

**STATE OF FLORIDA
SITING BOARD**

**IN RE: PROGRESS ENERGY FLORIDA)
LEVY NUCLEAR PROJECT UNITS 1 AND 2)
PPSA NO. PA08-51)**

**OGC CASE NO. 08-1621
DOAH CASE NO. 08-2727EPP**

FINAL ORDER APPROVING CERTIFICATION

On May 15, 2009, an administrative law judge ("ALJ") with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order on Certification ("RO") in this certification proceeding. The RO indicates that copies were served upon counsel for Florida Power Corporation, doing business as Progress Energy Florida, Inc. ("Progress Energy"), and the Department of Environmental Protection ("DEP" or "Department"). The RO also shows that copies were served to counsel for other designated state, regional and local agencies; and counsel and representatives for other named parties and intervenors. A copy of the RO is attached hereto as Exhibit A. No exceptions were filed by any party to the proceeding. This matter is now before the Governor and Cabinet, sitting as the Siting Board, for final action under the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501 et seq., Florida Statutes.

BACKGROUND

Progress Energy provides electricity and related services to approximately 1.7 million customers in the state of Florida. Its service area spans 35 counties over approximately 20,000 square miles in central and west Florida. In Florida, Progress Energy operates and maintains more than 43,600 miles of distribution and transmission lines that serve a population of more than 5 million people. On June 2, 2008, Progress Energy filed an application for site certification ("SCA") with the Department. Progress

Energy proposes to build and operate a two-unit nuclear-powered electrical generating facility in Levy County ("Levy Nuclear Project Units 1 and 2" or "LNP"). Directly associated facilities include a heavy haul road used for construction in Levy County, two site access roads in Levy County, and cooling water intake and discharge pipelines in Levy and Citrus Counties. Progress Energy also seeks certification of nine transmission corridors associated with eleven electrical transmission lines:

(1) Citrus 1 and 2 Transmission Lines — proposed LNP to proposed Citrus Substation, two 500-kiloVolt ("kV") Transmission Lines in Levy and Citrus Counties, also referred to as the "LPC" Lines;

(2) Crystal River Transmission Line — proposed LNP to existing Crystal River Energy Complex ("CREC") Switchyard, one 500-kV Transmission Line in Levy and Citrus Counties, also referred to as the "LCR" Line;

(3) Sumter Transmission Line — proposed LNP to proposed Central Florida South Substation, one 500-kV Transmission Line in Levy, Citrus, Marion, Sumter and Lake Counties, and the municipalities of Wildwood and Leesburg, also referred to as the "LCFS" Line;

(4) Crystal River East 1 and 2 Transmission Lines — proposed Citrus Substation to existing Crystal River East Substation, two 230-kV Transmission Lines in Citrus County, also referred to as the "CCRE" Lines;

(5) Levy North Transmission Line — proposed LNP to existing 69-kV Inglis-High Springs Transmission Line, one 69-kV Transmission Line for LNP construction/administration in Levy County, also referred to as the "IS" Line;

(6) Levy South Transmission Line — proposed LNP to existing 69-kV Inglis-Ocala Transmission Line, one 69-kV Transmission Line for LNP construction/administration in Levy County and the Town of Inglis, also referred to as the "IO" Line;

(7) Brookridge Transmission Line — existing CREC Switchyard to existing Brookridge Substation, one 230 kV Transmission Line in Citrus and Hernando Counties, also referred to as the "CB" Line;

(8) Brooksville West Transmission Line — existing Brookridge Substation to existing Brooksville West Substation, one 230-kV Transmission Line in Hernando County, also referred to as the "BBW" Line; and

(9) Polk-Hillsborough-Pinellas Transmission Line — existing Kathleen Substation to existing Lake Tarpon Substation, one 230-kV Transmission Line in Polk, Hillsborough and Pinellas Counties and the municipalities of Tampa, Plant City and Oldsmar, also referred to as the "Kathleen" or "PHP" Line.

The LNP site is east of U.S. Highway 19 and approximately four miles north of the Town of Inglis and the Levy-Citrus County border. The site contains approximately 3,105 acres, with the two reactors and ancillary power production support facilities located near the center of the site. The majority of the LNP site is currently active silviculture and is unimproved. The proposed heavy haul road and pipelines will be located in corridors south of the LNP site. Two site access roads will connect to U.S. Highway 19 west of the site and proceed east to the main plant area. Progress Energy also owns a 2,000-acre tract contiguous with the southern boundary of the LNP site, which provides access to a water supply in the Cross Florida Barge Canal ("CFBC") as

well as containing the heavy haul road and electrical transmission line corridors that exit the LNP site.

The LNP will include two 1,100 megawatt ("MW") (nominal) generating units ("LNP 1" and "LNP 2") designed by Westinghouse Electric Company, LLC ("Westinghouse"). The reactor design received an official design certification from the Nuclear Regulatory Commission ("NRC") and is referred to as the Westinghouse AP1000 Reactor ("AP1000"). The AP1000 is a standardized, advanced passive pressurized-water nuclear reactor. The Florida Public Service Commission ("PSC") issued a determination of need for the LNP, associated facilities and nine electrical transmission line corridors ("Project") in August 2008. That order was not appealed and is now final. Progress Energy proposes to place LNP 1 in commercial service by 2016 and LNP 2 in commercial service by 2017.

PARTIES

Progress Energy and the Department were parties to the certification hearing pursuant to Section 403.508(3)(b), Florida Statutes. The following filed notices of intent to be parties: (1) the Environmental Protection Commission of Hillsborough County ("Hillsborough EPC"); (2) Hernando County; (3) Sumter County; (4) the Southwest Florida Water Management District ("SWFWMD"); (5) Polk County; (6) the Florida Department of Community Affairs ("DCA"); (7) Lake County; (8) City of Oldsmar; (9) Hillsborough County; (10) Levy County; (11) the St. John's River Water Management District ("SJRWMD"); (12) Citrus County; (13) the Rainbow River Railroad Committee ("RRRC"); (14) the Rainbow Springs Property Owners Association, Inc.; (15) the City of Dunnellon; (16) the City of Tampa; (17) Marion County; (18) the Suwannee-St. John's

Group of the Sierra Club (“Sierra Club”); (19) the Florida Fish and Wildlife Conservation Commission (“FWC”); (20) Pinellas County; (21) the Florida Department of Transportation (“DOT”); and (22) the City of Wildwood.

The following parties intervened: the Withlacoochee Area Residents, Inc. (“WAR”); Calvin Partin, LeRoy Partin, Anne Stevens, Mary Holmes, Mary Humphries, John Lott, and Louise Partin (collectively “the Partin Family”); Cool Springs Farm, LLC; Southern Alliance for Clean Energy (“SACE”); Rainbow IV Partners, RLLP; Rainbow IV Investments, RLLP; and the RRRC.

The Partin Family; the RRRC; the Rainbow Springs Property Owners Association, Inc.; Cool Springs Farm, LLC; Rainbow IV Partners, RLLP; Rainbow IV Investments, RLLP; WAR; and the Sierra Club all subsequently voluntarily withdrew from the certification proceeding.

PUBLIC NOTICE AND OUTREACH

Progress Energy engaged in extensive public outreach for the selection of the LNP site and for the transmission line corridors. For the LNP site, outreach efforts included communications with local community leaders, press releases, communications with state and federal legislators, dissemination of information to the general public and property owners in the vicinity of the LNP plant via mailings and open houses, and participation in community and advisory groups. For the electrical transmission line portion of the Project, public involvement was a key part of the corridor selection process. Progress Energy developed a Community Partnership for Energy Planning (“CPEP”) process to get feedback from members of the community in a

manner that would most effectively involve the community in the transmission line corridor selection process.

Using the CPEP process, Progress Energy established leadership teams in three geographic regions: 1) Hillsborough, Pinellas, Pasco, and Polk Counties; 2) Citrus, Hernando, and Levy Counties; and 3) Lake, Marion, and Sumter Counties. The leadership teams identified and selected more than 100 community representatives to participate in regional Utility Search Conferences. The Utility Search Conferences involved intensive two-day discussions of local issues and the future of electricity supply in the region. The purpose of the Conferences was to inform the participants about the Project, to gain public input, and to allow participants to nominate community members who became part of the Community Working Groups for the remainder of the Project. Progress Energy and the Community Working Groups further studied and refined the recommendations of the Conferences. The Community Working Groups also provided ongoing input to Progress Energy throughout the Project.

Progress Energy held open houses in February and March 2008, to involve the public in the transmission line corridor selection process. It used newspaper advertisements, press releases, and direct mail letters to inform the public about the open houses. Over 2,900 people attended the open houses, and Progress Energy received completed written questionnaires from 2,071 attendees. The goal of Progress Energy's public outreach program (for both the plant and transmission lines) was to provide information in a transparent manner to the public and to provide ample opportunity and many avenues for the public to give input during all phases of the Project. In total, Progress Energy conducted over 40 public presentations and sent

communications to more than 125,000 property owners and stakeholders regarding the Project. Many of Progress Energy's outreach efforts were beyond those required by law.

In accordance with Section 403.5115(6), Florida Statutes, Progress Energy provided direct notice by mail of the filing of the SCA to all landowners whose property and residences were located within: (1) three miles of the proposed main site boundaries of the LNP; (2) one-quarter mile of a transmission line corridor that only includes a transmission line as defined by Section 403.522(22), Florida Statutes; and (3) one-quarter mile for all other linear associated facilities extending away from the main site boundary. Progress Energy timely submitted a list of the landowners and residences that were notified to DEP's Siting Coordination Office ("SCO"), as required by Section 403.5115(6)(b), Florida Statutes. Progress Energy made copies of the SCA available at two of its offices and ten public libraries. In addition, it provided copies to all local governments and agencies within whose jurisdiction portions of the Project will be located. The Department made an electronic version of the document available on its website.

On June 19, 2008, Progress Energy published notice of the filing of the SCA in the Ocala Star-Banner, the Hernando Today, the Tampa Tribune, The Lakeland Ledger, The Villages Daily Sun, the Levy County Journal, the Orlando Sentinel, the Gainesville Sun, the Citrus County Chronicle, the Sumter County Times, the Hernando Times, and the North Pinellas Times, satisfying the requirements of Section 403.5115(1)(b), Florida Statutes, and Florida Administrative Code Rule 62-17.281(3). On December 18, 2008, Progress Energy published notice of the certification hearing in the same newspapers,

satisfying the requirements of Section 403.5115(1)(e), Florida Statutes, and Florida Administrative Code Rule 62-17.281(7). It published amended notices of the site certification hearing in the same newspapers on February 17, 2009. The Department also published notices in the Florida Administrative Weekly. All notices required by law were timely published and/or provided in accordance with Section 403.5115, Florida Statutes.

DOAH PROCEEDINGS

The DOAH proceeding was conducted under the PPSA and Florida Administrative Code Chapter 62-17, to consider Progress Energy's application for certification of the Project. On June 2, 2008, Progress Energy filed its SCA with the Department. The application was distributed to 28 agencies, with multiple copies provided to several of those agencies. Agencies requested, and Progress Energy provided, additional information on the Project. The Department found the transmission line portion of the application complete on August 13, 2008. The plant portion of the application was found complete on October 30, 2008. Progress Energy exercised its option pursuant to Section 403.5064(1)(b), Florida Statutes, to allow parties to file alternate electrical transmission line corridors. However, no alternate transmission line corridors were filed in the proceeding. On October 6, 2008, Progress Energy amended the SCA to remove sections addressing two proposed substations called Citrus and Central Florida South. On November 26, 2008, Progress Energy amended the SCA to remove sections addressing a proposed rail corridor.

