

OGC CASE NO. 08-0563
DOAH CASE NO. 08-1629EPP

This matter is before me as Secretary of the Department of Environmental Protection ("DEP" or "Department") for the purpose of entering a Final Order under Sections 403.508(6), 403.509(1)(a), and 403.509(3), Florida Statutes.

On November 24, 2008, the Administrative Law Judge ("ALJ") assigned by the Division of Administrative Hearings ("DOAH") issued an order canceling hearing, closing file, and relinquishing jurisdiction. The order granted the parties' request to cancel the certification hearing and relinquish jurisdiction in accordance with Section 403.508(6), Florida Statutes. The order was issued pursuant to a Joint Stipulation and Motion of the Parties to Cancel Certification Hearing and to Relinquish Jurisdiction ("Joint Stipulation"). The Joint Stipulation stated that no disputed issues of fact or law remain to be raised at the site certification hearing. The Joint Stipulation stated that the parties' requested cancellation of the site certification hearing originally scheduled to begin on December 17, 2008, and did not object to entry of a Final Order by the Department. Therefore, under Section 403.509(1)(a), Florida Statutes, the Department is required to prepare and enter a Final Order.

PARTIES

The following are the parties to this site certification proceeding under Section 403.508(3)(a), Florida Statutes: Florida Municipal Power Agency ("FMPA"), Kissimmee Utility Authority ("KUA"), the DEP, the Department of Community Affairs ("DCA"), the Department of Transportation ("DOT"), the South Florida Water Management District ("SFWMD"), Osceola County, the Florida Fish and Wildlife Conservation Commission ("FWC"), and the East Central Florida Regional Planning Council ("ECFRPC"). Those parties have been granted party status by statute or have timely filed a Notice of Intent to be a Party pursuant to Section 403.508(2)(b), Florida Statutes. No other agency filed a Notice of Intent to be a Party before the 90th day prior to the scheduled certification hearing. Further, no third person intervened in this proceeding as of the last date for intervention prior to the scheduled hearing. All of the above-listed parties have standing to participate in this proceeding.

STATEMENT OF THE ISSUE

The issue to be decided in this proceeding is whether DEP, acting in lieu of the Siting Board, should approve certification in accordance with the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501, *et seq.*, Florida Statutes, authorizing FMPA and KUA ("the Applicants") to construct and operate a new Unit 4 at the existing Cane Island Power Park ("CIPP") in Osceola County, Florida, subject to the proposed Conditions of Certification.

PRELIMINARY STATEMENT

On April 1, 2008, the Applicants filed with DEP a site certification application for the CIPP Unit 4 Project ("Project") in Osceola County, Florida. On February 16, 2008, the SFWMD filed notice of its intent to be a party in the certification proceeding. On February 18, 2008, the DCA filed notice of its intent to be a party in the certification proceeding. On May 8, 2008, the DEP filed a determination of incompleteness for the Project application. The Applicants submitted their responses to the determination of incompleteness issued by DEP on June 6, 2008.

On June 23, 2008, Osceola County issued its land use and zoning determination for the Project site, pursuant to Section 403.50665(2), Florida Statutes. The County determined that the Project site was consistent and in compliance with the adopted land use plans and zoning ordinances of Osceola County. Following public notice by the Applicants and DEP of opportunity to challenge the land use determination, no challenges were filed. Accordingly, the ALJ canceled the previously scheduled land use hearing. On July 11, 2008, DEP determined the application to be complete.

Under Section 403.519, Florida Statutes, the Public Service Commission ("PSC") issued its determination of need for the Project on August 8, 2008. On November 10, 2008, DEP issued its Project Analysis Report ("PAR"), under Section 403.507, Florida Statutes. The PAR incorporates by reference reports from the agency parties. The PAR also contained a compiled set of proposed Conditions of Certification for the Project.

