section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57 for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the

agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify the Respondent in writing that the administrative hearing processes under sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

Waivers

31. Respondent will waive the right to a formal hearing or an informal proceeding if a petition is not filed with the Department within 20 days of receipt of this Notice. These time limits may be varied only by written consent of the Department.

General Provisions

32. The allegations of this Notice together with the Orders for Corrective Action will be adopted by the Department in a Final Order if Respondent fails to timely file a petition for a formal hearing or informal proceeding, pursuant to section 403.121, Florida Statutes. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

33. If Respondent fails to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to sections 120.69, 403.121 and 403.131, Florida Statutes. The Department may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than \$10,000 day for each day that Respondent has failed to comply with the Final Order.

34. The Department is not barred by the issuance of this Notice from maintaining an independent action in circuit court with respect to the alleged violations. If such action is warranted, the Department may seek injunctive relief, damages, civil penalties of not more than \$10,000 per day, and all costs of litigation.

35. Copies of Department rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the person listed on the last page of this Notice.

DATED this 25th day of April, 2016.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Frederick L. Aschauer, Jr., Director
Division of Water Resource Management

Copies furnished to:
Larry Morgan, OGC Enforcement Section
Mail Station 35

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Sent To
 Florida Power & Light Company, Inc.
 c/o J.E. Leon, Registered Agent
 4200 West Flagler Street, Suite 2113
 Miami, FL 33134

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Florida Power & Light Company, Inc.
 c/o J.E. Leon, Registered Agent
 4200 West Flagler Street, Suite 2113
 Miami, FL 33134

2. Article Number
 (Transfer from service label) 7013 2630 0001 2651 6074

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes