# STATE OF FLORIDA

## DEPARTMENT

**OF**

## ENVIRONMENTAL PROTECTION

# Conditions of Certification

**Florida Power & Light Company**
**Cape Canaveral Energy Center**

**PA 08-53A**

**Modified XX/XX/XX**

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## ATTACHMENTS & APPENDICES

## SECTION A. GENERAL CONDITIONS

### I. SCOPE

A. Pursuant to sections 403.501-518, Florida Statutes (F.S.)., the Florida Electrical Power Plant Siting Act (PPSA); 403.520-5365, the Transmission Line Siting Act (TLSA); and 403.9401-9425, the Natural Gas Transmission Pipeline Siting Act (NGPSA), this certification is issued to Florida Power & Light (FPL) as owner/operator of the Cape Canaveral Energy Center and Licensee. Subject to the requirements contained in these Conditions of Certification (Conditions) FPL will operate a 1250 MW facility consisting of one combined cycle unit and ancillary equipment, as well as a construction laydown and parking area, and offsite support facilities located on the west side of U.S. Highway 1 which include a well field, transmission lines, and a substation. These units are located on a 43 acre site which is located in Brevard County, Florida. UTM coordinates are; Zone 17, 523.1 kilometers (km) East and 3,149 km North.

B. These Conditions of Certification, unless specifically amended or modified, are binding upon Licensee and shall apply to the construction, operation and maintenance of the certified facility. If a conflict should occur between the design criteria of this certified facility and the Conditions of Certification, the Conditions shall prevail unless amended or modified. In any conflict between any of these Conditions of Certification, the more specific condition governs.

C. Within 60 days after completion of construction of the certified facility/ies, the Licensee shall provide: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as an official legal description, delineating the boundaries of the site, and an aerial photograph delineating the boundaries of the site. The survey and aerial photograph shall be attached hereto as Attachment A. The Licensee shall notify the Department of any change to the site boundary. The notification shall be accompanied by an updated land survey (or legal description) and aerial photograph delineating the new boundaries of the site. Absent the above description/delineation of the site, the Department will consider the perimeter fence line of the property on which the plant is located to be the boundaries of the site.

D. Within 60 days after completion of construction of the certified facility/ies , including but not limited to transmission lines and natural gas pipelines, the Licensee shall provide a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as an official legal description, delineating the boundaries of the certified area; and an aerial photograph delineating the boundaries of the certified area (if different from those boundaries established for the site). The survey and the aerial photograph shall be attached hereto as Attachment B. Any proposed project requiring a change to the boundaries of the certified area shall be accompanied by an updated survey map or legal description and aerial photograph.

E. The certified facility includes the following major associated facilities;

1. The peninsula which serves as a barrier between the Plant intake and discharge structures and includes a fuel oil barge unloading facility.

2. A barge slip comprised of about 1.5 acres of submerged land leased from the State of Florida.

3. An offsite construction laydown and parking area that will be located on FPL property west of U.S. Highway 1

4. Transmission upgrades to connect CCEC to FPL's transmission line system

F. Unless otherwise specified within the Conditions of Certification, Licensee shall make a good faith effort to timely comply with any newly established General Condition within 6 months. Licensee shall promptly notify the Department regarding any newly established General Condition for which licensee cannot timely comply.

*[Section 403.511, 403.531, 403.9416, F.S.; 62-4.160(8), and 62-17.205(2), F.A.C.]*

## II. APPLICABLE RULES

A. The construction and operation of the certified facility shall be in accordance with all applicable non-procedural provisions of Florida Statutes (F.S.) and Florida Administrative Code, including, but not limited to, the non-procedural portions of the following regulations, except to the extent a variance, exception, exemption or other relief is granted in the final order of certification or in a subsequent modification to the Conditions: Chapter 403 (Environmental Control), F.S., and Chapters 18-20 (Aquatic Preserves), 40D-2 through 4 (Consumptive Use of Water, Regulation of Wells, Individual Environmental Resource Permits), 40D-8 (Water Levels and Rates of Flow), 40D-9 (District Land Use Rules), 40D-20 (General Water Use Permits), 40-D21 (Water Shortage Plan), 40-D40 (General Environmental Resource Permits), 62-4 (Permits), 62-17 (Electrical Power Plant Siting), 62-25 (Regulation of Stormwater Discharge), 62-256 (Open Burning), 62-296 (Stationary Sources-Emission Standards), 62-297 (Stationary Sources-Emission Monitoring), 62-301 (Surface Waters of the State), 62-302 (Surface Water Quality Standards), 62-303 (Identification of Impaired Surface Waters), 62-304 (Total Maximum Daily Loads) 62-312 (Dredge and Fill Activities), 62-330 (Environmental Resource Permitting), 62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters), 62-345 (Uniform Mitigation Assessment Method), 62-520 (Groundwater Classes and Standards), 62-522 (Groundwater Permitting and Monitoring), 62-531 (Water Well Contractor Licensing Requirements), 62-532 (Water Well Permitting and Construction Requirements), 62-550 (Drinking Water Standards, Monitoring and Reporting), 62-555 (Permitting, Construction, Operation, and Maintenance of Public Water Systems), 62-560 (Requirements for Public Water Systems That Are Out of Compliance), 62-600 (Domestic Wastewater Facilities), 62-601 (Domestic Wastewater Treatment Plant Monitoring), 62-604 (Collection Systems and Transmission Facilities), 62-610 (Reuse of Reclaimed Water and Land Application), 62-621 (Generic Permits), 62-650 (Water Quality Based Effluent Limitations), 62-660 (Industrial Wastewater Facilities), 62-699 (Treatment Plant Classification and Staffing), 62-701 (Solid Waste Management Facilities),62-730 (Hazardous Waste), 62-762 (Aboveground Storage Tank Systems), 62-769 (Florida Petroleum Liability and Restoration Insurance Program), 62-770 (Petroleum Contamination Site Clean-Up Criteria), 62-780 (Contaminated Site Clean-Up Criteria), 62-807(Natural Gas Transmission Pipeline) and 62-814 (Electric and Magnetic Fields), Florida Administrative Code (F.A.C.).

B. No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings.

*[Section 403.511, 403.531, 403.9416, F.S.]*

## III. REVISIONS TO DEPARTMENT STATUTES AND RULES

A. The Licensee shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

B. Upon written notification to the department, any holder of a certification issued pursuant to the PPSA, TLSA or NGPSA may choose to operate the certified electrical power plant/transmission line/natural gas pipeline in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

*[Sections 403.511(5)(a),403.531,403.9416, F.S. ;Rules 62-4.160(8) and 62-4.160(10),F.A.C.]*

## IV. DEFINITIONS

Unless otherwise indicated herein, the meaning of terms used herein shall be governed by the applicable definitions contained in Chapters 373 and 403, F.S., and any regulation adopted pursuant thereto. In the event of any dispute over the meaning of a term used in these conditions which is not defined in such statutes or regulations, such dispute shall be resolved by reference to the most relevant definitions contained in any other state or federal statute or regulation or, in the alternative by the use of the commonly accepted meaning as determined by the Department. As used herein, the following shall apply:

A. "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information. For purposes of this license application shall also include materials submitted for petitions for modification to the Conditions of Certification, as well as supplemental applications.

B. "Associated Facilities" is defined by 403.503(7), F.S.

C. "Certified Area" means the area within the site in which the certified facilities are located. For linear facilities this term shall mean the area encompassed by the boundaries of the certified easements and/or ROWs.

D. "Certified Facility" or "Certified Facilities" means the certified electrical power generation facilities and all on- or off-site associated structures including but not limited to: steam generating units, transformers, substations, fuel and water storage tanks, air and water pollution control equipment, storm water control ponds and facilities, cooling towers, and related structures. This term shall also mean linear and associated facilities, including but not limited to: transmission lines, natural gas pipelines, and compressor stations.

E. "DCA" means the Florida Department of Community Affairs.

F. "DEP" or "Department" means the Florida Department of Environmental Protection.

G. “DHR” means the Florida Department of State, Division of Historical Resources.

H. “DOT” means the Florida Department of Transportation.

I. “Emergency conditions” or “Emergency reporting” means urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity.

J. “Feasible” means reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs.

K. “FWC” means the Florida Fish and Wildlife Conservation Commission.

L. “Licensee” means an applicant that has obtained a certification order for the subject project.

M. “NPDES permit” means a federal National Pollutant Discharge Permit System permit issued in accordance with the federal Clean Water Act.

N. “PSD permit” means a federal Prevention of Significant Deterioration air emissions permit issued by DEP in accordance with the federal Clean Air Act.

O. “ARPC”, “CFRPC”, “ECFRPC”, “NCFRPC”, “NEFRPC”, “SFRPC”, “SWFRPC”, “TBRPC”, “TCRPC”, “WFRPC”, or “WRPC” means the Apalachee, Central Florida, East Central Florida, North Central Florida, Northeast Florida, South Florida, Southwest Florida, Tampa Bay, Treasure Coast, West Florida or Withlacoochee Regional Planning Council, respectively.

P. “ROW” means right-of-way.

Q. “Site” means any proposed location within which will be located an electrical power plant's generating facility and onsite support facilities, or an alteration or addition of electrical generating facilities and onsite support facilities resulting in an increase in generating capacity, including offshore sites within state jurisdiction.

R. “NWF, SR, SJR, SWF, or SF WMD” means the Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, or South Florida Water Management District, respectively/

S. “Title V permit” means a federal permit issued by DEP in accordance with Title V provisions of the federal Clean Air Act.

## V. TRANSFERABILITY OF DEFINITIONS

Definitions in other Chapters of the Department's rules may be used to clarify the meaning of terms used in these Conditions unless the terms are defined in Section 62-4.020, F.A.C., or unless transfer of such definition would defeat the purpose or alter the intended effect of the provisions of these Conditions.

*[Rule 62-4.021, F.A.C.]*

## VI. FEDERAL PERMITS

The following permits have been issued pursuant to federal programs and they are applicable to the certified facility. The Department may consider a violation of any of these federal permits as a violation of this license.

### *A. Air*

The provisions of the following paragraphs shall be conditions of this certification. The Licensee shall comply with the substantive provisions and limitations set forth in both Air Construction Permit No. 0090006-005 and Title V Air Operation Permit Number 0090006-003-AV as part of these Conditions of Certification, and as those provisions may be modified, amended, or renewed in the future by the Department. Such provisions shall be fully enforceable as conditions of this certification. Any violation of such provisions shall be a violation of these Conditions of Certification.

1. Air Construction Permit(s)

Air Construction permit PSD-FL-0090006-005 is incorporated by reference herein as part of this Certification and attached as Appendix A.

*[Rule 62-212, F.A.C]*

2. Title V Permit

Title V Air Operation Permit 0090006-006-AV is incorporated by reference herein as part of this Certification and attached as Appendix B.

*[Rules 62-204, 62-210, 62-213, 62-214, 62-296, and 62-297, F.A.C.]*

### *B. Water*

1. Industrial Wastewater Discharge

Any discharges during construction and operation shall be in accordance with all applicable provisions of NPDES Permit No.FL0001473 (attached as Appendix C) and as those provisions may be modified, amended, or renewed in the future by the Department. Such provisions shall be fully enforceable as conditions of this certification. Any violation of such provisions shall be a violation of these Conditions of Certification. [Rule 62-621, F.A.C.]

2. NPDES Stormwater

Prior to start of construction the Licensee shall prepare a Storm Water Pollution Prevention Plan and submit a copy of the National Pollutant Discharge Elimination System (NPDES) Notice of Intent (NOI) to use a Construction Generic Permit (CGP) For Stormwater Discharges From Large and Small Construction Activities (as applicable) to the DEP NPDES Stormwater Notices Center.

*[Rule 62-621.300(4)(a), F.A.C.]*

3. Multi-Sector Generic Permits

Any storm water discharges associated with industrial activity shall be in accordance with all applicable provisions of Rule 62-621.300(5)(a) F.A.C.

*[Rule-62-621.300(5)(a), F.A.C.]*

### *C. Other*

For informational purposes, it should be noted that other federal permits for the certified facility may include permits issued by federal agencies such as the U.S. Army Corp of Engineers, U.S. Nuclear Regulatory Commission, and the U.S. Environmental Protection Agency.

## VII. DESIGN AND PERFORMANCE CRITERIA

Certification, including these Conditions of Certification, is predicated upon preliminary designs, concepts, and performance criteria. Final engineering design will be consistent and in substantial compliance with the preliminary information described in the Application and explained at the certification hearing (if any). Conformance to those criteria, unless specifically modified in accordance with Section 403.516, 403.5315, 403.9418, F.S., and Rule 62-17.211, F.A.C., is binding upon the Licensee in the design, construction, operation and maintenance of the certified facility. In any instance where a conflict occurs between the Application's design criteria and the Conditions of Certification, the Conditions shall prevail.

*[Sections 403.516, 403.5315 and 403.9418, F.S.; 62-17.211, 62-17.680 and 62-807.610 F.A.C.]*

## VIII. NOTIFICATION

A. If, for any reason, the licensee does not comply with or will be unable to comply with any condition or limitation specified in this license, the licensee shall immediately provide the Department with the following information:

1. A description of and cause of noncompliance; and

2. The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. The licensee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this certification.

*[Rule 62-4.160(8), F.A.C.]*

B. The licensee shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.

*[Rule 62-343, F.A.C.]*

## IX. REPLACEMENT FOR RESTORATION OF SYSTEM INTEGRITY

A. Replacement of all or a portion of a power plant, transmission line(s) or natural gas pipeline certified under the PPSA, TLSA or the NGPSA that is necessary to restore system integrity following an emergency as defined by section 252.34(6), (7) or (9), F.S. and requiring deviation from any condition of certification shall not be considered a modification pursuant to section 403.5315 F.S. A verbal report of the emergency replacement for restoration of system integrity shall be made to the department as soon as possible. Within 30 days after correction of the emergency condition requiring a replacement for system integrity, a report to the department shall be made outlining the details of the emergency condition requiring the replacement and the steps taken for its relief. The report shall be a written description of all of the work performed and shall set forth any pollution control measures or mitigative measures which were utilized or are being utilized to prevent pollution of waters, harm to sensitive areas or alteration of archaeological or historical resources.

B. The Department will use its enforcement discretion when evaluating violations that result from operating this facility under emergency conditions.. During and after the emergency conditions, the Licensee must use due diligence to bring the facility back into compliance as soon as possible. In addition, the facility must use its best efforts and best management practices to minimize adverse environmental impacts. The licensee shall notify the Siting Office and the appropriate DEP district office when the emergency condition has ended. Furthermore, the Licensee must include all monitoring data, which would otherwise be required under normal operating circumstances, recorded during emergency conditions when submitting reports as required by these conditions. Any exceedances and/or violations recorded during emergency conditions shall be reported as such, but the Department acknowledges that it intends to c use its enforcement discretion during this timeframe. This acknowledgement by the Department does not constitute a waiver or variance from any requirements of any federal permit. Relief from any federal agency must be separately sought.

*[Section 403.511, 403.531 and 403.9416, F.S.]*

## X. CONSTRUCTION PRACTICES

### *A. Local Building Codes*

Any local government has the right to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

*[Section 403.511(4), 403.531(4) and 403.9416(7) F.S.]*

### *B. Particulate Matter*

The Licensee shall take reasonable precautions to control emissions of unconfined particulate matter in accordance with Rule 62-296.320(4)(c)1., F .A .C The Licensee shall take appropriate measures to stabilize those portions of the certified area that are disturbed by construction or operation of the certified facility.

*[Sections 403.511, 403.531, 403.9416, F.S.; Rule 62-296.320, F.A.C.]*

### *C. Open Burning*

Any open burning in connection with initial land clearing shall be in accordance with the non-procedural requirements of Chapter 62-256, F.A.C., Chapter 5I-2, F.A.C., Uniform Fire Code Section 33.101, Addendum. Prior to any burning of construction-generated material, after initial land clearing that is allowed to be burned in accordance with Chapter 62-256, F.A.C., Licensee shall seek approval from the applicable DEP District Office, as appropriate, whose approval may be granted in conjunction with the Division of Forestry. Burning shall not occur if not approved by the appropriate agency or if the Department or the Division of Forestry has issued a ban on burning due to fire safety conditions or due to air pollution conditions. A copy of any submittal by Licensee relating to open burning shall be submitted to the affected county, for any open burning that will take place in the affected county, respectively, for informational purposes. A copy of any submittal by Licensee relating to open burning within the affected county or within 5 miles of the affected county shall be submitted to the affected county for informational purposes.

*[Sections 403.511, 403.531, 403.9416, F.S.; Rules 51-2 and 62-256, F.A.C.]*

***D. Solid Wastes***

Solid wastes resulting from construction shall be disposed of in accordance with the applicable non-procedural requirements of Chapter 62-701, F.A.C.

*[Sections 403.511, 403.531, 403.9416, F.S.; Rule 62-701, F.A.C.]*

***E. Flood Control Protection***

The certified facilities shall be constructed in such a manner that complies with any applicable County flood protection requirements,

***F. Vegetation***

The Licensee, to the extent feasible, will retain existing native (non-exotic) vegetation within the certified area and practice "best management practices" with respect to vegetation management in the certified area to the extent feasible and in compliance with Section 163.3209, F.S., which incorporates by reference North American Electrical Reliability Corporation (NERC) standard FAC-003-1, American National Standards Institute (ANSI) standards A300 (Part I)-2001 and 2133.1-2000, and National Electrical Safety Code (NESC) standards adopted by the Florida Public Service Commission. The requirements of section V. D. the *Upland Erosion Control, Revegetation, and Maintenance Plan* from the Federal Energy Regulatory Commission (FERC) found at this web address http://www.ferc.gov/industries/gas/enviro/uplndctl.pdf as well as Chapter 7 of the Florida Department of Transportation *Utility Accommodation Manual* located at this web address http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/710020001/Chapter-7.pdf shall serve as guidelines for best management practices.

*[Chapter 163.3209, F.S.]*

***G. Underground Utilities***

During design and prior to construction of any linear facility, Licensee shall contact Sunshine One Call and obtain a listing (design and construction tickets) of all of the known existing underground utilities within the ROW. Licensee shall provide the affected county and the Siting Office with a copy of those facilities located within the County's right-of-way. Licensee must also follow safe digging practices and the Underground Facility Damage Prevention and Safety Act, Chapter 556, F.S.

*[Chapter 556, F.S.]*

***H. Electric and Magnetic Fields***

Any transmission lines that are associated facilities shall comply with the requirements of Chapter 62-814, F.A.C.

*[Rule 62-814, F.A.C.]*

***I. Solar***

Any building constructed or remodeled utilizing rooftop solar panels will be certified under the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) rating system.

## XI. RIGHT OF ENTRY

A. Upon presentation of credentials or other documents as may be required by law, the Licensee shall allow authorized representatives of DEP or other agencies with jurisdiction over a portion of the certified facility:

1. At reasonable times, to enter upon the certified facility in order to monitor activities within their respective jurisdictions for purposes of assessing compliance with this certification; or

2. During business hours, to enter the Licensee's premises in which records are required to be kept under this certification; and to have access to and copy any records required to be kept under this certification.

B. When requested by DEP, on its own behalf or on behalf of another agency with regulatory jurisdiction, the Licensee shall within 10 working days, or such longer period as may be mutually agreed upon by DEP and the Licensee, furnish any information required by law, which is needed to determine compliance with the certification. If the Licensee becomes aware that relevant facts were not submitted or were incorrect in the Application or in any report to DEP or other agencies, such facts or information shall be corrected promptly.

*[Sections 403.511, 403.531, 403.9416, F.S.; Rule 62-4.160(7)(a), 62-4.160(15),F.A.C.]*

## XII. DISPUTE RESOLUTION

This Section XII governs disputes concerning these Conditions of Certification in cases where (a) the parties to the dispute are parties identified in Sections 403.508(3)(a), 403.527(2)(a), and 403.9411(4)(a) F.S. and (b) the time has elapsed for filing an appeal concerning the Conditions of Certification that gave rise to the disputed issue. If such a dispute arises and mutual agreement cannot be reached between the parties, the first attempt at dispute resolution will be handled by a Florida Supreme Court Certified Mediator agreed upon by all of the parties involved in the dispute. If resolution cannot be achieved in this manner, then the matter shall be referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, F.S. Licensee or DEP may request DOAH to establish an expedited schedule for the processing of such a dispute.

*[Sections 403.508(3)(a), 403.511(5)(c), 403.527(2)(a), 403.531(5), 403.9411(4)(a), 403.9416(4), F.S. and 120.57, F.S.]*

## XIII. SEVERABILITY

The provisions of this certification are severable, and if any provision of this certification or the application of any provision of this certification to any circumstance is held invalid, the remainder of the certification or the application of such provision to other circumstances shall not be affected thereby.

## XIV. ENFORCEMENT

A. The terms, conditions, requirements, limitations and restrictions set forth in these Conditions of Certification are binding and enforceable pursuant to Sections 403.141, 403.161, 403.514, 403.727, and 403.859 through 403.861, F.S.as applicable. Any noncompliance by the

Licensee with a Condition of Certification constitutes a violation of Chapter 403, F.S., and is grounds for enforcement action, license termination, license revocation, or license revision. The Licensee is placed on notice that the Department may review this certification periodically and may initiate enforcement action for any violation of these Conditions. Abandonment of the certified facility will be considered grounds for enforcement action.

B. All records, notes, monitoring data and other information relating to the construction or operation of the certified facility which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the certified facility arising under the Florida Statues or Department rules.

*[Sections 403.121, 403.131, 403.141, 403.151, 403.161 and 403.514, 403.533, 403.9419 F.S.; Rules 62-4.160(1) and 62-4.160(9)]*

## XV. REVOCATION OR SUSPENSION

The certification shall be final unless revised, revoked or suspended pursuant to law. This certification may be suspended or revoked pursuant to Section 403.512, 403.532 and 403.9435 F.S. as applicable, or for violations of any of these Conditions of Certification. This approval is valid only for the specific processes and operations identified within the Application and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this approval may constitute grounds for revocation and enforcement action by the Department. Any enforcement action, including suspension and revocation, shall only affect the portion(s) of the Certified facility that are the cause of such action, and other portions of the Certified facility shall remain unaffected by such action.

*[Sections 403.512, 403.532 and 403.9435, F.S. and Rule 62-4.160(2), F.A.C.]*

## XVI. SAFETY

As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this license does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This License is not a waiver of or approval of any other Department License that may be required for other aspects of the certified facility which are not addressed in this License. This license does not relieve the Licensee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this certified facility, or from penalties therefore; nor does it allow the Licensee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

*[Rules 62-4.160(3); 62-4.160(5), F.A.C.]*

## XVII. HERBICIDES

Herbicides applied at the plant site or in any ROW shall only be those registered by the U.S. Environmental Protection Agency and which have state approval. Herbicide application rates and concentrations will be in accordance with label directions and will be carried out by a licensed applicator, meeting all federal, state and local regulations. Herbicide applications shall be selectively applied to targeted vegetation. Broadcast application of herbicide shall not be used unless effects on non-targeted vegetation are minimized.

*[Sections 403.061, 403.088, 487.031 and 487.041, F.S.]*

## XVIII. CIVIL AND CRIMINAL LIABILITY

A. This certification does not relieve the Licensee from civil or criminal penalties for noncompliance with any conditions of this certification, applicable rules or regulations of the Department, or any other state statutes or regulations which may apply. As provided in Section 403.511, 403.531 and 403.9416, F.S., the issuance of this certification conveys neither any vested rights nor any exclusive privileges. Neither does it authorize any injury to human health or welfare, animal or plant life, public or private property or any invasion of personal rights.

B. This certification does not allow any infringement of federal, state, or local laws or regulations, nor does it allow the Licensee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order or permit from the Department or these Conditions of Certification. This approval is not a waiver of any other Department approval that may be required for other aspects of the certified facility under federally delegated or approved programs.

*[Sections 403.141, 403.161, 403.511, 403.531, 403.9416, F.S.]*

## XIX. PROPERTY RIGHTS

A. The issuance of this certification conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

B. If any portion of the certified facility is located on sovereign submerged lands, state-owned uplands, or within an aquatic preserve, then the certified facility must comply with the applicable portions of Chapters 18-2, 18-20 and 18-21, F.A.C., and Chapters 253 and 258, F.S. If any portion of the certified facility is located on sovereign submerged lands, the Licensee must submit section G of the Joint Application for Environmental Resource Permits to the Department prior to construction. If any portion of the certified facility is located on state-owned uplands, the Licensee must submit an Upland Easement Application to the Department prior to construction.

C. If a portion of the certified facility is located on sovereign submerged lands or state-owned uplands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, then the activity requires a proprietary authorization. The activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take action on requests for proprietary authorization in accordance with Section 18-2.018 or 18-21.0051, F.A.C.

D. The Licensee is hereby advised that Florida law states: “No person shall commence any excavation, construction, or other activity involving the use of sovereign or other state lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Environmental Protection under Chapter 253, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use." Pursuant to Chapter 18-14, F.A.C., if such work is done without consent, or if a person otherwise damages state land or products of state land, the Board of Trustees may levy administrative fines of up to $10,000 per offense.

E. The terms, conditions, and provisions of the required lease or easement shall be met. Construction of this activity shall not commence on sovereign submerged lands or state owned uplands, title to which is held by the Board of Trustees of the Internal Improvement Trust Fund, until all required lease or easement documents have been executed to the satisfaction of the Department.

*[Sections 403.511, 403.531, 403.9416, F.S.; Chapters 253 and 258, F.S., Chapter 3.1.1. of the B.O.R.; 18-2, 18-14, 18-21, 62-343.900(1), Section G, and 62-4.160(4) and 62-340, F.A.C.; Upland Easement Application and Section G of the Environmental Resource Permit Application Form.]*

## XX. LICENSEE'S PROCEDURAL RIGHTS

Except as specified in Chapter 403, F.S., or Chapter 62-17, F.A.C., no term or Condition of Certification shall be interpreted to preclude the post-certification exercise by the Licensee of whatever procedural rights it may have under Chapter 120, F.S., including those related to rule-making proceedings.

*[Chapter 120 and 403.511(5)(c), 403.531(5), 403.9416(4) F.S.]*

## XXI. POST-CERTIFICATION SUBMITTALS AND NOTICES REQUIRED BY CONDITIONS

Post-certification submittals and notices shall be sent, as specified in these Conditions, to the agencies specified in these Conditions at the following addresses, unless Licensee and DEP are notified in writing of an agency's change in address for such submittals and notices:

Florida Department of Environmental Protection
Siting Coordination Office, MS 48
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3900

Florida Department of Environmental Protection
Central District Office
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Florida Department of Community Affairs
Office of the Secretary
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Florida Fish & Wildlife Conservation Commission
Office of Policy and Stakeholder Coordination
620 South Meridian Street
Tallahassee, FL 32399-1600

Florida Department of Transportation
District Administration
605 Suwannee Street
Tallahassee, Florida 32399-0450

Florida Department of Agriculture and Consumer Services
Division of Forestry
3125 Conner Boulevard
Tallahassee, Florida 32399-1650

East Central Florida Regional Planning Council
Office of the Executive Director
631 North Wymore Road
Suite 100
Maitland, Florida 32751

St. Johns River Water Management District
Office of General Counsel
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177

Florida Department of State,
Division of Historical Resources
500 S. Bronough Street
Tallahassee, FL 32399-0250

Brevard County
Office of the County Attorney
Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, FL 32940
[Section 403.511, 403.531 and 403.9416, F.S.]

## XXII. PROCEDURES FOR POST-CERTIFICATION SUBMITTALS

### *A. Purpose of Submittals*

Conditions of Certification which provide for the post-certification submittal of information to DEP or other agencies by the Licensee are for the purpose of facilitating the agencies' monitoring of the effects arising from the location of the certified facility and the construction and maintenance of the certified facility. This monitoring is for DEP to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with the Conditions of Certification, without further agency action.

***B. Filings***

All post-certification submittals of information by Licensee are to be filed with the DEP Siting Coordination Office, the appropriate DEP District Office(s), and any other agency that is entitled to receive a submittal pursuant to any Condition of Certification. As required by Section 403.5113(2), F.S., each post-certification submittal will be reviewed by each agency with regulatory authority over the matters addressed in the submittal on an expedited and priority basis.

The Licensee shall provide within 90 days after certification a complete summary of those submittals identified in the Conditions of Certification where due-dates for information required of the Licensee are identified. A summary shall be provided as a separate document for each transmission line. Such submittals shall include, but are not limited to, monitoring reports, management plans, wildlife surveys, etc. The summary shall be provided to the DEP Siting Coordination Office and any affected agency or agency subunit to which the submittal is required to be provided, in a sortable spreadsheet, via CD and hard copy, in the format identified below or equivalent.

| Condition Number | Requirement and Timeframe | Due Date | Name of Agency or Agency Subunit to whom the submittal is required to be provided |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

*[62-17.191(3), F.A.C.]*

***C. Completeness***

DEP shall promptly review each post-certification submittal for completeness. This review may include consultation with the other agency (ies) receiving the post-certification submittal with regulatory jurisdiction over the matter addressed in the submittal. DEP's finding of completeness shall specify the area of the certified facility affected, and shall not delay further processing of the post-certification submittal for non-affected areas. If any portion of a post-certification submittal is found to be incomplete, Licensee shall be so notified. Failure to issue such a notice within 30 days after filing of the submittal shall constitute a finding of completeness. Subsequent findings of incompleteness, if any, shall address only the newly filed information.

*[62-17.191(1)(c)2., F.A.C.]*

***D. Interagency Meetings***

DEP may conduct an interagency meeting with other agencies, that received a post-certification submittal. The purpose of such an interagency meeting shall be for the agencies with regulatory jurisdiction over the matters addressed in the post-certification submittal to discuss whether compliance with the Conditions of Certification has been provided. Failure of DEP to conduct an interagency meeting or failure of any agency to attend an interagency meeting shall not be grounds for DEP to withhold a determination of compliance with these Conditions nor to delay the timeframes for review established by these Conditions. At DEP's request, Licensee shall conduct a field inspection with the agency representative in conjunction with the interagency meeting.

***E. Determination of Compliance***

DEP shall give written notification within 90 days, to the Licensee and the other agency(ies) to which the post-certification information was submitted of DEP's determination whether there is demonstration of compliance with the conditions of certification. If it is determined that compliance with these conditions has not been provided, Licensee shall be notified with particularity of the deficiencies and possible corrective measures suggested. Failure to notify Licensee in writing within 90 days of receipt of a complete post-certification submittal shall constitute a determination of compliance.

***F. Commencement of Construction***

If DEP does not object within the time period specified in paragraph E. above, Licensee may begin construction pursuant to the terms of the Conditions of Certification and the subsequently submitted construction details.

***G. Revisions to Design Previously Reviewed for Compliance***

The Licensee shall submit to DEP, and/or applicable agencies, proposed revisions to post-certification submittals for review. Such submittals shall include the same type of information required for the original submittal and shall be submitted prior to construction/implementation.

***H. Variation to Submittal Requirements***

DEP, in consultation with the appropriate agencies that have regulatory authority over a matter to be addressed in a post-certification submittal, and Licensee may jointly agree to vary any of the post-certification submittal requirements, provided the information submitted is sufficient to provide reasonable assurances of compliance with these Conditions of Certification.

***I. Disputes***

Any agency which received a post-certification submittal pursuant to these Conditions may dispute a determination that a submittal provides reasonable assurances of compliance with the Conditions of Certification made by DEP on matters within that agency's jurisdiction by following the procedures set forth in Chapter 120, F.S. The agency's statement disputing DEP's determination shall state with particularity the location to which the agency's dispute relates. Work in areas other than the location to which the agency's dispute relates will not be affected by the agency's dispute.

***J. Post-Construction Activities***

The Licensee shall comply with the requirements of section VII from the *Upland Erosion Control, Revegetation, and Maintenance Plan* from the Federal Energy Regulatory Commission (FERC) found at this web address http://www.ferc.gov/industries/gas/enviro/uplndctl.pdf.

*[Sections 120.569, 373.413, 373.416, 403.511, 403.531 and 403.9416, F.S.; 62-17.191 and 62-17.205, F.A.C.]*

## XXIII. POST CERTIFICATION AMENDMENTS

If, subsequent to certification, a Licensee proposes any material change to the application and revisions or amendments thereto, as certified, the Licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of a complete request for an amendment, the department shall determine whether the proposed change to the application requires a modification to the Conditions of Certification.

1. If the department concludes that the change would not require a modification to the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the Licensee, all agencies, and all other parties.

2. If the department concludes that the change would require a modification to the conditions of certification, the department shall provide written notification to the Licensee that the proposed change to the application requires a request for modification pursuant to 403.516, and 403.5317, F.S.

*Chapters 373, 403.4211 and 403.5113, 403.516, 403.5317, F.S.; Rules 62-340 and 62-343, F.A.C.]*

## XXIV. MODIFICATION OF CERTIFICATION

A. Pursuant to Section 403.516(1)(a), 403.5315(1), and 403.9418(1)(a), F.S., Section 120.569(2)(n), F.S., and Rule 62-17.211, F.A.C., the Siting Board hereby delegates the authority to the Department of Environmental Protection to modify, after notice and receipt of no objection by a party or other substantially affected person, any conditions which would not otherwise require approval by the Siting Board. In addition, the Department is delegated the authority to modify conditions as follows:

The certification shall be modified to conform to subsequent DEP-issued amendments, modifications, or renewals of any separately issued Prevention of Significant Deterioration (PSD) permit, Title V Air Operation permit, Underground Injection Control (UIC) permit, or National Pollutant Discharge Elimination System (NPDES) permit for the certified facility. In the event of a conflict, the more stringent of the conditions of such permits or of these Conditions of Certification shall be controlling.

B. Any anticipated facility expansions, production increases, or process modifications which may result in new, different or increased discharge or emission of pollutants, change in fuel, or expansion in generating capacity must be reported by submission of an appropriate application for amendment, modification, or certification

C. Requests which include alterations to the landscape regulated under Part IV of Chapter 373 (relevant to environmental resource permitting), F.S shall require modification to the Conditions of Certification. Activities meeting any one of the below criteria shall require modification to these conditions. An activity shall be considered a modification if:

1. the activity requires a new site inspection by the department in order to evaluate the request;

2. the activity necessitates a change to the Conditions of Certification;

3. the activity substantially

a. increases the authorized discharge;

b. results in different or increased impacts on wetlands and other surface waters, as delineated by the methodology ratified by section 373.4211, F.S., and codified in Chapter 62-340, F.A.C;

c. decreases the retention/detention specified by the current application/license;

d. decreases any flood control elevations for roads or buildings specified by the current application/license; or

e. increases the certified facility area; or

4. the activity occurs on sovereign (or state-owned) submerged lands.

For approval of activities governed by the Department's program for Environmental Resource Permits, the Licensee shall submit a completed application Form# 62-343.900(1) (as required in Rules 62-343.070(2) and 62-343.090(2)(b), F.A.C.) with its petition for modification.

D. Any anticipated facility change which results in a change to the certified area must be accompanied by a map or aerial photo showing the proposed new boundaries of the certified area. The Department may consider any such change to be a modification of the Conditions of Certification, including those changes that would otherwise be considered an amendment to the Site Certification Application. Within 60 days after completion of construction of the new project the Licensee shall provide: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as a legal description, delineating the boundaries of the certified area; and an aerial photograph delineating the new boundaries of the certified area. The survey and aerial photograph shall be attached hereto as Attachment B.

F. The Licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

*[Sections 120.569(2)(n), 403.511(5)(a) and 403.516, 403.5315, 403.9418, F.S.; Rules 62-17.211, 62-343, F.A.C.]*

## XXV. INCORPORATION OF EXISTING STATE AND LOCAL PERMITS/LICENSES

The operation of the Cape Canaveral Energy Center shall be in accordance with all applicable provisions of any state or local government permit issued prior to certification. All such state and locally issued permits are intended to be incorporated herein, such that the Licensee shall comply with the substantive provisions and limitations set forth in these permits. The inadvertent omission of any state or locally issued permit from these Conditions of Certification does not relieve the Licensee from compliance with the substantive provisions and limitations set forth in those permits.

At any time following certification, should the Licensee become aware of any state or locally issued permit not included herein, the Licensee shall promptly notify the Siting Office for incorporation into these Conditions of Certification. Likewise, when the Department is made aware of any separately issued permits, the Conditions of Certification will be modified accordingly to incorporate the substantive provisions and limitations of any such permit.

Such provisions shall be fully enforceable as conditions of this certification and may only be amended or modified in accordance with the provisions herein. Any violation of such provisions shall be a violation of these Conditions of Certification.

## XXVI. COASTAL ZONE CONSISTENCY

Pursuant to Section 403.511, F.S., certification of the facility constitutes the state's concurrence that the licensed activity or use is consistent with the federally approved program under the Florida Coastal Management Act.

*[Sections 380.23 and 403.511(7), F.S.]*

## XXVII.STATE WATER QUALITY STANDARDS COMPLIANCE

For each post-certification submittal and modification which addresses matters within DEP's environmental resource permitting jurisdiction, DEP shall provide to the U.S. Army Corps of Engineers (USCOE) a letter stating that the Licensee has met the requirements for 33 United States Code (U.S.C.) 1341.

*[Sections 403.067, F.S.]*

## XXVIII.FINANCIAL RESPONSIBILITY

The Department may require a Licensee to submit proof of financial responsibility and may require the Licensee to post an appropriate bond to guarantee compliance with the law and Department rules.

*[Section 403.061(7) FS., and 62-4.110, and 62-701.630, F.A.C.]*

## XXIX. TRANSFER OF CERTIFICATION

This certification is transferable in whole or in part, upon Department approval, to an entity determined to be competent to construct, operate and maintain the certified facility in accordance with these Conditions of Certification. The Department will consider whether the entity is a proper applicant as defined by the PPSA, TLSA and/or NGPSA, in making its approval. A transfer of certification of all or part of the certified facility may be initiated by the Licensee's filing of a Notice of Intent to Transfer Certification with the Department. A copy of the necessary form may be obtained by contacting the Siting Coordination Office. Upon approval the Department will initiate a modification to the Conditions of Certification to reflect the change in ownership in accordance with 62-17.211, F.A.C. In the event of the dissolution of a certified licensee, the Department may transfer certification to successor entities which are determined to be competent to construct, operate and maintain the certified facility in accordance with the conditions of certification and which are proper applicants as defined by the PPSA, TLSA and/or NGPSA. Upon determination that such a successor entity complies with the above, the Department will initiate a modification to the Conditions of Certification to reflect the change in ownership in accordance with 62-17.211, F.A.C.

*[Chapter 120, and Sections 403.511, 403.531, and 403.9416, F.S.]*

## XXX. LABORATORIES AND QUALITY ASSURANCE

A. The Licensee shall ensure that all laboratory analytical data submitted to the Department, as required by this Certification, are from a laboratory which has a currently valid and Department approved Comprehensive Quality Assurance Plan (CompQAP) or a CompQAP pending approval for all parameters being reported, as required by Chapter 62-160, F.A.C.

B. The Licensee shall ensure that all samples required pursuant to this certification are taken by an appropriately trained technician following EPA and Department approved sampling procedures and chain-of-custody requirements in accordance with Rule 62-160, F.A.C. All chain-of-custody records shall be retained on-site for at least three (3) years and made available to the Department immediately upon request.

C. Records of monitoring information shall include:

1. the date, exact place, and time of sampling or measurements;
2. the person responsible for performing the sampling or measurements;
3. the dates analyses were performed;
4. the person responsible for performing the analyses;
5. the analytical techniques or methods used; and,
6. the results of such analyses.

*[Rules 62-160 and 62-4.160(14), F.A.C.]*

## XXXI. ENVIRONMENTAL RESOURCES

### *A. Stormwater*

1. Activities approved by these conditions shall be conducted in a manner which does not cause violations of state water quality standards. The licensee shall implement best management practices for erosion and a pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction and permanent control measures shall be completed within seven days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the licensed work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. Thereafter the licensee shall be responsible for the removal of the barriers. The licensee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

2. Water quality data for the water discharged from the licensee's property or into the surface waters of the state shall be submitted to the Department as required by these Conditions. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by the American Public Health Association or Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the licensee shall provide data as required on volumes of water discharged, including total volume discharged during the days of sampling and total monthly volume discharged from the property or into surface waters of the state.

3. The Department must be notified in advance of any proposed construction dewatering. If the dewatering activity is likely to result in offsite discharge or sediment transport into wetlands or surface waters, a written dewatering plan must either have been submitted and approved with the license application or submitted to the Department as a license prior to the dewatering event as a license modification. The licensee is advised that the rules of the applicable Water Management District state that a water use license may be required prior to any use exceeding the thresholds in Chapter **40X-X**, F.A.C.

4. Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as feasible in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased.

5. Off site discharges during construction and operation of the certified facilities shall be made only through the facilities authorized by this license. Water discharged from the certified facility shall be through structures having a mechanism suitable for regulating upstream stages. Stages may be subject to operation schedules satisfactory to the Department.

6. The licensee shall complete construction of all aspects of the surface water management system, including wetland compensation (grading mulching, planting), water quality treatment features, and discharge control facilities prior to beneficial occupancy or use of the development being served by this system.

7. The following shall be properly abandoned and/or removed in accordance with the applicable regulations:

a. Any existing wells in the path of construction shall be properly plugged and abandoned by a licensed well contractor.

b. Any existing septic tanks on site shall be abandoned at the beginning of construction, unless these Conditions provide otherwise.

c. Any existing fuel storage tanks and fuel pumps shall be removed at the beginning of construction, unless these Conditions provide otherwise.

8. All surface water management systems shall be operated to conserve water in order to maintain environmental quality and resource protection; to increase the efficiency of transport, application and use; to decrease waste; to minimize unnatural runoff from the property and to minimize dewatering of offsite property.

9. At least 48 hours prior to commencement of activity authorized by this license, the licensee shall submit to the Department a written notification of commencement using an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), F.A.C.) indicating the actual start date and the expected completion date.

10. Each phase or independent portion of the licensed system must be completed in accordance with the licensed plans and license conditions prior to the occupation of the site or operation of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the licensed plans and license conditions prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to a local government or other responsible entity.

11. Within 30 days after completion of construction of the licensed activity, the licensee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the required "Environmental Resource Permit As-Built Certification by a Registered Professional" (Form No. 62-343.900(5), F.A.C.), and "Request for Transfer of Environmental Resource Permit Construction Phase to Operation Phase" (Form 62-343-900(7), F.A.C.). Additionally, if deviations from the approved drawings are discovered during the certification process the certification must be accompanied by a copy of the approved license drawings with deviations noted.

12. This license is valid only for the specific processes, operations and designs indicated on the approved drawings or exhibits submitted in support of the license application. Any substantial deviation from the approved drawings, exhibits, specifications or license conditions, including construction within the total land area but outside the certified facility, may constitute grounds for revocation or enforcement action by the Department, unless a modification has been applied for and approved. Examples of substantial deviations include excavation of ponds, ditches or sump areas deeper than shown on the approved plans.

13. The operation phase of this license shall not become effective until the licensee has complied with the requirements of the conditions herein, the Department determines the system to be in compliance with the licensed plans, and the entity approved by the Department accepts responsibility for operation and maintenance of the system. The license may not be transferred to the operation and maintenance entity approved by the Department until the operation phase of the license becomes effective. Following inspection and approval of the licensed system by the Department, the licensee shall request transfer of the license to the responsible operation and maintenance entity approved by the Department, if different from the licensee. Until a transfer is approved by the Department pursuant to Section 62-343.110(1)(d), F.A.C., the licensee shall be liable for compliance with the terms of the license.

14. Should any other regulatory agency require changes to the licensed system, the Department shall be notified of the changes prior to implementation so that a determination can be made whether a license modification is required.

15. The licensee is hereby advised that Section 253.77, F.S., states that a person may not commence any excavation, construction, other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the licensee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

16. Any delineation of the extent of a wetland or other surface water submitted as part of the license application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this license or a formal determination under section 373.421(2), F.S., provides otherwise.

*[Rules 62-343, 62-302, and 62-4.242, F.A.C.]*

### *B. Wetland Impacts*

1. Submittals for Activities Within Wetlands or Other Surface Waters

a. Prior to the projected commencement of construction of the certified facility in wetlands or other surface waters, the Licensee shall provide to the appropriate DEP District's Environmental Resource Permitting Section(s) and the U.S. Army Corps of Engineers all information necessary for a complete *Joint Environmental Resource Permit application*, DEP Form No. 62-343.900(1), with copies to the appropriate WMD(s), local government (s) and RPC(s) for informational purposes.

*[Section 373.416, F.S.; Rule 62-343.900(1)]*

b. The Licensee shall provide reasonable assurance that the joint construction, operation and maintenance of any facilities, including any access roads and structures constructed within wetlands and other surface waters, and/or associated facilities, satisfy any applicable water management district rules. Pursuant to Rule 62-17.665(7)(d), F.A.C., the Licensee shall provide sufficient information on a post-certification basis to demonstrate that there is reasonable assurance of compliance with the applicable WMD(s) substantive requirements.

*[Section 373.414, F.S.; Rule 62-17.665(7)(d)]*

c. The post-certification submittal shall include a signed and sealed Professional Land Surveyors' survey of wetland and surface water areas as defined pursuant to Chapter 62-340, F.A.C., and verified by appropriate agency staff.

*[Rule 62-340, F.A.C.]*

2. Consultation with Wetland Agencies

At the request of the Licensee, DEP Siting Coordination Office may conduct an interagency meeting for the Licensee to consult with the wetlands resource permitting staffs of DEP and WMD(s) and the FWC's staff, prior to the finalization of any construction in wetlands which are to be reflected in any post-certification submittals. At DEP's request, the Licensee shall conduct a field inspection with the agencies' staff representatives in conjunction with the interagency meeting.

*[Sections 403.504, 403.523 and 403.9404, F.S.]*

3. Reduction and Elimination of Impacts

a. Avoidance

(1) Where the certified facility crosses wetlands or other surface waters, the Licensee shall utilize adjacent existing access roads and public roads for access to associated facilities for construction, operation and maintenance purposes to the extent feasible.

(2) All facilities shall be constructed in a manner which reduces or eliminates adverse impacts to on-site and adjacent wetlands to the extent feasible.

(3) Where feasible, the Licensee shall make an effort to reduce or eliminate impacts to wetlands and other surface waters within the certified facility.

(4) To the extent feasible and utilizing the typical structures shown in the Application, access roads, culverts and structures shall be located to avoid conflict with existing underground utilities properly documented in county records.

(5) In the event temporary fill is used to facilitate construction, the temporary fill shall be removed where necessary to minimize impacts to wetlands or habitats of listed species.

b. Clearing

(1) The Licensee shall use only restrictive clearing practices during construction and maintenance of the certified facility where it crosses forested wetlands. Restrictive clearing, as used in this condition, is the removal of vegetation by hand, usually with chain saws, or with low-ground-pressure shear or rotary machines to reduce soil compaction and damage to ground cover. These methods may be used alone or in combination, as may be appropriate for specific sites. All cut vegetation must be removed from wetlands unless other techniques, such as mulching or burning in place, are agreed to by DEP Siting Coordination Office and the applicable local government in the post-certification review process. Removable construction matting in conjunction with best management practices may be used in wetlands to support equipment.

(2) Tree stumps within access roads and in the construction area may be removed, sheared, or ground to 6 inches below the ground line to allow for travel and construction activities.

(3) Clearing or fill must not occur within 550 feet from the shoreline of a named waterbody designated as an Outstanding Florida Waterbody (OFW).

*[Sections 373.414 and 373.416, F.S]*

4. Mitigation

a. Mitigation for wetland impacts pursuant to Section 373.414, F.S. shall not be required by DEP if the certified facility is;

(1) not located within wetlands

(2) not expected to adversely impact wetlands, or

(3) complies with the following conditions:

i. All permanent fill shall be at grade; and

ii. Vegetation within wetlands may be cut or removed no lower than the soil surface while maintaining the remainder of the project right-of-way within the wetland by selectively clearing vegetation which has an expected mature height above 14 feet. Brazilian pepper, Australian pine, and melaleuca shall be eradicated throughout the wetland portions of the right-of-way; and

iii. Erosion control methods shall be implemented as necessary to ensure that state water quality standards for turbidity are met. Diversion and impoundment of surface waters shall be minimized; and

iv. The proposed construction and clearing shall not adversely affect threatened and endangered species; and

v. The proposed construction and clearing shall not result in a permanent change in existing ground surface elevation.

vi. For associated linear facilities, where fill is placed in wetlands, the clearing to ground of forested wetlands is restricted to 4.0 acres per 10-mile section of the project, with no more than one impact site exceeding 0.5 acres. The impact site which exceeds 0.5 acres shall not exceed 2.0 acres. The total forested wetland clearing to the ground per 10-mile section shall not exceed 15 acres. The 10-mile sections shall be measured from the beginning to the terminus, or vice versa, and the section shall not end in a wetland.

b. For construction in wetlands that does not comply with the requirements in paragraph a., the Licensee shall propose a mitigation plan as a post-certification submittal under Condition XXII and once approved by DEP become part of the Conditions as Attachment C. The following information shall be provided to the appropriate DEP District(s) Environmental Resource Permitting Section for review:

(1) detailed description, location map, and recent aerial photograph of each wetland impact area in which the Rule 62-341.620(2)(b)-(i), F.A.C., limitations were not met;

(2) acreage of the type and quality of wetland being impacted at each such site;

(3) narrative, drawings, location map, and aerial photographs showing and explaining the proposed mitigation, or in the case of a mitigation bank, the name and location of the bank;

(4) detailed description of the existing conditions at the impact site and, unless a mitigation bank is proposed, at the mitigation area;

(5) acreage and wetland type of the proposed mitigation, or for a Department-approved mitigation bank, the type and number of credits;

(6) if not a mitigation bank, documentation providing reasonable assurance that the proposed mitigation will be successful; and

(7) an analysis pursuant to Chapter 62-345, F.A.C., to the extent applicable.

(8) To the extent mitigation will be provided from a mitigation bank, a credit reservation letter will be provided from the selected bank demonstrating the necessary credits are being set aside to offset project impacts.

c. Mitigation plans must be found to fully offset the functions and values provided by wetlands that will be degraded or eliminated to the abundance and diversity of fish, wildlife and listed species, and the habitat of fish, wildlife and listed species. DEP will work with the Licensee in the development of acceptable mitigation plans. The mitigation plans proposed by the Licensee shall be submitted for review and compliance monitoring to DEP under Condition XXII.

d. If DEP, upon review of the proposed mitigation plan, determines that the proposed mitigation is inadequate to offset the loss of wetland values described above from this project, the Licensee may propose additional or alternative mitigation or dispute the determination pursuant to Condition XII.

e. If the proposed mitigation plan is deemed acceptable by DEP; and,

(1) Does not involve the use of a mitigation bank, the construction conditions, success criteria and a monitoring plan will be incorporated into the construction conditions.

(2) Does involve the use of a mitigation bank within 90 days after issuance of the site certification or 30 days prior to commencement of construction of the Project, the Licensee shall provide the Siting Coordination Office with documentation of the final purchase of the required mitigation credits and deduction of those credits from the wetlands mitigation bank's ledger. If the Project results in additional wetland impacts not covered by this certification, then additional wetlands mitigation information shall be submitted to the Department. Upon receiving complete information, the Department will assess the revised mitigation plan within 90 days. If the Department, upon review of the proposed mitigation, determines that the proposed mitigation is inadequate to offset the additional wetland loss and habitat degradation from this project, the Licensee shall propose additional mitigation.

g. No construction within wetlands subject to the regulatory jurisdiction of DEP that does not comply with the non-procedural limitations of Rule 62-341.620(2)(b)-(i), F.A.C., or paragraph A above, shall commence until DEP approves a mitigation plan, and, if a bank is not used, mitigation construction conditions, success criteria and a monitoring plan are incorporated into the certification conditions.

h. The Licensee shall be deemed to have met the requirements of this condition relative to mitigation if the Licensee satisfies the criteria of the appropriate WMD(s) Basis of Review for Environmental Resource Permit Applications and Chapter 62-345, F.A.C., as applicable under operating agreements between appropriate WMD(s) and the department.

*[Sections 373.414, 403.511, 403.531, 403.814(6) and 403.9416, F.S. (2007); Rules 62-341.620 and 62-345, F.A.C.]*

## XXXII.THIRD PARTY IMPACTS

The Licensee is responsible for maintaining compliance with these conditions of certification even when third party activities occur in or on the certified area. Such third party activities may include but are not limited to mining, hunting, and timbering.

*[Rule 62-4.166, F.A.C.]*

## XXXIII. FACILITY OPERATION

A. The Licensee shall at all times properly operate and maintain the certified facility and related appurtenances, and systems of treatment and control that are installed and used to achieve compliance with the conditions of this certification, and are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the approval and when required by Department rules.

B ll discharges or emissions authorized herein shall be consistent with the terms and conditions of this certification. The discharge or emission of any regulated pollutant not identified in the Application, or more frequently than, or at a level in excess of that authorized herein, shall constitute a violation of the certification.

C. The Department shall hold the Licensee responsible for compliance with the Conditions of Certification regardless of how the violation occurred.

*[Rules 62-4.160(2) and 62-4.160(6), F.A.C.]*

## XXXIV. RECORDS MAINTAINED AT THE FACILITY

A. These Conditions of Certification or a copy thereof shall be kept at the work site of the approved activity.

B. The Licensee shall hold at the facility, or other location designated by this approval, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation required by this approval, copies of all reports required by this approval, and records of all data used to complete the application for this approval. These materials shall be retained at least three (3) years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule. The Licensee shall provide copies of these records to the Department upon request. If the Licensee becomes aware of relevant facts that were not submitted or were incorrect in any report to the Department, such facts or information shall be promptly submitted or corrected.

*[Rules 62-4.160(12) and 62-4.160(14)(b), F.A.C.]*

## XXXV. TOXIC, DELETERIOUS OR HAZARDOUS MATERIALS

***A. Use***

If hazardous substances are used in the construction or maintenance of the certified facility, Licensee shall provide the DEP with reasonable assurances that such hazardous substances will not enter stormwater drains or waterbodies (including groundwater).

*[Rules 62-761.451; 62-762.451 F.A.C.]*

***B. Spills***

Fuel and other petroleum product spills that enter stormwater drains or waterbodies, or fuel and other petroleum product spills that are in excess of 25 gallons shall be contained, cleaned up, and immediately reported to the appropriate DEP District Water Resources Office. A copy of any submittal by Licensee pursuant to this paragraph, for any spills located in the affected County, shall be provided to the affected County for informational purposes. Smaller ground surface spills shall be cleaned up as soon as practical.

*[Rules 62-761.451; 62-762.451 F.A.C.]*

***C. Discharge***

The Licensee shall not discharge to surface waters wastes which are acutely toxic, or present in concentrations which are carcinogenic, mutagenic, or teratogenic to human beings or to significant locally occurring wildlife or aquatic species. The Licensee shall not discharge to ground waters wastes in concentrations which, alone or in combination with other substances, or components of discharges (whether thermal or non-thermal) are carcinogenic, mutagenic, teratogenic, or toxic to human beings (unless specific criteria are established for such components in Section 62-520.420, F.A.C.) or are acutely toxic to indigenous species of significance to the aquatic community within surface waters affected by the ground water at the point of contact with surface waters.

*[Rules 62-303; 62-40; 62-520, F.A.C.]*

***D. Reporting***

The Licensee shall report all spills of materials having potential to significantly pollute surface or ground waters and which are not confined to a building or similar containment structure, by telephone immediately after discovery of such spill. The Licensee shall submit a written report within forty-eight hours, excluding weekends, from the original notification; the Siting Coordination Office shall be copied on this report. The telephone report shall be submitted by calling the DEP District Office Industrial Wastewater Compliance/Enforcement Section. After normal business hours, the Licensee shall contact the State Warning Point by calling (850) 413-9911 or (850) 413-9912. The written report shall include, but not be limited to, a detailed description of how the spill occurred, the name and chemical make-up (include any MSDS sheets) of the substance, the amount spilled, the time and date of the spill, the name and title of the person who first reported the spill, the size and extent of the spill and surface types (impervious, ground, water bodies, etc.) it impacted, the cleanup procedures used and status of completion, and include a map or aerial photograph showing the extent and paths of the material flow. Any deviation from this requirement must receive prior approval from the Department.

*[Chapter 376, F.S.; Rule 62-160, F.A.C.]*

## XXXVI. SOLID AND HAZARDOUS WASTE

***A. Solid Waste***

The Licensee shall comply with all applicable provisions of DEP Chapter 62-701, F.A.C. for any solid waste generated within the certified facility during construction and/or operation.

*[Rules 62-701 and 62-702, F.A.C.]*

***B. Hazardous Waste***

The Licensee shall comply with all applicable provisions of DEP Rule Chapter 62-730, F.A.C., for any hazardous waste generated within the certified facility. An EPA identification number must be obtained before beginning hazardous waste activities, except for Conditionally Exempt Small Quantity Generators (CESQGs) who are exempt from this regulation under Title 40 Code of Federal Regulations (CFR), §261.5. CESQGs generate no more than 100 kg (220 lbs) of hazardous waste in any month.

*[Rule 62-730, F.A.C.]*

***C. Water Quality Reporting Requirements***

All solid and/or hazardous waste water quality monitoring reports and all solid and/or hazardous waste ground water, surface water and leachate analytical results shall be submitted electronically. Water quality monitoring reports shall be submitted in a pdf format. The water quality data Electronic Data Deliverable (EDD) shall be provided to the Department in an electronic format consistent with requirements for importing the data into the Department's databases. Water quality monitoring reports shall be signed and sealed by a Florida registered professional geologist or professional engineer with experience in hydrogeological investigations and shall include the following:

1. Cover letter;

2. Summary of exceedances and recommendations;

3. Ground water contour maps;

4. Chain of custody forms;

5. Water levels, water elevation table;

6. Ground Water Monitoring Report Certification, using the appropriate Department form;

7. Appropriate sampling information on Form FD 9000-24 (DEP-SOP-001/01); and,

8. Laboratory and Field EDDs and error logs, as applicable.

All submittals in response to this specific condition shall be sent both to:

Florida Department of Environmental Protection
Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

And to:

Florida Department of Environmental Protection
Solid Waste Section
2600 Blair Stone Road, MS 4565
Tallahassee, Florida, 32399-2400

And to:

Florida Department of Environmental Protection
Siting Coordination Office, MS 48
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3900

*[Rules 62-160.110, 62-160.240, 62-160.340, and 62-730.225, F.A.C.]*

## XXXVII. PETROLEUM STORAGE

The Licensee shall comply with all applicable provisions of DEP Rule 62-762, F.A.C. for any above ground petroleum storage systems.
*[Rule 62-762, F.A.C.]*

## XXXVIII. NOISE

The Licensee shall comply with applicable noise ordinances, if any. If steam-blows will be necessary the Licensee will notify the local government in advance and conduct steam-blows only during day time (8:00am – 5:00pm).

## XXXIX. SCREENING

The Licensee shall comply with applicable local government requirements concerning the screening of the certified facility.

## SECTION B. SPECIFIC CONDITIONS

## I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

### *A. Groundwater*

1. Quarterly Groundwater monitoring will be conducted in all monitor wells until all groundwater discharges cease.

2. The existing Sodium exemption in groundwater is valid until August 9, 2010 at which time FPL will renew this exemption with the Central District.

3. An annual groundwater monitoring plan for secondary parameters in pertinent monitor wells will be submitted to the Central District for review until deemed by the Department as unnecessary.

4. Upon removal of evaporation/percolation pond and the solids settling basin, the groundwater monitoring in subject wells OB-5, EPB-NE, EPB-E, and EPB-SE will be continued on a semi-annual basis until two consecutive sampling events indicate compliance with antimony groundwater standard.

5. Within 30 days of issuance of the final certification the vertical extent of potential antimony contamination will be assessed. Any such contamination assessment activities for complete delineation of groundwater plume in the future must be proposed to the Department's Central District office for review and approval. All activities related to the contamination assessment and remediation of groundwater shall be closely coordinated with the Department until a closure order is issued by the Department certifying that antimony contamination is successfully addressed.

6. No monitor wells will be abandoned without the Department's prior approval. If any of the existing monitor wells are to be abandoned due to the proposed construction activities, a written proposal shall be submitted to the Groundwater Section of Central District for approval for abandoning the wells as well as replacement with new monitor wells at suitable location(s).

*[Rules 62-520 and 62-522, F.A.C.]*

### *B. Dredging:*

1. If dredging is proposed, the Licensee will be required, upon consultation with district staff, to submit all applicable information to the Department prior to the commencement of any dredge activities:

2. Sampling and test analyses of ambient water or sediments, core borings, surveys of existing resources such as grassbeds and other habitats, or any other information necessary to evaluate the proposed dredging or filling may be required.

*[Chapters 403.918 and 403.919, F.S.; Rules 62-4, 62-45, and 62-312, F.A.C.]*

### *C. Public Easement*

Within 60 days of certification, Florida Power and Light will submit the required information, as outlined in Condition XIX, in order to obtain a public easement for the existing spit of land extending east into the Indian River. Upon issuance of the easement a copy will be attached as Attachment E.

*[Chapters 253 and 258, F.S.]*

## II. FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

The Licensee shall comply with a current Sovereign Submerged Land Lease (Attachment D). Any renewals of the lease shall be submitted by the Licensee to the Siting Coordination Office.

## III. DEPARTMENT OF TRANSPORTATION

### *A. Post Certification Review Items*

1. Access Management to the State Highway System: Any access to the State Highway System will be subject to the requirements of Rule Chapters 14-96, State Highway System Connection Permits, and 14-97, Access Management Classification System and Standards, F.A.C:

2. Overweight or Overdimensional Loads: Operation of overweight or overdimensional loads by the applicant on State transportation facilities during construction and operation of the utility facility will be subject to safety and permitting requirements of Chapter 316, F.S., and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

3. Use of State of Florida Right of Way or Transportation Facilities: All usage and crossing of State of Florida right of way or transportation facilities will be subject to Rule Chapter 14-46, Utilities Installation or Adjustment, F.A.C.; Florida Department of Transportation's Utility Accommodation Manual (Document 710-020-001); Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Standard Specifications for Road and Bridge Construction; and pertinent sections of the Florida Department of Transportation's Project Development and Environmental Manual.

4. U.S. 1 has been identified as Florida Intrastate Highway System (FIHS) and Strategic Intermodal System's (SIS) facilities. The placement of the transmission line and pipeline should take into consideration the planned widening of these facilities. The cost of relocating or reconstructing the transmission line and pipeline will be borne by the applicant to the extent required by Section 337.403, F.S., and Rule Chapter 14-46, F.A.C..

5. Standards: The Manual on Uniform Traffic Control Devices; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; Florida Department of Transportation's Utility Accommodation Manual; and pertinent sections of the Department of Transportation's Project Development and Environmental Manual will be adhered to in all circumstances involving the State Highway System and other transportation facilities.

6. Drainage: Any drainage onto State of Florida right of way and transportation facilities will be subject to the requirements of Rule Chapter 14-86, Drainage Connections, F.A.C., including the attainment of any permit required thereby.

7. Use of Air Space: Any newly proposed structure or alteration of an existing structure will be subject to the requirements of Chapter 333, F.S., and Rule 14-60.009, Airspace Protection, F.A.C. Additionally, notification to the Federal Aviation Administration (FAA) is required prior to beginning construction, if the structure exceeds notification requirements of 14 CFR Part 77, Objects Affecting Navigable Airspace, Subpart B, Notice of Construction or

Alteration. Notification will be provided to FAA Southern Region Headquarters using FAA Form 7460-1, Notice of Proposed Construction or Alteration in accordance with instructions therein. A subsequent Determination by the FAA stating that the structure exceeds any federal obstruction standard of 14 CFR Part 77, Subpart C for any structure that is located within a 10-nautical-mile radius of the geographical center of a public-use airport or military airfield in Florida will be required to submit information for an Airspace Obstruction Permit from the Florida Department of Transportation or variance from local government depending on the entity with jurisdictional authority over the site of the proposed structure. The FAA Determination regarding the structure serves only as a review of its impact on federal airspace and is not an authorization to proceed with any construction. However, FAA recommendations for marking and/or lighting of the proposed structure are made mandatory by Florida law. For a site under Florida Department of Transportation jurisdiction, application will be made by submitting Florida Department Transportation Form 725-040-1 1, Airspace Obstruction Permit Application, in accordance with the instructions therein.

8. Level of Service on State Roadway Facilities: All traffic impacts to State roadway facilities on the FMS or the SIS, or funded by Section 339.2819, F.S., will be subject to the requirements of the level of service standards adopted by local governments pursuant to Rule Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C., in accordance with Section 163.3180(10), F.S.. All traffic impacts to State roadway facilities not on the FIHS, the SIS, or funded by Section 339.2819, F.S., will be subject to adequate level of service standards established by the local governments.

### *B. Best Management Practices*

1. Traffic control during facility construction and maintenance will be subject to the standards contained in the Manual on Uniform Traffic Control Devices; Rule Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C.; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; and Florida Department of Transportation's Utility Accommodation Manual, whichever is more stringent.

2. It is recommended that the applicant encourage transportation demand management techniques by doing the following:

- Placing a bulletin board on site for car pooling advertisements.
- Requiring that heavy construction vehicles remain onsite for the duration of construction to the extent practicable.
- A temporary traffic control plan for handling construction related traffic is needed subject to the requirements and standards. The plan will need to be approved by Florida Department of Transportation prior to construction.

3. If the applicant uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, the applicant should ensure that its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 3 16, F.S., and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C..

## IV. FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

### *A. West Indian Manatee*

1. Interim Warm-Water Refuge Heating System

a. The current trigger temperature identified in the Manatee Protection Plan under the Cape Canaveral power plant's National Pollutant Discharge Elimination System permit is 61°F. In order to prevent an increased risk of manatee cold stress death during the CCEC conversion construction period, adaptive management protocols for the interim warm-water refuge heating system shall include the following:

(1) Testing, monitoring, and evaluation of the interim heating system shall take place pursuant to the permit conditions found in the Environmental Monitoring and Biological sections.

(2) The trigger temperature shall be set at 65°F, during the period that the interim heating system is required. The interim heating system shall be designed such that when ambient water temperatures are below 65°F, as indicated from a selected ambient water temperature station (as agreed to in the environmental monitoring plan), the interim heating system will provide a water temperature at or above 68°F, within the identified warm-water refuge until such time as the ambient water temperature reaches 65°F. The interim heating system shall be maintained and operated to achieve this result, in accordance with best management practices (BMP) established by Licensee, unless otherwise authorized by FWC and USFWS, or unless the safety or reliability of the electric power system would be compromised. The Licensee shall develop a BMP manual for the interim heating system that shall include the following components:

i. operation and maintenance procedures for the interim heating system;

ii. requirement for a log demonstrating that the recommended operating and maintenance procedures and checks are performed;

iii. a spare parts list including the location of the spares;

iv. a list of qualified operators and repair persons and their contact information;

iv. a trouble shooting flowchart and repair personnel call out plan;

v. an incident log to track the status of troubleshooting and repair activities until the system is operable;

vi. notification requirements to agencies.

(3) Licensee shall submit its BMP manual to FWC for review and comment by August 15 of the year when the CCEC conversion commences which is expected to be 2010. Licensee will review, consider, and incorporate if practicable, comments from FWC that are received by September 15 of that year. A copy of the Licensee's BMP manual for the interim heating system shall be maintained at all times at the CCEC site and shall be made available upon request to authorized representatives of FWC and DEP.

(4) If through the biological monitoring or daily visual assessments of manatee health, or scientific data it is indicated, that the 65°F interim heating system trigger temperature should be; raised or lowered to maintain a sufficient warm-water refuge, then FWC will consult with DEP, USFWS, and FPL to assess the information and develop a new strategy that can be agreed upon by all four parties. Such a new agreed upon strategy would be proposed by FWC in a DEP initiated modification to certification.

(5) The interim warm-water refuge is described as the area located within the current Cape Canaveral plant intake canal beginning at the western most extent of the canal and including all waters within the canal between the peninsula and the southern shoreline up to the southern shoreline's eastern most point (See attachment F and G).

(6) The Licensee may request modification of the following applicable FWC conditions upon issuance by the Department of Environmental Protection, in consultation with the FWC, of Final NPDES permit modification FL0001473 if such requested modifications to the conditions herein have been adopted into the Final NPDES permit.

(7) Licensee shall provide written notification of the commencement of conversion to DEP and the FWC as soon as possible but no later than June 15 of the year when the CCEC conversion commences which is expected to be 2010.

*[Sections 403.507 and 403.509, F.S.; Section 379.1025 F.S., Section 379.2291 F.S., Section 379.2431 (2) F.S., Section 20.331 F.S., Section 253.75 F.S., Rules 68A-27 F.A.C.]*

2. Environmental Monitoring

a. The following monitoring requirements are applicable to the interim warm-water refuge period and two years 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 (Florida Power & Light Company) shall submit to the FWC, Florida Department of Environmental Protection (DEP) Siting Office, and the USFWS an Environmental Monitoring Plan. The Environmental Monitoring Plan shall include, at a minimum, the following components:

i. An evaluation of the interim heating system to determine its ability to provide a sufficient manatee warm-water refuge (as described in Interim Heating System and Environmental monitoring Conditions V.A.1. and 2, and the Licensee's Thermal Modeling Study) during the winter months shall take place prior to discontinuation of the current warm-water discharge. Evaluation of the system shall include its performance during cold fronts and varying tidal and wind conditions, if present, for a duration to be established in the Environmental Monitoring Plan (unless testing takes place as outlines in IVA 2.a.(1) ii).

ii. If an interim heating system is installed at Riviera Beach Energy Center (RBEC) in 2009 an initial evaluation of the interim heating system, during winter conditions, shall be conducted there.

iii. The interim heating system at the CCEC site shall be installed and operational by September 15, of the year when the CCEC conversion commences which is expected to be 2010 or as soon as practicable after certification, whichever is later. However, the conversion from the existing system to the interim system cannot be implemented during the winter months (November through March). The warm-water refuge created by this system shall be monitored during initial testing at the CCEC site between September 15 and October 15, of the year when the CCEC conversion commences which is expected to be 2010, or the duration described in Condition IV.A.2.a.(1) i. and the empirical temperature data will be collected and compared to the thermal modeling results to evaluate the performance of the interim heating system and the accuracy of the thermal model.

iv. Monitoring of the CCEC's interim warm-water refuge during the conversion shall consist of winter (October 15 through March 31) ambient air and water temperatures measured at multiple locations within the interim warm-water refuge. The number and configuration of temperature monitoring stations must be sufficient to provide a three-dimensional view, over time, of the thermal plume.

v. Monitoring of the CCEC's post-conversion warm-water refuge shall consist of winter ambient air and water temperatures measured at multiple locations within the warm-water refuge. Monitoring for the first post conversion winter shall take place from October 15 through March 31 and from November 15 through March 31 during the second winter post construction. The number and configuration of temperature monitoring stations must be sufficient to provide a three-dimensional view, over time, of the thermal plume.

vi. Temperature monitoring stations will be deployed during the conversion phase in the interim refuge and post-conversion warm-water refuge. As part of this Environmental Monitoring Plan as described in this Section 5., the Licensee shall include a plan to convey the data from the temperature monitoring stations to the appropriate agencies on a daily basis when the trigger is on and the heaters are running and on a weekly basis when the ambient temperature is greater than 65 degrees.

vii. Specific locations for the temperature monitoring station(s), sampling frequencies, station depths data collection methods, and reporting frequencies must be identified and may be subject to further revision depending on receipt of any required permits, licenses and approvals.

viii. The Environmental Monitoring Plan, including the proposed monitoring locations, shall be approved prior to implementation. FWC, in consultation with the DEP and USFWS, shall indicate its approval or disapproval of the submitted plan within 90 days of the originally submitted information. In the event that additional information from the licensee is necessary to complete and approve the Plan, FWC, in consultation with the DEP and USFWS, shall make a written request to the licensee for additional information no later than 30 days after receipt of the submitted information. A final plan shall be in place by September 1, of the year when the CCEC conversion commences which is expected to be 2010.

(2) The Licensee will prepare an environmental monitoring report that includes all data (made available in electronic form) and statistical analyses collected as a result of the environmental monitoring requirements. This report will be submitted yearly, by August 1 of each year, while the interim warm-water system is in operation during the construction period and two years post-conversion of the CCEC. Within 180 days of the submittal of the final yearly environmental monitoring report, a summary report of all environmental monitoring shall be completed and submitted to the FWC and DEP Siting Office for review.

(3) If, in the review of the annual environmental monitoring reports, FWC, in consultation with the DEP and USFWS, determines the need to modify the Environmental Monitoring Plan, FWC will notify the Licensee to discuss the findings. At that time, FWC, in consultation with the DEP and USFWS and the Licensee, will determine what, if any, modifications need to be made to the Environmental Monitoring Plan and FWC will request that DEP initiate modifications to certification if necessary.

(4) If by June 1, 2010, the initial monitoring tests of the interim warm-water heating system have taken place at the Riviera Beach power plant, the Licensee will contact DEP and FWC to provide and discuss the results. At that time, FWC, in consultation with the DEP and USFWS, and the Licensee, will determine what, if any, modifications need to be made to the operation of the interim heating systems and FWC will request that DEP initiate a modification to certification if necessary.

(5) By November 1, of the year when the CCEC conversion commences which is expected to be 2010, or two weeks after completion of the initial monitoring test of the interim warm-water heating system at the CCEC, the Licensee will contact DEP, FWC and USFWS to provide and discuss the results. At that time, FWC, in consultation with the DEP, USFWS, and the Licensee, will determine what, if any, modifications need to be made to the operation of the interim heating system and FWC will request that DEP initiate a modification to certification if necessary.

(6) If the Licensee determines the Environmental Monitoring Plan is in need of modifications during the operation of the interim heating system, the Licensee will contact the agencies to discuss the proposed modifications. At that time, FWC, in consultation with the DEP and USFWS and the Licensee, will determine what if any modifications need to be made to the Environmental Monitoring Plan and the FWC will request that DEP initiate a modification to certification if necessary.

*[Sections 403.507 and 403.509, F.S.; Section 379.1025 F.S., Section 379.2291 F.S., Section 379.2431 (2) F.S., Section 20.331 F.S., Section 253.75 F.S., Rules 68A-27 F.A.C.]*

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. Aerial surveys shall be designed so the data collected will provide an evaluation of manatee abundance and distributional changes in Brevard County in a statistically valid manner that is consistent with past aerial survey data.

v. Telemetry monitoring shall be accomplished by the Licensee through the use of FWC or another entity with experience in manatee telemetry tracking, and data analysis in Florida by providing them $50,000 per winter season to be used for the purchase of up to three tags annually, if needed, and the accompanying annual activities and research, tracking and monitoring activities, data collection, ARGOS usage, software purchase and update, and one final report to the Licensee. This condition will coincide with the use of the interim heating system and 2 years post-commercial operation of CCEC. After the first year of post conversion telemetry monitoring FWC will discuss the results with the Licensee and the parties will determine if the second year's monitoring can be eliminated. The tags will be attached to manatees captured at, or near the CCEC site to document their movements to secondary warm-water sites, nighttime habitat use, behavioral response to changes in the operation of the interim refuge (e.g., availability of warm-water discharge in relation to the trigger temperature), and thermal regime experienced by manatees during the conversion of CCEC. The details of the telemetry effort will be provided in the biological monitoring plan and, if requested by the licensee, FWC and USFWS can provide assistance.

vi. The Biological Monitoring Plan shall be reviewed and approved prior to implementation. FWC, in consultation with the DEP and USFWS, shall recommend its approval or disapproval of the submitted plan to DEP within 90 days of the originally submitted information. In the event that additional information from the licensee is necessary to complete and approve the Plan, FWC, in consultation with the DEP and USFWS, shall make a written request to the Licensee for additional information no later than 30 days after receipt of the submitted information. A final plan shall be in place by September 1, of the year when the CCEC conversion commences which is expected to be 2010.

(2) The Licensee shall provide a manatee observer(s) who has sufficient experience in detecting indicators of cold stress in manatees. The monitoring protocols and individuals acting as manatee observer(s) will require approval from the FWC.

(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) The Licensee shall provide two moveable land-based observation platforms located along the interim warm-water refuge. These will be used by the manatee observer(s) for conducting assessments of cold stress symptoms and by FWC or USFWS staff monitoring manatee use of the interim refuge through photo identification.

(5) The Licensee will prepare a biological monitoring report that includes all data (made available in electronic form) and statistical analyses completed as a result

of the requirements set forth in the biological monitoring plan. This report will be submitted yearly, by August 1 of each year, when the interim warm-water system is in operation during the construction period and two years post-commercial operation date. Within 180 days of submittal of the final yearly biological monitoring report a summary of all biological monitoring reports shall be completed and submitted to the FWC and DEP Siting Office for review.

(6) If, in the review of the biological monitoring reports, FWC, in consultation with DEP and USFWS, determines the need to modify the Biological Monitoring Plan, FWC will notify the Licensee to discuss the findings. At that time, FWC, in consultation with the DEP and USFWS, and the Licensee will determine what if any modifications need to be made to the Biological Monitoring Plan and the FWC will request that DEP initiate a modification to certification if necessary.

(7) If the Licensee determines the Biological Monitoring Plan is in need of modifications during the operation of the interim heating system, the Licensee will contact the agencies to discuss the proposed modifications. At that time, FWC, in consultation with the DEP and USFWS, and the Licensee will determine what, if any, modifications need to be made to the Biological Monitoring Plan and the FWC will request that DEP initiate a modification to certification if necessary.

(8) The Licensee will provide personnel from the FWC, USFWS, USGS Sirenia Project, or a designee of these agencies, access to the CCEC property to conduct manatee monitoring activities. Reasonable notice shall be given to the Licensee by the agencies. Access would be limited to normal weekday business hours (8:00 a.m. - 5:00 p.m.) unless arrangements are made in advance with the Licensee.

*[Sections 403.507 and 403.509, F.S.; Section 379.1025 F.S., Section 379.2291 F.S., Section 379.2431 (2) F.S., Section 20.331 F.S., Section 253.75 F.S., Rules 68A-27 F.A.C.]*

4. Contingency Plan

a. FWC and USFWS' LOA (Letter of Authorization) network responders will be responsible for all efforts related to manatee rescues, rehabilitation activities, and carcass recovery during the CCEC conversion. In order to effectively implement contingency plans during the plant conversion and to address manatee health-related issues due to a malfunction or inability of the interim warm-water heating system to effectively provide a warm-water refuge during the winter months (October 15 through March 31), the following conditions are required:

(1) If the observer (pursuant to Biological monitoring Conditions IV.A.3.b-d;) identifies manatees with apparent signs of cold stress disease, digital photographs should be taken of the animal(s) and the FWC shall be called as soon as possible on the day of the observations through the following methods. An FWC biologist can be reached via pager at 800-714-0620 (enter the callers contact number followed by the code "02". A page will be returned within 30 minutes; if not, resend the page. For immediate emergency situations FWC's Wildlife Alert number can also be called at 888-404-FWCC.

(2) The Licensee will notify FWC and USFWS immediately if there is a mechanical failure of the interim heating system, or if, for any other reason the interim heating system is not operating in a manner that will provide warm-water sufficient to keep the warm-water refuge at a temperature of 68° F or greater.

(3) The Licensee shall provide in-kind services and financial assistance, not to exceed $100,000 in total value, to FWC for manatee rescue or recovery in the event that there is a failure of the interim heating system resulting from Licensee's failure to comply with Condition IV.A. 1.a.(2) & (3) that causes death or identifiable cold stress to manatees in Brevard County. This condition would apply during the winter months (October 15 through March 31). The in-kind assistance and funds would only be used to address manatee-related cold stress issues in the area that the interim system affects.

(4) The Licensee will provide personnel from the FWC, USFWS, USGS-Sirenia Project, or a designee of these agencies, access to the CCEC property to conduct manatee monitoring activities. Reasonable notice shall be given to the licensee by the agencies. Access would be limited to normal weekday business hours (8:00 a.m. - 5:00 p.m.) unless arrangements are made in advance with the Licensee.

(5) The Licensee will include as part of its safety orientation manatee awareness training for full-time permanent construction personnel at the CCEC site. This training will be designed to educate the construction work force about the legal requirements to avoid manatees and to provide them with contact information if they should spot an injured manatee.

(6) All visitors to CCEC will be required to comply with FPL's safety and security requirements. Personnel will receive an orientation from FPL or its contractor prior to commencing observations or other activities.

*[Sections 403.507 and 403.509, F.S.; Section 379.1025 F.S., Section 379.2291 F.S., Section 379.2431 (2) F.S., Section 20.331 F.S., Rules 68A-27 F.A.C.]*

5. Development of a Long-Term Manatee Strategy

a. It is expected that at some point in the future the warm-water habitat created by the CCEC will diminish or be terminated in that event the FWC and USFWS believes it is in the best interest of the Licensee, FWC, USFWS, DEP, and the Florida manatee population to begin strategic long term planning to reduce the adverse affects to the Florida manatee population before this occurs.