A site certification hearing was scheduled to begin on December 15, 2008, in Osceola County. Pursuant to Section 403.5115(1)(e) and (4)(f), Florida Statutes, notice of that hearing was published by the Applicants in the Osceola News-Gazette in Osceola County and by DEP in the Florida Administrative Weekly. By Amended Notice of Hearing dated October 17, 2008, the ALJ rescheduled the hearing to begin on December 17, 2008. On October 25, 2008, the Applicants published an amended notice of the hearing to indicate the December 17, 2008, commencement date in the Osceola News-Gazette in Osceola County. No party to this proceeding is objecting to, or recommending denial of, final certification for the Project, subject to the proposed Conditions of Certification.¹

On November 21, 2008, the parties filed a Joint Stipulation with the ALJ to cancel the hearing and relinquish jurisdiction to DEP, subject to the Applicants and DEP publishing notice of cancelation of the certification hearing. On December 4 and December 12, 2008, respectively, the Applicants and DEP published notice of the cancelation of the certification hearing. On November 24, 2008, the ALJ canceled the certification hearing and relinquished jurisdiction to DEP.

1. In the Joint 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. The SFWMD specifically takes no position on Conclusions of Law paragraphs 9-14.

FINDINGS OF FACT²

The Applicants and Proposed Project

1. FMPA is a nonprofit, public, joint action agency consisting of a group of 30 municipal electric utilities with the primary purpose of developing competitive power supply and related services. FMPA is specifically authorized under the Joint Power Act to undertake joint projects for its members and to issue tax-exempt bonds and other obligations to finance the costs of such projects. Pursuant to that authority, FMPA developed the All Requirements Project ("ARP") to secure an adequate, economical, and reliable supply of electric capacity and energy to meet the needs of the ARP members who include 15 municipal utilities serving approximately 180,000 customers throughout Florida. ARP members purchase all their capacity and energy from the ARP. FMPA meets the ARP's needs through electricity generated by FMPA owned or co-owned facilities, as well as power purchases from generating ARP members (i.e., members with their own generating capacity), other non-ARP member utilities, Florida investor-owned utilities, and independent power producers.

2. KUA is a member of FMPA and the ARP. KUA owns, operates, and manages the municipal electric system established by the City of Kissimmee, and is the sixth largest municipal utility in Florida. KUA serves approximately 58,000 customers in Kissimmee and surrounding areas.

2. These stipulated facts are supported by the Site Certification Application ("SCA"), FMPA's Responses to Completeness Comments, and the DEP's Project Analysis Report ("PAR") dated November 10, 2008 and attachments thereto.

The Existing Cane Island Power Park (CIPP) Site

3. The CIPP is a 1,027-acre site located within rural northwest Osceola County, Florida, approximately 20 miles southwest of Orlando, 5 miles west of Kissimmee, and 1 mile northwest of Intercession City.

4. The CIPP currently includes three existing units and associated support facilities, certified under the PPSA in 1999. CIPP Unit 1 is a nominal 40 megawatt ("MW") simple cycle combustion turbine unit; CIPP Unit 2 is a nominal 120 MW combined cycle combustion turbine unit; CIPP Unit 3 is a nominal 250 MW combined cycle combustion turbine unit. CIPP Units 1 and 2 began commercial operation in 1995; and Unit 3 began commercial operation in 2001. CIPP Units 1, 2, and 3 fire natural gas as the primary fuel. No. 2 fuel oil is stored onsite as backup fuel. The electricity generated is stepped up in voltage for distribution to the power grid.

The CIPP Unit 4 Project

5. Proposed site modifications will consist of construction and operation of CIPP Unit 4, a nominal 300 MW one-on-one combined cycle generating unit consisting of an F-class combustion turbine generator ("CTG"), a heat recovery steam generator ("HRSG"), a condensing steam turbine generator ("STG"), and a mechanical draft cooling tower. Duct burners will be installed in the HRSG inlet to provide increased steam turbine generator output for peaking capacity. CIPP Unit 4 will have the capability to operate in steam bypass mode. Natural gas will be the only fuel for the combustion turbine and the HRSG duct burners. The CIPP Unit 4 power block area will occupy approximately 9 acres north of the existing Units 1, 2, and 3.

6. There will also be new wastewater treatment facilities, new water storage tanks, and a new storm water detention area for CIPP Units 3 and 4. Similar facilities associated with the operation of Units 1, 2, and 3 exist onsite.

7. No new offsite transmission facilities will be required for construction or operation of CIPP Unit 4, which will be interconnected to the existing CIPP substation. A few of the existing transmission poles in the power block area will be relocated to accommodate CIPP Unit 4.

