

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket Nos. M-52-040 & 52-041
)
(Turkey Point Units 6 and 7))

Pursuant to the Commission's Memorandum and Order, dated January 4, 2017,¹ the Staff hereby provides the Commission with its analysis of the Biological Opinion issued on June 23, 2017 by the U.S. Fish and Wildlife Service (FWS) under Section 7 of the Endangered Species Act (ESA) regarding the Florida Power & Light Company combined license application for Turkey Point Units 6 and 7.² In the Biological Opinion and the Incidental Take Statement, the FWS identified items that it requests be included in the proposed combined licenses for Turkey Point Units 6 & 7. In response, the Staff recommends eight license conditions be included. The Staff has been working closely with the U.S. Army Corps of Engineers (USACE) and FWS on the remaining items, and the USACE confirmed on July 6, 2017 that they will be including the remaining items in their Section 404 permit, which will be issued pursuant to the Clean Water Act (33 U.S.C. §1344). The revised non-radiological environmental protection plan (EPP) with the proposed license conditions is attached.

² ADAMS Accession No. ML17177A673.

Respectfully submitted,
/Signed (electronically) by/
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Dated at Frisco, Texas
this 7th day of July, 2017

July 7, 2017

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NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
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FLORIDA POWER & LIGHT COMPANY) Docket Nos. M-52-040 & 52-041
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(Turkey Point Units 6 and 7))

CERTIFICATE OF SERVICE

I hereby certify that the NRC STAFF ANALYSIS OF BIOLOGICAL OPINION AND SUBMISSION OF PROPOSED LICENSE CONDITIONS FOR TURKEY POINT UNITS 6 & 7, dated July 7th, 2017, has been filed through the E-Filing system this 7th day of July, 2017.

Respectfully submitted,
/Signed (electronically) by/
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Attachment A

NRC Staff Assessment of the U.S. Fish & Wildlife Service
Biological Opinion, Issued June 23, 2017

The U.S. Fish & Wildlife Service (FWS), South Florida Ecological Services Office, Vero Beach, Florida sent NRC staff a Biological Opinion and Incidental Take Statement dated June 23, 2017 regarding the Florida Power & Light Company (FPL) combined license application for Turkey Point Units 6 and 7.¹ The NRC staff had initiated formal consultation with FWS under Section 7 of the Endangered Species Act by letter dated September 28, 2016.² The staff had included with the letter a Biological Assessment dated February 2015 that outlined the staff's evaluation of potential effects of the proposed project on threatened or endangered species (listed species) known to potentially occur in the area of the proposed project.³ Additionally, the staff and FPL had communicated frequently with FWS about the proposed project before and after the formal consultation request.

The Biological Opinion presents FWS's conclusions as to whether the proposed project could put any species in jeopardy of extinction and whether the proposed project could adversely affect any listed species. The Biological Opinion concluded that the proposed project would not likely put any species in jeopardy of extinction.⁴ It also concluded that the proposed project would either have no effect or may affect but would not likely adversely affect most listed species potentially occurring in the action area.⁵ However, it concluded that the proposed project may affect and could likely adversely affect six listed species: the Florida panther (mammal), American crocodile (reptile), eastern indigo snake (reptile), Everglades snail kite (bird), red knot (bird), and wood stork (bird).⁶ The Biological Opinion affirmed the same conclusions that NRC staff drew in the Biological Assessment, except that FWS elevated the NRC staff's conclusions that the project would not adversely affect the eastern indigo snake and red knot to conclusions that the project could adversely affect these two species. The elevated conclusion is based on recent information NRC staff and FPL provided to FWS after completion of the Biological Assessment in 2015. This information included survey data and updated reports that the eastern indigo snake was present on the proposed site.

The Incidental Take Statement establishes incidental take limits for each of the six species that the Biological Opinion concluded the project may affect and could likely adversely affect.⁷ The limits are expressed quantitatively as number of individuals injured or killed over specific time intervals or as acres of suitable habitat lost or degraded over specific time intervals.⁸ The Incidental Take Statement establishes reasonable and prudent measures, monitoring and reporting requirements, and requirements for disposition of dead or injured specimens of listed species.⁹

NRC staff is incorporating the non-discretionary terms and conditions of the incidental take statement into license conditions in its non-radiological environmental protection plan (EPP) that

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML17177A673.

² ADAMS Accession No. ML16237A312.

³ ADAMS Accession No. ML15028A372.

⁴ Biological Opinion at 51.

⁵ *Id.* at 2, 13-17.

⁶ *Id.* at 2.

⁷ *Id.* at 48-53.

⁸ *Id.* at 49-51.

⁹ *Id.* at 51, 52.

will be an appendix to any combined license for Turkey Point Units 6 and 7, should the NRC grant the combined licenses to FPL. Like the Incidental Take Statement that NRC received in 2012 for the now-licensed Levy Nuclear Project (also in Florida), the Turkey Point Units 6 & 7 Incidental Take Statement includes a requirement, established in the text of the Biological Opinion, that updated field surveys for specific species be conducted immediately prior to ground disturbing activities. The purpose of the updated surveys is to ensure that listed species have not become established in the proposed project area during the interim between licensing and commencement of construction. The staff has included license conditions regarding these updated surveys in the EPP.

