





UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 19, 1999

MEMORANDUM TO: Herbert N. Berkow, Project Director  
Project Directorate II  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

FROM: Cynthia A. Carpenter *Cynthia Carpenter* Chief  
Generic Issues, Environmental, Financial, and  
Rulemaking Branch  
Division of Regulatory Improvement Programs  
Office of Nuclear Reactor Regulation

SUBJECT: COMMENTS ON THE SUPPLEMENTAL INFORMATION REGARDING  
THE IMPACT TO SEA TURTLES AT THE BRUNSWICK STEAM  
ELECTRIC PLANT (TAC NOS. MA6363 AND MA6364)

Attached are the NRC technical staff comments (Attachment 1) on the supplemental information provided by Carolina Power and Light (CP&L) and dated October 4, 1999. Attachment 2 is an example letter to the National Marine Fisheries Service (NMFS) requesting re-initiation of Section 7 consultation under the Endangered Species Act. The NRC comments and the supplemental information regarding the impact to sea turtles at the Brunswick Steam Electric Plant are to be sent to the NMFS for NRC compliance with the Endangered Species Act. Please contact Ms. Kimberly D. Leigh at 415-2678 if you have any questions.

Attachments: As stated

NRC COMMENTS ON THE SUPPLEMENTAL INFORMATION  
TO THE BIOLOGICAL OPINION ON THE IMPACTS OF SEA TURTLES AT THE  
BRUNSWICK STEAM ELECTRIC PLANT

**CP&L Comment on incidental take numbers:** "CP&L believes the Incidental Take Statement and the biological opinion should reflect a categorization for non-causal takes. However, the sub-categorization for non-causal takes should not reduce the take numbers in the Incidental Take Statement and biological opinion. In fact, as demonstrated by the information in the above table, the overall number of takes should be increased." (Page E1-2 of Enclosure 1, first paragraph)

**NRC Response:** The NRC staff agrees with the idea of a categorization for non-causal takes and that the categorization of the non-causal takes should not reduce the take numbers in the Incidental Take Statement. Non-causal takes, by definition, imply fatalities due to activities outside of plant operation (*i.e.*, no fault by the Brunswick Steam Electric Plant). The plant has no control over activities outside the diversion structure (*i.e.*, sea turtles may be affected by human activities throughout their migratory range [Biological Opinion, dated April 30, 1999, page 17, fourth paragraph]) and, effectively, has no means to minimize the non-causal mortalities outside the diversion structure. Because CP&L has no practicable means to control the amount of non-causal mortalities, the staff feels that CP&L should be required to report only the number of non-causal mortalities and *not* be limited to a set number of non-causal takes. Nevertheless, the NRC recognizes the NMFS view articulated at the September 14, 1999 meeting, that the non-causal take limit cannot be unbounded. Perhaps it would be prudent to explore a potential relationship with the North Carolina Sea Turtle Program before finalizing any limit; NRC would be available to participate in a teleconference on this issue.

The NRC staff recommends that the historical plant data on the number of turtles captured be used as a basis for determining the new take numbers. The Brunswick plant has reached the limits of its current Incidental Take Statement and the staff cannot envision any additional reasonable and prudent measure CP&L could implement to further reduce the number of turtle mortalities at Brunswick. Therefore, the take numbers should be increased appropriately.

**CP&L Comment 1:** Request to delete the requirement providing a summary report to NMFS within 14 days. (Page E1-2 of Enclosure 1, second paragraph)

**NRC Response to Comment 1:** NRC does not foresee difficulty with adding the NMFS Southeast Regional address to the carbon copy list, as the plant is already required to provide a report to the North Carolina Wildlife Resources Commission. However, the NRC staff notes that the submittal of two separate reports, assuming the NMFS lab in Miami forwards the report from the North Carolina Wildlife Resource Commission to the Southeast Regional office in St. Petersburg, could lead to confusion with two reports being submitted for the same event and would be an unnecessary administrative burden.

**CP&L Comment 2:** Request to delete the requirement to provide annual reports of incidental take information to NMFS. (Page E1-2 of Enclosure 1, third paragraph)

**NRC Comment:** The NRC staff concludes that submittal of individual reports to NMFS (in accordance with Section VIII, Item 6, and discussed in the above comment) is sufficient. If summary information is needed by the NMFS, the NMFS has the individual report information available to draw those summaries.

**CP&L Comment 3:** *Request to delete the requirement to conduct tissue sampling. (Page E1-3 of Enclosure 1, first full paragraph)*

**NRC Comment:** The NRC understands from the September 14, 1999 meeting, that the plant personnel currently take tissue samples, therefore, the NRC staff does not see this requirement as unduly burdensome. It could prove beneficial by providing subspecies and population information. However, further clarification of procedures and protocol for tissue sampling should be provided before the requirement is imposed on the licensee.

Mr. Robert Hoffman  
National Marine Fisheries Service  
Southeast Region  
Protected Species Division  
9721 Executive Center Drive North  
St. Petersburg, FL 33702

SUBJECT: SUPPLEMENTAL INFORMATION REGARDING THE IMPACT TO SEA  
TURTLES AT THE BRUNSWICK STEAM ELECTRIC PLANT

Dear Mr. Hoffman:

As we discussed in the meeting held on September 14, 1999, between the National Marine Fisheries Service (NMFS), Carolina Power and Light Company (CP&L), the North Carolina Sea Turtle Coordinator, and the U.S. Nuclear Regulatory Commission (NRC), the NRC is providing additional information on the impact to sea turtles at the Brunswick Steam Electric Plant. This information supplements that contained in the staff's "Biological Assessment of Impacts to Sea Turtles at the Brunswick Steam Electric Plant," transmitted to the NMFS by letter dated March 9, 1998. NRC is requesting the re-initiation of formal Section 7 consultation under the Endangered Species Act to revise the Incidental Take Statement and conservation recommendations issued for the Brunswick Steam Electric Plant.

Enclosure 1 is the supplemental information prepared by CP&L to support a Section 7 consultation with the NMFS. Enclosure 2 contains NRC staff comments on the supplemental information provided by CP&L.

Please contact Ms. Kimberly D. Leigh at 301-415-2678 with any questions or comments.

Sincerely,

Director  
Division of  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission

Docket Nos. 50-324, 50-325  
Enclosures: As stated  
cc w/encl: See next page