8. No railroad spur will be required. The CSX Railroad operates a track adjacent to the southern property boundary that could be used for deliveries.

9. CIPP Unit 4 is scheduled for commercial operation in May 2011. FMPA is the owner and project manager for CIPP Unit 4 permitting, certification, and construction. KUA will operate the unit on behalf of FMPA.

Architectural or Historical Sites

10. The Department of Historical Resources ("FDHR") had cleared the site for development during Units 1 and 2 permitting, stating that there are no archaeological, historic, or cultural sites present on the property or in the immediate vicinity that are considered eligible for listing on the *National Register of Historic Places*. A Phase I cultural resources investigation of the CIPP property was conducted in May 1992. None of the discovered sites were considered eligible for listing on the *National Register of Historic Places*. FDHR raised no comments or concerns about the CIPP Unit 4 project. Furthermore, FDHR recommended approval of the application, as there are no historic properties in the area of potential effect for the proposed plant expansion.

Construction

11. The CIPP Unit 4 power block facilities will be located on approximately 9 acres, which will include several buildings and equipment pads. Concrete or aggregate surfacing will be used around the unit, with asphalt paved roads around the perimeter. The cooling tower, demineralized water tank, fire protection/service water tanks, and surrounding equipment are within an aggregate surfaced area. The area between the Unit 3 cooling tower and the storm water detention basin will be converted from a grass/lawn-like cover to aggregate surface. The storm water detention basin will be located southeast of CIPP Unit 4 and will occupy 1.41 acres. The area north of CIPP Unit 4 and the new cooling tower will be used for construction laydown and parking. This area will be seeded when construction is complete.

12. The area proposed for the CIPP Unit 4 facilities is, for the most part, the construction equipment/materials lay-down area that was used during construction of Unit 3. This area is generally grassland with scattered trees located north of CIPP Unit 3. The 1.41 acre storm water pond associated with CIPP Units 3 and 4 will be located immediately north of the existing switchyard and will encroach into a sand pine scrub area. A new 12.5 acre construction equipment/materials lay-down area for CIPP Unit 4 will be located immediately north of the CIPP Unit 4 power block and cooling tower. The area of the existing transmission line corridor along the southern part of the CIPP, outside of the conservation area, may also be used for construction parking.

13. No explosives will be used during construction. No new paved roads will be required for CIPP Unit 4 construction access. Unimproved trails are available in the

construction area so that new roads will not be needed for CIPP or CIPP Unit 4 construction area access.

14. Construction of CIPP Unit 4 will modify the existing terrain. The CIPP Unit 4 facilities' areas will be cleared and grubbed. The power block area will be raised to the minimum floor elevation of 82 feet NGVD. The Unit 3 storm water pond will require modification to accommodate CIPP Unit 4 runoff, becoming the Units 3 and 4 storm water pond. Construction materials such as concrete, steel, and aggregate, will be delivered to the site by trucks.

Determination of Need

15. August 8, 2008, the PSC issued its final order determining the need for the CIPP Unit 4. In re: Petition to determine need for CIPP Unit 4 electrical power plant in Osceola County, by FMPA, Order No. PSC-08-0591-FOF-EI (Aug. 8, 2008). The PSC found: that there is a need for the CIPP Unit 4 project taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes; that there is a need for CIPP Unit 4 taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes; that there is a need for CIPP Unit 4 taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519, Florida Statutes; and that the addition of CIPP Unit 4 is the most cost-effective optimization of FMPA's required capacity additions. The PSC also found that there are no additional renewable energy sources and technologies or cost-effective conservation measures available that might mitigate the need for the proposed CIPP Unit 4, as this criterion is

used in Section 403.519(4), Florida Statutes; and that FMPA is utilizing renewable resources to the extent reasonably available.

OSCEOLA COUNTY

Land Use

16. CIPP is located within an unincorporated area of Osceola County. The southern boundary of Orange County is 4.5 miles north of the site. The northeast boundary of Polk County is 2 miles southwest of the site. The western city limit of Kissimmee is 5 miles east of the site. The incorporated town of Campbell is 4.5 miles southeast of the site. The unincorporated town of Intercession City is 1 mile southeast of the site. The unincorporated town of Loughman is 3.5 miles southwest of the site.