Finally, the Incidental Take Statement notes that its terms and conditions are predicated on a sequence of specific mitigation measures to which FPL has committed while pursuing environmental permits from the U.S. Army Corps of Engineers, which is a cooperating agency, and the State of Florida. These mitigation measures include actions such as expanding and enhancing specific habitats, establishing onsite speed limits, and educating site workers about wildlife. The U.S. Army Corps of Engineers stated in a July 6, 2017 email to the Staff that their permit will include conditions ensuring the implementation of these mitigation measures. The Corps permit conditions will include all requirements of the Incidental Take Statement not covered by NRC license conditions. The FWS agreed by telephone on June 29, 2017 that this approach will satisfy the Incidental Take Statement.

Attachment B

APPENDIX B
TURKEY POINT UNITS 6 & 7
ENVIRONMENTAL PROTECTION PLAN
(NONRADIOLOGICAL)

1.0 Objectives of the Environmental Protection Plan

The Environmental Protection Plan (EPP) objectives are to ensure compliance with Biological Opinions issued pursuant to the Endangered Species Act of 1973, as amended (ESA), and to ensure that the U.S. Nuclear Regulatory Commission (NRC) is kept informed of other environmental matters. The EPP is intended to be consistent with Federal, State, and local requirements for environmental protection.

2.0 Environmental Protection Issues

In the Final Environmental Impact Statement (FEIS) dated October 2016 the staff considered the environmental impacts associated with the construction and operation of Turkey Point Units 6 & 7. This EPP applies to Florida Power & Light (FPL, the licensee) actions affecting the environmental resources evaluated in the FEIS and FPL's actions that may affect any newly discovered environmental resources.

2.1 Aquatic Resources Issues

Federal agencies other than the NRC, such as the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers, have jurisdiction to regulate aquatic resources under the Federal Water Pollution Control Act (Clean Water Act or CWA) and the Rivers and Harbors Appropriation Act of 1899 (RHA). Certain water quality environmental considerations identified in the FEIS, including effluent limitations, monitoring requirements, and wetland and aquatic resource mitigation measures, are regulated under FPL's CWA permits, such as National Pollutant Discharge Elimination System and Section 404 permits, and RHA Section 10 permit. Nothing within this EPP shall be construed to place additional requirements on the regulation of aquatic resources except the imposition of the requirements in a Biological Opinion under the ESA (see Section 2.3). FPL is required to inform the NRC of events or situations concerning aquatic resources consistent with the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.72(b)(2)(xi), and this EPP does not expand any reporting requirement required by that regulation.

2.2 Terrestrial Resources Issues

Several statutes govern the regulation of terrestrial resources. For example, the U.S. Fish and Wildlife Service (FWS) regulates matters involving migratory birds and their nests in accordance with the Migratory Bird Treaty Act (MBTA). Activities affecting migratory birds or their nests may require permits under the MBTA. The FWS also regulates matters involving the protection and taking of bald and golden eagles in accordance with the Bald and Golden Eagle Protection Act. FPL shall inform NRC of any events or situations concerning terrestrial resources consistent with the provisions of 10 CFR 50.72(b)(2)(xi), and this EPP does not expand any reporting requirement required by that regulation.

[2.3 Endangered Species Act of 1973](#)

[The NRC may be required to protect some aquatic resources and terrestrial resources in accordance with the ESA. In accordance with ESA Section 7, FPL shall comply with the](#)

following conditions to implement the terms and conditions set forth in the Incidental Take Statement of the Biological Opinion issued by the FWS on June 23, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17177A673):

1. No earlier than one year before commencing land clearing and construction activities for the plant and associated facilities in areas potentially containing one or more of the following species, FPL shall conduct surveys to determine whether the following species are present:

- Florida bonneted bat
- Piping plover
- Bartram's scrub-hairstreak butterfly
- Florida leafwing butterfly
- Miami tiger beetle

FPL shall provide the survey results in a report to the FWS Vero Beach Field Office and the NRC. If any individuals are found by these surveys, the licensee shall coordinate with the FWS to avoid or minimize any "take" of these species.

2. No earlier than one year before commencing land clearing and construction activities for the plant and associated facilities in areas potentially containing one or more of the following species, FPL shall conduct surveys to determine whether the following species are present:

- Beach jaquemontia
- Carter's small-flowered flax
- Crenulate lead plant
- Deltoid spurge
- Florida Brickell-bush
- Gerber's spurge
- Small's milkpea
- Tiny polygala

FPL shall provide the survey results in a report to the FWS Vero Beach Field Office and NRC. If any occurrences of these species are found by these surveys, the licensee shall coordinate with the FWS to avoid or minimize any "take" of these species.