(1) Within two years of the formal approval by FWC and USFWS of a Warm-Water Action Plan (Plan), inclusive of a future-oriented Management Policy for Warm-Water Manatee Habitat, the Licensee shall host and chair a workshop designed to: (a) articulate a strategy for achieving the goals of that Plan, (b) develop a timetable for implementing the strategy, (c) review progress to date in achieving the strategy, and (d) identify impediments and solutions.

(2) Within one year of the workshop held pursuant to Condition V.A.5.1, the Licensee shall provide the FWC and USFWS with a formal report of the workshop, including findings, conclusions, and recommendations.

(3) Over the course of the operating life span of the CCEC the Licensee shall develop an exit strategy for the CCEC that prevents significant losses to the manatee population when the Licensee determines reduce or eliminate the CCEC's thermal discharge to the extent that a dependable warm-water refuge is no longer present. The Licensee's strategy shall consider FWC and USFWS's statewide Warm-Water Action Plan approved by FWC and USFWS.

(4) The Licensee shall work closely with the FWC and USFWS to evaluate progress toward achieving the vision and goals of the Warm-Water Action Plan and to

develop adaptive changes to the Plan as needed to promote manatee recovery through participation in periodic workshops and/or conferences designed to accomplish such evaluation and adaptive changes.

6. Manatee Construction Conditions for In-Water Work

a. The Standard Manatee Conditions for In-Water Work (revision 2009) are required for all in-water work in or adjacent to waters accessible to manatees. Blasting or pile hammering activities to break rock shall be prohibited in waters accessible to manatees. If no other alternative exists, a modification of these conservation measures can be requested. An adequate Blast and Protected Species Watch Plan must be submitted to and approved by the Imperiled Species Management Section of the FWC prior to these methodologies being used.

b. To reduce the possibility of injuring or killing a manatee during construction, in-water work shall not be performed between November 15 and March 31 unless essential to support the CCEC project's schedule. If in-water work during the winter cannot be avoided the Licensee will contact the agencies to determine alternative conditions that will be implemented to address the proposed activity.

c. At least one person shall be designated as a manatee observer when in-water work is being performed. That person shall have experience in manatee observation, be approved by the FWC two weeks before the beginning of construction, and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within 50 feet of any in-water construction activity. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible. Observers shall maintain a log detailing manatee sightings, work stoppages, and other protected species-related incidents. A report, summarizing all activities noted in the observer logs, the location and name of project, and the dates and times of work shall be submitted within 30 days following project completion, to the FWC's Imperiled Species Management Section at: 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600, or e-mailed at fcmpmail@myfwc.com.

d. To reduce the risk of entrapment and drowning of manatees, grating shall be installed over any existing or proposed pipes or culverts greater than 8 inches, but smaller than 8 feet in diameter that are submerged or partially submerged and reasonably accessible to manatees. Bars or grates no more than 8 inches apart shall be placed on the accessible end(s) during all phases of the construction process and as a final design element to restrict manatee access.

7. Force Majeure

If there is an act of God, terrorism, or war that prevents Licensee from providing the requisite warm water conditions, Licensee will notify FWC expeditiously and coordinate efforts to resume compliance with the certification conditions.

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.

*[Sections 403.507 and 403.509, F.S.; Section 379.1025 F.S., Section 379.2291 F.S., Section 379.2431 (2) F.S., Section 20.331 F.S., Rules 68A-27 F.A.C.]*

### *B. Terrestrial Wildlife*

1. All undeveloped habitat onsite shall be surveyed for the presence of state- and federally listed species no more than six months before land clearing and the results shall be reported to the FWC. The report shall include methodology, results, discussion, and references to all survey protocols and documents used. If there is evidence that any state-listed species are present, then the licensee must report the findings to the FWC. If impacts to those species cannot be avoided, then the licensee must contact the FWC before taking any action that might result in an impact to those species.

2. Gopher tortoises found onsite shall be relocated in accordance with the state Gopher Tortoise Management Plan. Pursuant to the requirements of Rules 68A-25.002 and 68A-27.004, Florida Administrative Code, a permit for a gopher tortoise capture/relocation/release activity must be secured from the FWC before beginning any relocation work. Such permits will be issued pursuant to any and all applications which sufficiently accommodate these guidelines. Application forms to be used are available from the Permit Coordinator, Species Conservation Planning Section, Florida Fish and Wildlife Conservation Commission, 620 S. Meridian St., Mail Station 2A, Tallahassee, FL 32399-1600, (850)410-0656, ext. 17327/ (850)488-5297 fax or from the FWC's web site at http://myfwc.com/permits/Protected-Wildlife/ Complete applications should be submitted to the Gopher Tortoise Permit Coordinator at the above address at least 45 days before the time needed, with copies to DEP Siting Coordination Office.

3. Before clearing, FPL shall coordinate with the USFWS and the FWC regarding appropriate measures to address impacts to scrub-jay habitat.

*[Article IV, Sec. 9, Fla. Const.; Chapter 68A-27, F.A.C.]*

***C. Listed Species Survey***

Before land clearing and construction activities within the certified facility occur, the Licensee shall conduct an assessment for listed species which will note all habitat, occurrence or evidence of listed species. Listed species to be included in this survey shall include those listed as endangered, threatened or of special concern by Florida Fish and Wildlife Conservation Commission or those listed as endangered or threatened by U.S. Fish and Wildlife Service.

1. This survey shall be conducted in accordance with USFWS/FFWCC guidelines and methodologies by a person or firm that is knowledgeable and experienced in conducting flora and fauna surveys for listed species.

2. This survey shall identify any wading bird colonies within the project that may be affected.

3. This survey shall identify locations of breeding locations, nests, and burrows for listed wildlife species. Nests and burrows may be recorded with GPS coordinates, identified on an aerial photograph, and submitted with the final listed species report. Although nests and burrows may be recorded individually with GPS, the FWC prefers that a protection radius surrounding nest sites and burrows be included, rather than individual nests and burrows, and be physically marked so that clearing and construction will avoid impacting them.

4. This survey shall include an estimate of the acreage and percent cover of each existing vegetation community (Florida Land Use, Cover and Forms Classification System, or FLUCFCS, at the third degree of detail) including a wildlife-based habitat classification scheme such as the Comprehensive Wildlife Conservation Strategy (FWC 2005), Descriptions of Vegetation and Land Cover Types (FWC 2004), or Natural Communities Guide (FNAI 1990) of each community that is contained within the certified facility prior to land clearing and construction activities using GIS.

*[Chapter 379, F.S., Article IV, Sec. 9, Fla. Const., Chapter 68A-2 7, F. A. C]*

### *D. Listed Species Locations*

Where any suitable habitat and evidence is found of the presence of listed species within the certified facility, the Licensee will report those locations to, and confer with, the appropriate regulatory agencies for possible additional pre-clearing surveys and to identify potential mitigation, or avoidance recommendations. If pre-clearing surveys are required, they shall be timed to be reasonably compatible with the construction schedule, considering the in-service date specified in the Public Service Commission's need determination. The Licensee will not construct in areas where evidence of listed species was identified during the initial survey until the particular listed species issues have been resolved.

1. *Listed Wildlife Species*: If listed wildlife species are found, their presence shall be reported to the DEP Siting Coordination Office, the appropriate DEP District Office(s), the FFWCC's Office of Policy and Stakeholder Coordination, the appropriate WMD, the appropriate local government(s) and the U.S. Fish and Wildlife Service.

2. *Listed Vegetation Species*: If listed vegetation species are found on public land or water, their presence shall be reported to the DEP Siting Coordination Office and the Florida Department of Agriculture and Consumer Services. Listed wildlife species and listed vegetation species on public land or water shall not be disturbed, if feasible.

3. *Species Management Plan:* If avoidance is not feasible, the Licensee shall consult with DEP, FWC, and, if necessary, the U. S. Fish and Wildlife Service for listed wildlife species, and with the Florida Department of Agriculture and Consumer Services for listed vegetation species on public land or water, to determine the steps appropriate for the species involved which are to be taken to avoid, minimize, mitigate, or otherwise appropriately address impacts within each agency's respective jurisdiction. For wildlife species, these steps shall be memorialized in a Wildlife Management Plan and submitted to DEP, FWC, and the appropriate local government.

*[Chapter 379, F.S., Article IV, Sec. 9, Fla. Const., Chapter 68A-2 7, F. A. C]*

### *E. Scientific Collecting/Institutional Authorizations*

FPL shall maintain and comply with a current Scientific Collection/Institutional permit, as applicable for salvaging of non-listed wildlife species at the CCEC, issued by the State of Florida Fish and Wildlife Conservation Commission. A copy of the required permit/authorization shall be made available at the CCEC site.

*[Rules 68A-9.002, 68A-25.002, 68A-27.003-.005]*

### *F. Migratory Bird Nest Authorizations*

FPL shall maintain and comply with a current Migratory Bird Nest permit as applicable for removal and replacement of inactive (i.e. containing no eggs or flightless young) nests of ospreys (*Pandion haliaetus*) and other migratory birds, pursuant to the Florida Fish and Wildlife Conservation Commission Osprey Nest Removal Policies, where necessary in the process of routine facility maintenance in Florida. A copy of the required permit/authorization shall be made available at the CCEC site.

*[Rules 68A-9.002 & 68A-27.005]*

## V~~I~~. DEPARTMENT OF STATE – DIVISION OF HISTORICAL RESOURCES

A. Any alterations associated with the reconfiguration of this plant may need to have a survey as determined in consultation with the Department of State, Division of Historical Resources (DHR). A qualified cultural resources consultant will identify an appropriate work plan for this project based on a thorough review of the certified facility. Prior to beginning any field work, the work plan will be reviewed in consultation with DHR. Upon completion of the survey, the results will be compiled into a report which shall be submitted to DHR. If feasible, sites considered to be eligible for the National Register shall be avoided during construction of the project and access roads, and subsequently during maintenance. If avoidance of any discovered sites is not feasible, impact shall be mitigated through archaeological salvage operations or other methods acceptable to DHR, as appropriate.

B. If historical or archaeological artifacts or features are discovered at any time within the certified facility, the Licensee shall notify the appropriate DEP District office (s) and DHR, R. A. Gray Building,500 S. Bronough Street, Rm 423, Tallahassee, Florida 32399-0250, telephone number (850) 245-6333, and the Licensee shall consult with DHR to determine appropriate action.

*[Sections 267.061 and 403.531, and Chapter 372, F.S.]*

## VI~~I~~. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

A. The Licensee will continue to comply with the permit conditions of Consumptive Use Permit #10652 until the existing power plant units are decommissioned.

B. All submittals made to demonstrate compliance with the consumptive use conditions of this certification must have the certification number plainly labeled on the submittal.

*[Paragraphs 10.3(a)-(h)(j), A.H.]*

C. Nothing in this certification shall be construed to limit the authority of the SJRWMD to declare a water shortage and issue orders pursuant to Section 373.1 75, F.S., or to formulate a plan for implementation during periods of water shortage, pursuant to Section 373.246, F.S. In the event of a water shortage, as declared by the SJRWMD Governing Board, the Licensee must adhere to reductions in water withdrawals as specified by the SJRWMD.

*[Paragraphs 10.3(c)-(e)(h)(j), A.H.]*

D. Licensee must mitigate any adverse impact caused by withdrawals permitted herein on legal uses of water existing at the time of application. The DEP has the right to curtail permitted withdrawal rates or water allocations if the withdrawals of water cause an adverse impact on legal uses of water which existed at the time of certification. Adverse impacts are exemplified by, but not limited to:

1. Reduction of water levels in an adjacent surface water body resulting in a significant impairment of the use of water in that water body.
2. Saline water intrusion or introduction of pollutants into the water supply of an adjacent water use resulting in a significant reduction of water quality.
3. Change in water quality resulting in either impairment or loss of use of a well or waterbody.

*[Paragraphs 10.3(b)(d)(h)(j), A.H.]*

E. Licensee must mitigate any adverse impact caused by withdrawals permitted herein on adjacent land uses that existed at the time of permit application. The DEP has the right to curtail permitted withdrawal rates of water allocations if withdrawals of water cause an adverse impact on adjacent land uses that existed at the time of certification. Adverse impacts are exemplified by, but not limited to:

1. Significant reduction in water levels in an adjacent surface water body.
2. Land collapse or subsidence caused by a reduction in water levels.
3. Damage to crops and other types of vegetation.

*[Paragraphs 10.3(b)(d)(h)(j), A.H.]*

F. The SJRWMD must be notified, in writing, within 30 days of any sale, conveyance, or other transfer of a facility from which the permitted consumptive use is made or within 30 days of any transfer of ownership or control of the real property at which the permitted consumptive use is located. All transfers of ownership or transfers of permits are subject to the provisions of section 40C-1.612.

*[Paragraph 3.3.2(a),A.H.]*

G. A SJRWMD-issued identification tag shall be prominently displayed at each withdrawal site by permanently affixing such tag to the pump, headgate, valve, or other withdrawal facility as provided by Section 40C-2.401, F.A.C. Licensee shall notify the SJRWMD in the event that a replacement tag is needed.

*[Paragraphs 10.3(b)(d)(h)(j), A.H.]*

H. All landscape irrigation shall be conducted in accordance with the times, days, and within the manner set forth in section 40C-2.042, F.A.C.

*[Paragraphs 10.3(a)(b)(e),A. H.]*

I. The maximum annual use of water supplied by the City of Cocoa as secondary use for power production and household use must not exceed 84.7 million gallons (0.232 mgd annual average). The maximum daily use authorized under peak conditions is 0.86 million gallons.