17. The CIPP site is designated as "Natural Resource Utilization" under the existing future land use map of the Osceola County Comprehensive Plan's future land use element. See Land Use and Zoning Determination by Osceola County (June 23, 2008). Electric utility facilities are permitted uses as an Institutional use in that future land use designation. The CIPP site is zoned as "Agricultural Development and Conservation" under the existing Osceola County zoning ordinances. Electrical power plants are permitted as a conditional use in this zoning district. The property was approved for use as an electrical power plant in 1993 by the Osceola Board of Commissioners and KUA was issued a Conditional Use Permit (CU/SDP 92-86) authorizing power plant construction and operation on the property. The Conditional Use permit recognized the site could support up to 1,000 MW of generating capacity,

comprised of multiple electrical generating units on the portion of the site to be occupied by CIPP Unit 4.

18. In 1999, the Siting Board determined that the CIPP site was consistent with the existing land use plans and zoning ordinances of Osceola County. The Siting Board found that the use of the 1,027 acre CIPP site for electrical generating facilities was consistent with the County's zoning for the CIPP site and with the Conditional Use permit issued by the County for the CIPP site.

19. On June 16, 2008, Osceola County granted a Conditional Use Permit (CU08-00023) to allow for the construction of the CIPP Unit 4 Project.

20. On June 23, 2008, Osceola County filed its determination with DEP, pursuant to Section 403.50665, Florida Statutes, that the site for the proposed CIPP Unit 4 project is consistent with the existing and local land use plans and zoning ordinance of Osceola County. As noted above, the County's determination was not challenged pursuant to Section 403.50665(4), Florida Statutes. Accordingly, the ALJ canceled the land use hearing.

Noise

21. In general, noise emissions associated with the construction of CIPP Unit 4 may cause short-term (temporary) increases in the daytime sound levels at the nearest noise sensitive locations of 0 to 5 dBA. While these sound level increases are typically considered "imperceptible" to "clearly noticeable," the construction noise is temporary in nature and these impacts are anticipated to be less than significant, particularly after sunset.

22. The noise emissions associated with the normal operation of the project are expected to comply with the property boundary sound levels specified in Special Condition 3 of Osceola County CU08-00023. The project is expected to meet these requirements by including standard equipment packages.

23. Potential impacts to nearby receptors were evaluated by comparing the existing background sound level with the new background sound level expected to result from operation of CIPP Unit 4. The new future background sound level is expected to be below a level that is typically considered "clearly noticeable." As such, significant impacts to nearby receptors are not expected.

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Threatened or Endangered Species

24. The majority of the CIPP site (860 acres) was placed in conservation easements granted to the SFWMD and FWC. A complete biophysical assessment of the property during Units 1 and 2 permitting, and subsequent monitoring, concluded that the property is not inhabited by any federal- or state- listed threatened or endangered species, with the exception of the recently listed gopher tortoise (state threatened). The FWC issued Incidental Take Permit OSC-6 to KUA for the incidental taking of gopher tortoises, their eggs and their burrows on the CIPP site in March 1993. FWC has stated that it has no objections to approval of the project and it seeks no further requirements beyond those in the existing Conditions of Certification.

FDEP

Separate PSD Air Construction Permitting

25. CIPP Unit 4 is a "major stationary source" subject to DEP's Prevention of Significant Deterioration (PSD) preconstruction permitting program which is implemented separately from the PPSA site certification process. See § 403.508(8), Fla. Stat. (2007). On September 5, 2008, DEP issued a final PSD permit for CIPP Unit 4 (DEP Air Permit Nos. PSD-FL-400, 0970043-014-AC). As discussed below, DEP determined through the PSD permitting process that the project's emissions will not cause or contribute to any violations of ambient air quality standards or PSD increments. In addition, DEP established best available control technology ("BACT") requirements as described more fully below and in the technical evaluation and BACT determination associated with the PSD permit. The following factual findings are presented to enable the Secretary of DEP to apply the statutory criteria in Section 403.509, Florida Statutes. Inclusion of such findings shall not be construed to reopen the separately issued PSD permit or any issues addressed in that separate permitting process.