Various reviewing agencies submitted reports and proposed conditions of certification. The Department filed its corrected Staff Analysis Report ("SAR") for the

transmission line portion of the application on September 26, 2008. On January 12, 2009, the Department issued its SAR for the plant portion of the application, incorporating the reports of the reviewing agencies and proposing a compiled set of conditions of certification for the plant and associated facilities, including transmission lines. These compiled conditions of certification have been superseded by the Fourth Amended Conditions of Certification set forth in DEP Exhibit 1, as amended, attached hereto as Exhibit B.

Hernando County, Hillsborough County, Levy County, and Sumter County all requested that public hearings be held within their respective county boundaries concerning transmission facilities under Section 403.527(4), Florida Statutes, which is incorporated in the PPSA under Section 403.5064(4), Florida Statutes. The intent of these public hearings was to give members of the public who reside within the jurisdiction of the local government and who are not parties to the certification hearing, an opportunity to provide testimony. See § 403.527(4)(b), Fla. Stat. (2008).

Citrus County and Levy County issued determinations on July 17, 2008, and September 23, 2008, respectively, that components of the Project were consistent with their land use plans and zoning ordinances. Under Section 403.5115(1)(c), Florida Statutes, Progress Energy timely published notice of Citrus and Levy Counties' Determinations of Land Use and Zoning Consistency on August 1, 2008, and October 16, 2008, respectively. No person challenged these determinations; therefore, land use hearings under Section 403.50665, Florida Statutes, were not required.

On January 26, 2009, Progress Energy filed a Motion to Strike Portions of SACE's Petition to Intervene in part on the ground that the PSC already determined

issues relating to need and reliability, and in part on the ground that radiological safety is preempted under the Supremacy Clause of the United States Constitution by federal regulation of nuclear energy by the NRC. On February 11, 2009, an Order on Motion to Strike was entered. Issues relating to need and reliability were stricken to the extent of the matters properly determined by the PSC under Section 403.519, Florida Statutes; and radiological safety issues were stricken under the Supremacy Clause. As a result, those issues were not considered in the certification hearing.

The parties entered into a detailed prehearing stipulation prior to the certification hearing, agreeing to numerous findings of fact and conclusions of law. All agency parties who provided position statements recommended or did not object to certification of the Project.¹ Of the remaining parties, only SACE recommended that the Project not be certified.

All notices required by law were timely published in accordance with Section 403.5115, Florida Statutes. The certification hearing was held on February 23, 24, and 26 and March 3, and 9-12, 2009. Public testimony and comment were also received during the hearing: in Inglis, on February 26, 2009; in Crystal River, on March 3 and 9, 2009; in Lutz, on March 10, 2009; in Brooksville, on March 11, 2009; and in The Villages on March 12, 2009. A total of thirty hours was devoted to receiving public comment from approximately 85 individuals at these six separate sessions. Public Exhibits 1-30 also were received, some subject to valid hearsay objections by Progress

¹ In the Prehearing Stipulation, the agency parties stipulated only to those findings of fact and conclusions of law within each agency's knowledge or subject matter jurisdiction. The agency parties stipulated that the Project complies with the nonprocedural requirements of each agency's rules and criteria, so long as the Project complies with the Conditions of Certification.

Energy. Progress Energy presented rebuttal evidence during the final public testimony session in The Villages.

At the conclusion of the hearing, the parties were allowed to file proposed recommended orders ("PROs"). The Transcript of the final hearing (including four volumes of hearing transcript, plus one volume for each public testimony session) was filed with the DOAH on April 6, 2009. The ALJ subsequently issued his RO on May 15, 2009.

SUMMARY OF THE RECOMMENDED ORDER ON CERTIFICATION

In the RO, the ALJ recommended that the Siting Board enter a Final Order approving Progress Energy's SCA to build, operate, and maintain the LNP, including a heavy haul road, site access roads, and cooling water intake and discharge pipelines, subject to the conditions of certification set forth in DEP Exhibit 1, as amended. He further recommended that the Siting Board approve the SCA to build, operate, and maintain each of the nine proposed electrical transmission line corridors as associated facilities, as described in paragraphs 181-189 of the RO, and subject to the conditions of certification set forth in DEP Exhibit 1, as amended.

The ALJ found that the PSC issued its final order determining the need for the Project on August 12, 2008. In that order the PSC found: "a need for Levy Units 1 and 2, taking into account the need for electric system reliability and integrity"; "a need for Levy Units 1 and 2, taking into account the need for fuel diversity"; "a need for Levy Units 1 and 2, taking into account the need for base-load generating capacity"; "a need for Levy Units 1 and 2, taking into account the need for adequate electricity at a reasonable cost"; "[t]here are no renewable energy sources and technologies or

conservation measures taken by or reasonably available to [Progress Energy] which might mitigate the need for Levy Units 1 and 2"; and "Levy Units 1 and 2 will provide the most cost-effective source of power." (RO ¶ 4). The PSC also found a need for the associated transmission lines. New transmission lines are required to interconnect and integrate the proposed plant into Progress Energy's existing transmission grid and to reliably deliver bulk power to its load centers. Load flow studies were conducted by Progress Energy's system planners to identify the appropriate transmission end-points and voltages. The PSC determined that the proposed transmission lines in Progress Energy's proposed corridors satisfy the need for transmission lines. (RO ¶ 5).

The ALJ found that in this certification proceeding Progress Energy proved its entitlement to site certification for the Project under the PPSA. The data and information submitted by Progress Energy to the agencies and at the hearing was not rejected or contested by any of the agency parties, including the DEP. These agency parties have expertise in the matters involved in this Project and reviewed the information submitted by Progress Energy. Other evidence in support of certification included the DEP's SAR and the testimony of DEP staff. The DEP's SAR reflected the agency parties' review of the Project and demonstrated the Project's compliance with applicable regulatory requirements, including the criteria for certification under Section 403.509(3), Florida Statutes. (RO ¶¶ 260-261, 271).

Plant and Associated Facilities

In the RO the ALJ made findings under each of the criteria for certification. He also determined that issues related to radiological safety are not considered under the PPSA because they have been preempted by federal regulation under the Supremacy

Clause of the United States Constitution. (RO ¶¶ 33, 243, 263). The ALJ found that in accordance with Section 403.509(3)(a), Florida Statutes, Progress Energy provided reasonable assurance that the operational safeguards for the construction, operation, and maintenance of the LNP are technically sufficient for the public welfare and protection. (RO ¶¶ 36-51, 94-99, 100-111, 114, 264). He found that under Section 403.509(3)(b), Florida Statutes, the location, construction, and operation of the LNP will comply with applicable non-procedural requirements of agencies, provided that Progress Energy complies with the conditions of certification. (RO ¶ 82-93, 94-99, 100-111, 115-134, 135-137, 149-151, 265). In addition, Progress Energy provided reasonable assurance that its proposed use of groundwater from the Floridan Aquifer satisfied the substantive criteria of the SWFWMD set forth in Chapter 373, Florida Statutes, Rule Chapter 40D-2, Florida Administrative Code, and the SWFWMD's Basis of Review for water permit applications. (RO ¶¶ 73-82, 265).

The ALJ found that in accordance with Section 403.509(3)(c), Florida Statutes, the location, construction, and operation of the LNP will be consistent with applicable provisions of the Levy County Comprehensive Plan and comply with the Levy County Land Development Code; if constructed and operated in accordance with the proposed conditions of certification. (RO ¶¶ 135-137, 152-156, 266). The LNP is also consistent with the State Comprehensive Plan and the Withlacoochee Regional Planning Council's Strategic Regional Policy Plan. (RO ¶¶ 156, 266). The ALJ found that in accordance with Section 403.509(3)(d), Florida Statutes, the LNP will meet the electrical energy needs of the state in an orderly, reliable, and timely fashion. The PSC found in its order determining need for the LNP that Progress Energy demonstrated a need for both Units

1 and 2 to reasonably meet customer reliability needs in the time period from 2016 to 2019, and beyond. The plant design and construction schedule demonstrate that the LNP will meet the electrical energy needs of the state in an orderly, reliable, and timely fashion. (RO ¶¶ 4-5, 18-29, 258, 267).

The ALJ determined that under Section 403.509(3)(e), Florida Statutes, the LNP, if constructed and operated in compliance with the conditions of certification, will effect a reasonable balance between the need for the facility and the impacts resulting from construction and operation of the facility. These include air and water quality, fish and wildlife, water resources, and other natural resources of the state (but not including radiological safety issues, which are preempted by federal regulation under the Supremacy Clause). (RO ¶¶ 4-5, 258, 268). The LNP and associated facilities are expected to produce minimal adverse environmental impacts, and will provide extensive benefits, including substantial economic benefits. (RO ¶¶ 52-72, 107, 111, 115-134, 138-148, 258, 268).

The ALJ found that under Section 403.509(3)(f), Florida Statutes, if constructed and operated in compliance with the conditions of certification, the LNP will minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life (not including radiological issues, which are preempted by federal regulation under the Supremacy Clause). (RO ¶¶ 52-72, 107, 111, 114, 115-134, 269). The ALJ further found that, in accordance with Section 403.509(3)(g), Florida Statutes, if constructed and operated in compliance with the

conditions of certification, the certification of the LNP will serve and protect the broad interests of the public. (RO ¶¶ 4-5, 31, 138-156, 258, 270).

Transmission Lines

In the RO the ALJ made findings under each of the criteria for certification. He found that in accordance with Section 403.509(3)(a), Florida Statutes, Progress Energy provided reasonable assurances that the operational safeguards for the construction, operation, and maintenance of the transmission lines in the proposed corridors, in compliance with the conditions of certification, are technically sufficient for the public welfare and protection. (RO¶¶ 166-180, 181-189, 192-201, 272). He also found that the parties stipulated that "the Conditions of Certification attached hereto are the applicable non-procedural requirements of the state, regional and local agencies and governments with regulatory jurisdiction over the transmission lines in the Proposed Corridors." (RO ¶ 273). See Exhibit B attached hereto. In addition, Progress Energy proved at the certification hearing that the construction, operation, and maintenance of each of the proposed transmission lines in the nine proposed corridors will comply with the applicable non-procedural requirements of agencies in accordance with Section 403.509(3)(b), Florida Statutes. (RO ¶¶ 173, 180, 202-204, 273).

The ALJ found that the parties stipulated that construction of transmission lines on established rights-of-way is excepted from the definition of "development" in Section 163.3164(6), Florida Statutes. To the extent that comprehensive plans or land development regulations of the local governments crossed by the transmission lines include provisions that are applicable to non-development activities, Progress Energy's construction, operation, and maintenance of the transmission lines in the nine proposed

corridors in compliance with the conditions of certification, will be consistent with applicable local government comprehensive plans and land development regulations, under Section 403.509(3)(c), Florida Statutes. (RO ¶¶ 173, 205-208, 274). The ALJ further found that the construction, operation, and maintenance of the transmission lines in the nine proposed corridors, in compliance with the conditions of certification, will help meet the electrical energy needs of the state in an orderly, reliable, and timely fashion, in accordance with Section 403.509(3)(d), Florida Statutes. (RO ¶¶ 5, 209-212, 258, 275). He also found that construction, operation, and maintenance of the transmission lines in the nine proposed corridors, in compliance with the conditions of certification, will effect a reasonable balance between the need for the facilities and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facilities, in accordance with Section 403.509(3)(e), Florida Statutes. (RO ¶¶ 5, 181-189, 213-220, 258, 276).