*[Paragraphs 10,3(a)(b)(c)(f)(h)(j), A. H.]*

*J.* In the event the HRSG blowdown is not recycled to the demineralization system because of poor water quality, additional water from the City of Cocoa may be used. The maximum annual amount authorized for this use is 18.4 million gallons (0.05 mgd annual average). The maximum daily use authorized under peak conditions is 0.07 million gallons.
*[Paragraph 10.3(a)(b)(c)(g), A.H.]*

K. The annual surface water withdrawal from the Indian River Lagoon for once through cooling water and screen wash water must not exceed 225,935 million gallons (619 mgd annual average).

*[Paragraph 10.3(a)(b)(c)(g), A.H.]*

L. Maximum annual use of water from the upper Floridan aquifer for pump cooling water must not exceed 46.3 million gallons (0.13 mgd annual average).

*[Paragraph 10.3(a)(b)(c)(g), A.H]*

M. The annual reclaimed water allocation for landscape irrigation from Brevard County's Port St. John WWTP for landscape irrigation is 0.57 million gallons (0.0016 mgd annual average). Additional reclaimed water may be used when available.

*[Paragraphs 10.3(a)(c)(e)(f), A.H.]*

N. Total flow of water from the City of Cocoa connection must be recorded continuously, totaled monthly, and reported to the District at least every six months from the initiation of monitoring using Form EN-50. The Licensee will monitor water use using an existing flow meter owned by the City of Cocoa Utilities. Flow meters must maintain 95% accuracy, be verifiable, and be installed according to manufacturer specifications. The reporting dates each year will be as follows:

| Reporting Period | Report Due Date |
|---|---|
| January – June | July 31 |
| July – December | January 31 |

*[Paragraphs 10.3(a)(b), A.H.]*

O. The Licensee has elected to implement an alternative method for withdrawals from upper Floridan aquifer wells (wells 1A, 1 B Lube Water and Unit 2 Lube Water) which utilizes an hour meter in conjunction with the design pumping capacity for the pump as a basis for calculating the quantity of water withdrawn from the well. The Licensee shall not alter the approved alternative method without prior written approval from the District. The method must maintain 95% accuracy and be verifiable. If after a period of one year, the selected alternative does not meet the accuracy criteria, totalizing flow meters or another District-approved alternative method must be used. If flow meters are used, the meters must maintain 95% accuracy, be verifiable and be installed according to manufacturer specifications.

P. Total withdrawal of ground water from the upper Floridan aquifer wells (wells 1A, 1 B Lube Water and Unit 2 Lube Water) must be recorded continuously, totaled monthly, and reported to the District at least every six months from the initiation of the monitoring using Form EN-50. The reporting dates each year will be as follows:

| Reporting Period | Report Due Date |
|---|---|
| January – June | July 31 |
| July - December | January 31 |

*[Paragraphs 10.3(a)(b), A.H.]*

Q. The Licensee must maintain all flow meters. In case of failure or breakdown of any meter, the DEP and SJRWMD must be notified in writing within 5 days of its discovery. A defective meter must be repaired or replaced within 30 days of its discovery.

*[Paragraphs 10.3(a)(b), A.H.]*

R. The Licensee must have the flow meters calibrated once every 3 years within 30 days of the anniversary date of certification issuance, and recalibrated if the difference between the actual flow and the meter reading is greater than 5%. SJRWMD Form No. EN-51 must be submitted to the DEP and SJRWMD within 10 days of the inspection/calibration.

*[Paragraphs 10.3(a)(b), A.H.]*

S. The Licensee has indicated that dewatering will be necessary to facilitate construction of the converted plant. The Licensee has estimated dewatering of the surficial aquifer will occur over an approximate 12-month period at a rate of 920 million gallons per year (2.52 mgd). Prior to commencement of construction of those portions of the project that involve dewatering activities, the Licensee shall submit a detailed plan for any such activities to the SJRWMD for a determination of compliance with the requirements of Section 10.3 of the SJRWMD Applicant's Handbook: Consumptive Uses of Water. This plan shall include at a minimum:

1. a map showing the locations of dewatering activities with associated projected drawdowns. If projected drawdowns initially appear to cause adverse environmental impacts or interference to existing legal uses, mitigation measures must be proposed and included in the Dewatering Plan;
2. a map delineating the portions of the property where dewatering activities will take place and the extent of the proposed excavations, both vertically and laterally. This map must include the locations and dimensions of any proposed ponds to receive dewatering discharges;
3. procedures to ensure that dewatering will not cause or contribute to flood damage including the proposed rate and duration of water pumped for dewatering;
4. a map providing the proposed locations and capacities (gpm) of proposed dewatering pump(s);
5. detailed description of turbidity treatment and erosion control measures at the discharge point(s).
6. requested dewatering allocation and schedules;
7. water quality monitoring plans; and
8. if necessary, a water treatment system design.

*[Paragraphs 10.3(a),(b),(c),(d),(i),(k), A.H.]*

T. The Licensee must implement the Water Conservation Plan submitted to the District in December 2008, in accordance with the schedule contained therein.
*[Paragraphs 10.3(a),(b),(e), A.H.]*

U. Pursuant to subsections 373.219 and 373. 236(4) F.S., the Licensee shall submit to FDEP and SJRWMD five-year compliance reports at the frequency and containing the information specified below:

1. Beginning June 30, 2016, or by June 3oth of the fifth year after commercial operation of the facility begins, whichever occurs first, and every five years thereafter for the life of the facility, the Licensee shall submit a compliance report that establishes that the Licensee has a continuing need for the allocations from all sources in the permit and that Licensee's use of water will continue, for the duration of the authorization to use water, to meet the conditions for issuance set forth in Chapter 40C-2, F.A.C., and sections 9.3, 9.4.2, 9.4.3, 9.4.4, and 10.3(a) - (k) Applicant's Handbook: Consumptive Use of Water, as such rules existed at the time the certification was issued by the Siting Board.

2. In determining whether the Licensee has established that its use of water complies with section 9.4.4, A.H. and Chapter 40C-2, F.A.C., FDEP and SJRWMD shall evaluate whether the Licensee's use of water interferes with a legal use of water that existed at the time the certification was issued by the Siting Board.

3. If the FDEP determines, in consultation with the SJRWMD, based on its review of a compliance report, that the Licensee has failed to establish that the Licensee's use of water will continue to meet the relevant criteria as set forth above, FDEP shall modify the authorization to use water in the certification to ensure that the consumptive use of water meets the conditions for issuance in Chapter 40C-2, F.A.C. Modifications shall not be subject to competing applications, provided there is no increase in the permitted allocation and no change in source, except for changes in source requested by FDEP or SJRWMD.

4. FDEP shall review the reports pursuant to the provision of section 120.60, F.S. (2008). Agency review and action on a compliance report submitted pursuant to this condition shall be as provided in section 120.60, F.S. (2008).

*[Sections 373.236 and 373.219 F.S.; Chapter 40C-2, F.A.C.; Paragraphs 9.3, 9.4.2, 9.4.3, 9.4.4, 10.3(a)-(k) A.H.]*

## VII~~I~~. EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL

*A.* The project site is located in Category 3 and 5 Storm Surge Areas. The ECFRPC recommends that FPL work with Brevard County Emergency Management to ensure the safe evacuation of workers if needed during the project development, as well as a plan for the debris and construction equipment.

*[ECFRPC Policy 2.2]*

## ~~VIX~~VIII. BREVARD COUNTY

A. At a minimum of 60-days prior to the start of any construction on any portion of the Cape Canaveral Florida Power Plant, including the lay down area, the Applicant shall submit to Brevard County for its review:

1. A detailed site plan inclusive of;

a. all development within the proposed development areas providing sufficient geometry and details for grading and construction of all improvements, roadways, underground and above ground utilities (station offset or coordinates for drainage and sanitary structures, all radius for median and islands, typical sections of roadways, retention, parking, building ties from property line, parking dimensions). A survey control sheet using state plane coordinates may supplement the plans, which provides coordinates at all property corners, building corners, sanitary sewer structures, drainage structures, centerline of parking driveway, etc.

b. the number of buildings and structures on the site which are to remain and new buildings being constructed such as an administrative building, storage buildings, storage tanks, and other accessory structures. Also indicate buildings or structures being removed (demolished) such as fuel storage tank or storage. Please refer to Section 62-3204(g)(1).

c. dimensions for all property lines on the site plan sheet 4 per Sec 62-3204(g)(4)a.

d. the required buffer wall on site construction plan sheet 4 as well as the landscape plans

e. the sidewalk together with required construction details per Sec 62-3204(g)(4)c and note the recording information of the sidewalk assessment agreement.

f. the paved parking areas, and the number of parking spaces provided clearly identified on the site construction plan.

g. fire flow calculations. Also, indicate proposed and existing fire hydrants within the required travel distance to the most remote accessible point of the structure.

h. FEMA flood zone delineations

2. A signed and sealed photometric lighting plan complete with a photometric display, luminaire schedule, manufacturer's cut-sheet and the following note: "Site lighting must conform to Brevard County Performance Standard 62-2257 and the Engineer of Record shall certify that it complies prior to Brevard County approval of the As Built drawings."

*(Chapter 62, Article VIII. Site Plans, Sections 62-3200 through 62-3206, and Chapter 62; Division 6, Article VI, Subdivision 111, Performance Standards)*

B. At a minimum of 30 days prior to any vertical construction, on the site or associated facilities, the Applicant shall submit to Brevard County for its review completed County building permit forms for any structures on the site for associated facilities that do not consist of facilities of electric utilities as defined in Florida Statues Section 366.02, which do not directly involve the generation, transmission, or distribution of electricity or that are not otherwise exempt from the requirements of the Florida Building Code. For every structure that the Applicant intends to construct on the site for associated facilities that the Applicant contends is exempt from the Florida Building Code, the Applicant shall provide a list of the exempt structures or facilities, and the regulatory basis for the exemption.

*(Chapter 62, Article VI, Division 1, Section 62-4033, Chapter 22, Article 11)*

C. Final development approval shall be contingent upon the Applicant obtaining all development approvals and permits from all applicable state and federal agencies that are necessary for the particular development activity to be approved by the County.

1. Include the state wetland permit and mitigation details, any revisions to the state approved Manatee Protection Plan, state gopher tortoise permit (requested but not required), and federal scrub jay permit (requested but not required).

2. Regardless of state mitigation requirements, mitigation for any and all state-claimed jurisdictional wetlands shall be provided to meet the no net loss of functional wetlands requirement established by ordinance and the Brevard County Comprehensive Plan.

*(Comprehensive Plan, Conservation Element Policy 5.2; Chapter 62, Article X, Division 4, Sections 62-3693(1) & 62-3696).*

3. Please provide compliance documents that demonstrate that groundwater recharge volume is maintained in aquifer recharge soils.

*(Comprehensive Plan, Conservation Element Policy 10.2.A)*

4. While there is currently no development proposed within the surface water protection buffer, please be advised that any future site design modifications that include such development will require additional stormwater management consisting of the capture of the first 1-inch of runoff that drains to the buffer.

*(Chapter 62, Article X, Division 3, Section 62-3668)*

5. While there is currently no development proposed in the FEMA special flood hazard area, please be advised that any future site design modifications that include such development (including access to the structure) shall be elevated to or above the 100-year base flood elevation.

*(Chapter 62, Article X, Division 5, Section 62-3724(d))*

D. Upon completion of the construction of the project, the Applicant shall submit as-built drawings for all site improvements. The as-built drawings shall contain all items shown on the Brevard County Planning and Development as-built checklist.

*(Chapter 62, Article VII, Division 2, Section 62-2842)*

E. Concurrent with the submittal of the documentation required in paragraph B above, or concurrent with requests for inspections, the Applicant shall pay all of the county's fees for staff review of required documents, permits, inspections, and any other fees related to building permits for structures that are not exempt from the provisions of the Florida Building Code, as provided in Florida Statutes.

*(Section 403.511(4) F.S.; Chapter 553, Part IV, F.S.; Section 102.2, Florida Building Code; Chapter 62, Article 11, Division I, Section 62-101, Chapter 22, Article 11, Fee Resolution 2007- 170, Fee Resolution 2008-025)*

F. The Licensee shall adhere to all Brevard County Land Development Regulations in Chapter 62 of the Brevard County Code of Ordinances, including dust control, fill material stockpile height limits, noise control, dewatering operations monitoring, weekend working hours, and other related construction issues pertaining to code compliance.

*(Chapter 62, Article VI, Division 6, Subdivision I, Section 62-2255)*

**History**

Certified 10/09/2009
Modified XX/XX/XXXX

## ATTACHMENT A: SURVEY MAP OF SITE

*To be attached after certification pursuant to Section A. Condition I.C.*

**ATTACHMENT B: SURVEY MAY OF CERTIFIED FACILITY**

*To be attached after certification pursuant to Section A. Condition I.D.*

## ATTACHMENT C: MITIGATION PLAN

*To be attached after certification pursuant to Section A. Condition XXXI.B.4.b.*

## ATTACHMENT D: SOVEREIGN SUBMERGED LEASE

## ATTACHMENT E:  PUBLIC EASEMENT

*To be attached after certification pursuant to Section B. Condition I.C.*

## ATTACHMENT F: MAP 1 – PLANT INTAKE CANAL

*To be attached after certification pursuant to Section B. Condition V.A.1.a.(5)*

## ATTACHMENT G: MAP 2 – PLANT INTAKE CANAL

*To be attached after certification pursuant to Section B. Condition V.A.1.a.(5)*

## APPENDIX A: PSD PERMIT

## APPENDIX B: TITLE V PERMIT

*To be attached after final issuance of permit.*

## APPENDIX C: NPDES PERMIT