Air Emission Controls & Impact Analysis

26. The CIPP is located in an attainment area for all criteria pollutants, except PM₁₀ and lead, which are unclassifiable. CIPP Unit 4 has the potential to emit nitrogen oxides ("NO_x"), sulfur dioxide ("SO₂"), carbon monoxide ("CO"), sulfuric acid mist ("H₂SO₄" or "SAM"), and particulate matter ("PM/PM₁₀") above PSD significance thresholds. CIPP Unit 4 is not expected to emit volatile organic compounds ("VOCs")

above PSD significance thresholds. Accordingly, a full PSD analysis was performed for NO_x, SO₂, CO, SAM and PM/PM₁₀. Such analysis included the following: BACT Analysis; Ambient Air Quality Impact Analysis; and Additional Impact Analysis.

27. The technology proposed as BACT to control emissions from CIPP Unit 4 includes dry low-NO_x burners and selective catalytic reduction ("SCR") for the control of NO_x, the use of natural gas, and good combustion controls to reduce CO, PM/PM₁₀, SO₂, and SAM emissions.

28. An air dispersion modeling analysis was performed to determine the CIPP Unit 4 maximum SO_x, NO_x, CO, and PM/PM₁₀ air quality impacts. The maximum air quality impacts at all modeled receptors were less than the applicable PSD significant impact levels, and consequently below the less stringent de minimis ambient background monitoring levels. As such, multi-source modeling of nearby existing sources for PSD increment consumption and ambient air quality standards ("AAQS") comparison was not required. The CIPP Unit 4 predicted pollutant impact concentrations are well below the threshold levels above which the air quality may be significantly affected. Moreover, an additional impact assessment determined that the CIPP Unit 4 visual impacts, PSD Class I regional haze impacts, air quality impacts on vegetation and soils, and air quality impacts due to growth, are inconsequential as the predicted levels are well below threshold levels.

29. The Department has reviewed and concurs with the applicant's BACT proposals. Based on the ambient air quality review, the Department concludes that the project will neither cause nor contribute to a violation of ambient air quality standards or

increments. Furthermore, there will be no significant impacts on soils, wildlife or vegetation.

Carbon Dioxide Emissions

30. Although there currently are no state or federal regulations governing CO₂ emissions from power plants, the Department's PAR considered the potential impact of CO₂ emissions from the proposed project. Based upon applicant submittals, the addition of CIPP Unit 4 generating unit will cause a direct increase of 640,000 tons per year in CO₂ emissions, utilizing 2012 as the baseline. However, an overall decrease in CO₂ emissions of 262,000 tons per year is expected to result. This decrease is due largely to CIPP Unit 4 displacing electricity which is currently generated from higher CO₂ generating units, via purchase power transactions (shown as "Net Market Transactions"). Thus, the addition of CIPP Unit 4 appears to be consistent with the intent of the Governor's Executive Order 07-127.

Wastewater

31. CIPP Unit 4 process wastewaters will be collected, treated, and discharged at two locations onsite. Potentially oil-contaminated wastewaters will be routed to an oil/water separator for treatment prior to groundwater discharge through a new percolation pond. Cooling tower and evaporative cooler blowdown, neutralization basin effluent, and boiler blowdown are collected and returned to the Tohopekaliga Water Authority ("TWA") reuse pipeline after pH adjustment. All wastewaters returned to the TWA pipeline will be treated to meet applicable TWA agreement limits prior to

discharge. Licensed contractors will remove boiler and combustion turbine cleaning wastewaters for disposal offsite.

32. Domestic/sanitary wastewater is generated by showers, lavatories, sinks, toilets, urinals, and drinking fountains. It is estimated that there will be two new permanent CIPP Unit 4 employees at the site who will generate approximately 80 gallons per day of sanitary wastewater. Sanitary wastewaters will be discharged to an existing, onsite septic tank/tile field system.

Solid Waste & Hazardous Substances

33. CIPP Unit 4 will not generate any solid waste, such as combustion ash or flue gas desulfurization scrubber waste, from the electric generation process. The firing of natural gas does not create significant combustion byproducts. CIPP operations will not require any onsite landfills or solid waste disposal areas. The existing commercial trash services will be contracted to haul off typical solid wastes that result from plant operations, such as increased office debris.