The ALJ determined that in accordance with Section 403.509(3)(f), Florida Statutes, the construction, operation, and maintenance of the transmission lines in the nine proposed corridors, in compliance with the conditions of certification, will minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life. (RO ¶¶ 181-189, 221-228, 277). Finally, the ALJ found that the construction, operation, and maintenance of the transmission lines in the nine proposed corridors, in compliance with the conditions of certification, will serve and protect the broad interests of the public, in accordance with Section 403.509(3)(g), Florida Statutes. Having met the criteria in subsections (3)(a) through (3)(f) of Section

403.509, Florida Statutes, Progress Energy demonstrated that the construction, operation, and maintenance of each of the transmission lines in the proposed corridors will serve and protect the broad interests of the public. (RO ¶¶ 4-5, 229-237, 258, 278).

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See, e.g., Comm'n on Ethics v. Barker, 677 So.2d 254, 256 (Fla. 1996); Henderson v. Dep't of Health, Bd. of Nursing, 954 So.2d 77 (Fla. 5th DCA 2007); Fla. Dep't of Corrs. v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." Env'tl. Coalition of Fla., Inc. v. Broward County, 586 So.2d 1212, 1213 (Fla. 1st DCA 1991); see also Colonnade Medical Ctr., Inc. v. State of Fla., Agency for Health Care Admin., 847 So.2d 540, 542 (Fla. 4th DCA 2003). However, even when exceptions are not filed, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction. See § 120.57(1)(l), Fla. Stat. 2008; Barfield v. Dep't of Health, 805 So.2d 1008 (Fla. 1st DCA 2001); Fla. Public Employee Council, 79 v. Daniels, 646 So.2d 813, 816 (Fla. 1st DCA 1994). In reviewing findings of fact in a recommended order, an agency is constrained to modification of the findings only when the findings are not supported by competent substantial evidence. See § 120.57(1)(l), Fla. Stat. 2008.

Having reviewed the matters of record and being otherwise duly advised, the Siting Board adopts the ALJ's RO. It is therefore ORDERED that:

A. The Recommended Order on Certification (Exhibit A) is adopted in its entirety and is incorporated by reference herein.

B. Progress Energy's Application for Certification to build, operate, and maintain a two-unit nuclear powered electrical generating facility in Levy County, Florida, including a heavy haul road, site access roads, and cooling water intake and discharge pipelines, subject to the conditions of certification set forth in Exhibit B attached hereto, is APPROVED; and

C. Progress Energy's Application for Certification to build, operate, and maintain each of the following electrical transmission line corridors as associated facilities, as described in paragraphs 181-189 of the RO, and subject to the conditions of certification set forth in Exhibit B attached hereto, is APPROVED:

1. Citrus 1 and 2 Transmission Lines (LPC Corridor),
2. Crystal River Transmission Line (LCR Corridor),
3. Sumter Transmission Line (LCFS Corridor),
4. Crystal River East 1 and 2 Transmission Lines (CCRE Corridor),
5. Levy North Transmission Line (IS Corridor),
6. Levy South Transmission Line (IO Corridor),
7. Brookridge Transmission Line (CB Corridor),
8. Brooksville West Transmission Line (BBW Corridor), and
9. Polk-Hillsborough-Pinellas Transmission Line (PHP Corridor).

D. Authority to assure and enforce compliance by Progress Energy and its agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to the DEP.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

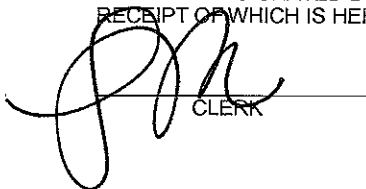
DONE AND ORDERED this 26th day of AUGUST, 2009, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on August 11, 2009.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE CHARLIE CRIST
GOVERNOR

FILING IS ACKNOWLEDGED ON THIS DATE,
PURSUANT TO § 120.52, FLORIDA STATUTES,
WITH THE DESIGNATED DEPARTMENT CLERK,
RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.


CLERK

8.26.09
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order was provided by United States Postal Service or electronic mail to:

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this 26th day of AUGUST, 2009.

STATE OF FLORIDA DEPARTMENT
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