3. Before and for each day throughout the period of active land clearing, site preparation, and muck placement work, the licensee shall conduct pedestrian surveys for the American crocodile and eastern indigo snake in potentially suitable habitats undergoing disturbance. If any crocodiles are found, the licensee shall cease work in the affected area until the individuals have left or been relocated. If any eastern indigo snakes are found, the licensee shall cease work until the individuals have left areas where they might be killed or injured by project work.
4. Prior to land-clearing to build the west transmission lines, the licensee shall conduct an aerial survey for the wood stork during the nesting season to determine if active wood stork nesting colonies occur within 0.5 mi (0.8 km) of the west transmission line route.
5. After land-clearing but prior to commencing construction on the west transmission lines, the licensee shall conduct flight surveys for the wood stork during the nesting season.
6. During the first nesting season following completion of construction of the west transmission lines, the licensee shall monitor for injured or dead wood storks along the

section of the west transmission line that occurs near the known wood stork nesting colonies. Monitoring methods shall be developed in conjunction with the FWS, Florida Fish and Wildlife Conservation Commission, and South Florida Water Management District.

7. Following commencement of construction and throughout the period of construction, the licensee shall submit to the FWS Vero Beach Field Office an annual report describing:

- 1) Any observations within the project area of injured or dead individuals of the following species: American crocodile, eastern indigo snake, Everglade snail kite, Florida panther, red knot, and wood stork.
- 2) The acreage of each habitat type cleared, using habitat names used in the FEIS.

8. Upon locating a dead, injured, or sick threatened or endangered species, the licensee shall immediately notify the FWS Law Enforcement Office at 20501 Independence Boulevard, Groveland, Florida 34736-8573; Phone 352-429-1064 and the Florida Fish and Wildlife Conservation Commission, South Region, 3900 Drane Field Road, Lakeland, Florida, 33811-1299; Phone 800-282-8002. The licensee shall follow the instruction of the FWS Law Enforcement Office regarding the care, disposition, and/or preservation of any such individuals.

If any Federally listed species or critical habitat occurs in an area affected by construction or operation of the plant that was not previously identified as occurring in such areas, including species and critical habitat that were not previously Federally listed, FPL shall inform the NRC within four hours of discovery. The time of discovery is identified as the specific time when a decision is made to notify another agency or to issue a press release. Similarly, FPL shall inform the NRC within four hours of discovery of any take, as defined in the ESA, of a Federally listed species or destruction or adverse modification of critical habitat. The four-hour discovery notification shall be made to the NRC Operations Center via the Emergency Notification System. FPL shall provide any necessary information to the NRC if the NRC initiates or reinitiates consultation under the ESA.

Unusual Event - FPL shall inform the NRC of any onsite mortality, injury, or unusual occurrence of any species protected by the ESA within four hours of discovery, followed by a written report in accordance with Section 4.1. The time of discovery is identified as the specific time when a decision is made to notify another agency or to issue a press release. Such incidents shall be reported regardless of FPL's assessment of causal relation to plant construction or operation.

3.0 Consistency Requirements

FPL shall notify the NRC of proposed changes to permits or certifications concerning aquatic or terrestrial resources by providing the NRC with a copy of the proposed change(s) at the same time it is submitted to the permitting agency.

FPL shall provide the NRC with a copy of the application for renewal of permits or certifications at the same time the application is submitted to the permitting agency.

Changes to or renewals of such permits or certifications shall be reported to the NRC within 30 days following the later of the date the change or renewal is approved or the date the change becomes effective. If a permit or certification, in part or in its entirety, is appealed and stayed, the NRC shall be notified within 30 days following the date the stay is granted.

4.0 Administrative Procedures

4.1 Plant Reporting Requirements: Non-routine Reports

A written report shall be submitted to the NRC within 30 days of occurrence of any unusual event described in Section 2.3 of this EPP. The report shall:

- (a) describe, analyze, and evaluate the event, including extent and magnitude of the impact and plant operating characteristics at the time of the event,
- (b) describe the probable cause of the event,
- (c) indicate the action taken to correct the reported event,
- (d) indicate the corrective action taken to preclude repetition of the event and to prevent similar occurrences involving similar components or systems, and
- (e) indicate the agencies notified and their preliminary responses.

Events reportable under this subsection, which also require reports to other Federal, state, or local agencies, shall be reported in accordance with those reporting requirements in lieu of the requirements of this subsection. The NRC shall be provided a copy of such report at the same time it is submitted to the other agency.

4.2 Review and Audit

FPL shall provide for review and audit of compliance with Section 2.3 of this EPP. The audits shall be conducted independently of the individual or groups responsible for performing the specific activity. A description of the organizational structure utilized to achieve the independent review and audit function and results of the audit activities shall be maintained and made available for inspection.

4.3 Records Retention

Records required by this EPP shall be made and retained in a manner convenient for review and inspection. These records shall be made available to the NRC on request. The records, data, and logs relating to this EPP shall be retained for five years or, where applicable, in accordance with the requirements of other agencies.

4.4 Changes in Environmental Protection Plan

A request for a change in the EPP shall include an assessment of the environmental impact of the proposed change and a supporting justification. Implementation of such changes in the EPP shall not commence prior to NRC approval of the proposed changes in the form of a license amendment incorporating the appropriate revision to the EPP.

FPL shall request a license amendment to incorporate the requirements of any Terms and Conditions set forth in the Incidental Take Statement of applicable Biological Opinions issued subsequent to the effective date of this EPP.