34. Waste oil is the major potentially hazardous substance generated by plant operation. Two processes generate waste oil: combustion turbine cleaning and oil/water separator operation. The internal components of the combustion turbines are periodically cleaned using a solvent solution. This wash water may contain oily residues and metal particles. The wash water is collected in an underground combustion turbine drain tank and hauled offsite as needed by a licensed contractor for ultimate disposal.

35. Oily wastewaters that are generated will be conveyed to the oil/water separator. Waste oil collected in the oil/water separator will be hauled offsite as needed by a licensed contractor for ultimate disposal. Small quantities of other hazardous wastes, such as paints and cleaners, which may be used in maintenance, will be segregated from the plant drainage system and disposed offsite to a licensed contractor. Spent SCR modules will be removed from the CIPP by a licensed contractor.

Socioeconomic Impacts

36. Operation of CIPP Unit 4 should have positive incremental socioeconomic impacts in Osceola County through employment and associated tax revenues. During the peak period of CIPP Unit 4 construction, approximately 313 jobs will be created by the construction project. The net direct employment effect from CIPP Unit 4 will be the creation of approximately two additional full-time operations positions. CIPP Unit 4 is not anticipated to adversely impact the local or regional services or infrastructure.

SFWMD

Water Use and Supply

37. The CIPP Unit 4 cooling tower will use approximately 2.8 million gallons of treated sewage effluent (or reuse water) per day when firing natural gas at full load and average ambient conditions. This effluent will be supplied from the TWA reuse water pipeline adjacent to the southern boundary of the CIPP site. The existing onsite pipelines appear to have adequate capacity, but a new supply line along the plant access road may be required. Pipeline construction and any potential impacts

associated with the TWA reuse supply pipeline have not been addressed in this proceeding.

38. KUA has an agreement with TWA for the delivery, use, and return of this reuse water (Agreement). The TWA asserts that its reuse water supply pipeline in the CIPP area has adequate capacity to provide the required makeup water flow. The Agreement is for a term of thirty (30) years beginning on the date CIPP Unit 4 goes into commercial operation.³ The Agreement contains a ten (10) year option that will automatically be exercised unless one of the parties to the Agreement, TWA or the Applicants, opts out of the extension by providing notice no later than 18 months prior to the expiration of the 30-year term.

39. Service, potable, and fire water will be supplied by onsite groundwater wells. Under full load operation, CIPP Unit 4 will require 134,000 gallons of service water per day in addition to the currently authorized amount. The majority of this amount is required for power cycle demineralized makeup water supply and evaporative cooler makeup supply. The Upper Floridan Aquifer ("UFA") is the water source.

40. In addition to the normal service water demand identified in paragraph 39 of this Stipulation, CIPP Unit 4 will require the use of 2.786 million gallons per day of groundwater for emergency (30 days/year) cooling tower makeup, if needed due to temporary service interruption of TWA's reuse supply. (Proposed Condition of Certification XXIII.b.2.b). The UFA is the water source for emergency cooling tower makeup water.

³ The Agreement states that Commercial Operation is anticipated to commence in June 2011.

Groundwater Impact Analyses

41. The STOPR numerical groundwater flow model was used to assess the impacts of Project groundwater withdrawals from the UFA. The model was used in consultation and cooperation with the SFWMD. The STOPR model completely encompasses the CIPP site.

42. Three different pumping scenarios were simulated under three different conditions. Impacts on the surficial aquifer are expected to be negligible, even during drought conditions. Under normal Project pumping (no cooling water component), the maximum UFA impact is predicted as a 1 foot drawdown near the site boundary, and less than 1 foot offsite. Under heavy Project pumping (with the 30 day cooling water component from one calendar year followed immediately by the 30 day cooling water component of the second year plus maximum normal plant usage) and drought conditions, the maximum UFA impact is predicted as a 2 foot drawdown at the site boundary and a 1 foot drawdown 1.75 miles from the center of the site with the CIPP Unit 4 contribution to this maximum drawdown being only 1 foot at the site boundary. So long as TWA supplies CIPP Unit 4 with an adequate volume of reuse water in accordance with TWA Agreement, no adverse impacts on existing domestic, irrigation, or other public water supply wells are anticipated from the Project withdrawals.

Stormwater Management

43. The CIPP stormwater management system is designed to comply with the requirements of applicable statutes and rules. Runoff from areas not disturbed by construction or operations will be directed to natural drainage systems within the area.

Runoff from disturbed areas will be collected and directed into a drainage system consisting of ditches, swales, and runoff basins, for treatment. The runoff from uncontaminated areas will be directed through a detention basin for reduction of the suspended solids load and equalization of peak flows. At the property boundary, the post development peak flow rate will not exceed the predevelopment peak discharge rate during the applicable design storm event.

44. CIPP operations are not expected to affect surface water quality within the area. Undisturbed areas will remain in their existing state. Runoff water quality should at least remain unchanged and is expected to be improved as a result of detention in the storm water basin.

45. Construction of CIPP Unit 4 power block will have no adverse impact to on-site wetlands, on Reedy Creek, which crosses the southwest portion of the site more than a mile from the power block area; or on the Bonnet Creek Canal, which is adjacent to the CIPP on the north and west, also one-half mile from the power block site.

FDOT

Traffic

46. The CIPP is located off of Old Tampa Highway, one mile northwest of Intercession City. The CIPP is near Interstate 4, which will facilitate quick and easy access during the construction period. Other nearby routes include State Roads 535, 528 (Beachline Expressway), 408 (the East-West Expressway), and 417 (the GreeneWay). US 17/92, and 441 are also major highways in the area. Given the

proximity of the CIPP to Orlando and Kissimmee, the entire Orlando-Kissimmee MSA is considered to be within easy commuting distance of the site.

47. Traffic flow will increase temporarily near the site during CIPP Unit 4 construction. During the anticipated peak month of worker construction, it is anticipated that 7,076 round trips will be made to the site. This is equal to approximately 337 trips per day, on average, assuming 21 work days in the peak month. The additional trips to the site will present a small and temporary increase in the traffic flow near the site. Deliveries will be dispersed throughout the day, while worker trips will be linked to the morning and evening commute.

48. There will also be a minor increase in traffic through the operational period. These impacts should be manageable because the concentration of commuting vehicles at the site occurs in a rural area experiencing relatively low traffic levels.

49. No new or upgraded public roadways or other transportation facilities will be needed for CIPP Unit 4, given Cane Island Power Park's established infrastructure and minimal need for heavy, long-term traffic. The unit will utilize existing power transmission facilities and will not create significant disruptions to the transportation network offsite.

Agency Reports & Proposed Conditions of Certification

50. Osceola County, DCA, DOT and the SFWMD submitted Agency Reports, pursuant to Section 403.507(2)(a)2, Florida Statutes. Each of these agencies recommended approval subject to recommended conditions of certification. In addition,

FDHR, ECRPC, FWC and DEP provided correspondence indicating that they recommend or do not object to the proposed project.

51. On November 10, 2008, DEP issued its written PAR, pursuant to Section 403.507, Florida Statutes. The PAR contained a compiled set of proposed Conditions of Certification for the Project, including conditions recommended by the following agencies: DEP, the SFWMD, DCA, PSC, DOT, and Osceola County. In its PAR, DEP recommended approval of the CIPP Unit 4 project provided that the Applicants comply with the proposed Conditions of Certification incorporated therein and attached as Appendix I to the PAR Report.

52. DEP and the Applicants stipulated that proposed Conditions of Certification XVII A, B and C shall be revised to identify new sample points by replacing each "X" and "XX" with sequential numbers. Specifically, sample point INT-01 shall be identified in Condition of Certification XVII B.1; sample point INT-03 shall be identified in Conditions of Certification XVII B.2.a, B.2.e and C.1; and sample point INT-04 shall be identified in Conditions of Certification XVII A.1, B.2.d and C.1. In Addition, DEP and the Applicants stipulated that the following shall be inserted in Condition of Certification XVII A.1 after the sentence ending "(TWA)": "This water supply is designated INT-01. Well water is used to supplement the reclaimed water from TWA."

53. DEP and the Applicants stipulated that proposed Condition of Certification XVII C.2 shall be revised to delete the final sentence of the proposed condition.

54. SFWMD, DEP and the Applicants stipulated that proposed Condition of Certification XXIII.D.2.b shall be revised to delete the requirement to include monthly water level readings in the Preserved Wetlands Monitoring Plan.

55. SFWMD, DEP and the Applicants stipulated that proposed Condition of Certification XXIII.C.3.c.2)B shall be revised to substitute EPA Method 624 for EPA Methods 601 and 602.

56. FMPA and KUA agree to the proposed Conditions of Certification included in Appendix I to DEP's PAR, as revised in paragraphs 52-55. A copy of the proposed Conditions of Certification, as revised (hereafter Conditions of Certification), is attached hereto as Exhibit A.

CONCLUSIONS OF LAW

1. All parties identified above have standing to participate in this proceeding.
2. The Department has jurisdiction of the parties and of the subject matter of this proceeding. This proceeding was conducted in accordance with the Florida Electrical Power Plant Siting Act, Part II of chapter 403, Florida Statutes.
3. The ALJ has the authority pursuant to Section 403.508(6)(a), Florida Statutes, to cancel the scheduled site certification hearing upon stipulation by all parties to the proceeding that there are "no disputed issues of fact or law to be raised at the certification hearing."
4. When the ALJ cancels the hearing and relinquishes jurisdiction to the Department, it has the authority to issue a final order in accordance with Section 403.509(1)(a), Florida Statutes.

5. In accordance with Section 403.5115, Florida Statutes, and Chapter 62-17, Florida Administrative Code, proper notice was provided to all persons, entities and parties entitled to such notice, as well as notice being provided to the general public. No third party intervened by the deadline for such intervention.

6. Osceola County has determined that the Project will be consistent with its local government comprehensive plans and land development regulations, in accordance with Section 403.509(3)(c), Florida Statutes, subject to the Conditions of Certification attached hereto as Exhibit A.

7. All necessary and required state and local government agencies participated in the certification process.

8. The PSC determined the need for the electric power to be supplied by the CIPP Unit 4 as required by Section 403.519, Florida Statutes. The PSC is the sole forum for the determination of the need for the CIPP Unit 4 Project.

9. Considering the criteria in Section 403.509(3) Florida Statutes, and balancing the various factors set forth therein, based upon the information provided by the Applicants in the site certification application and completeness responses; and the information provided by DEP in its PAR and subject to the attached Conditions of Certification, the Project is eligible for issuance of a final certification order.

10. Under Section 403.509(3)(a), Florida Statutes, the Applicants have provided reasonable assurances that operational safeguards for the CIPP Unit 4 Project are technically sufficient for the public welfare and protection, as long as the attached Conditions of Certification are implemented and complied with.

11. As required by Section 403.509(3)(b), Florida Statutes, CIPP Unit 4 will comply with applicable nonprocedural requirements of agencies, as long as the attached Conditions of Certification are implemented and complied with. DEP's analysis concludes that the Project is not reasonably projected to cause or contribute to a violation of ambient air quality standards or water quality standards. No variances are proposed from any nonprocedural requirements of agencies for the Project.

12. Through the use of an already developed site, the Project will minimize the adverse effects on human health, the environment and the ecology of land and its wildlife and the ecology of state waters and their aquatic life, as required by Section 403.509(3)(f), Florida Statutes. Compliance with DEP's nonprocedural standards at CIPP Unit 4 will minimize and avoid adverse effects on human health as well as upon the environment.

13. Under Section 403.509(3)(e), Florida Statutes, certification of the Project in accordance with the attached Conditions of Certification effects a reasonable balance between the need for the facility as determined by the PSC, and the minimal impacts on air and water quality, fish and wildlife, water resources and other natural resources of the State that would result from the construction and operation of the Project.

14. Based upon the foregoing considerations that the Project will meet all of the other criteria for certification under the PPSA, it is concluded that the CIPP Unit 4 Project will serve and protect the broad interests of the public, as long as the attached Conditions of Certification are implemented and complied with.

CONCLUSION

Having reviewed the matters of record and being otherwise duly advised, the Department concludes that, if constructed and operated in accordance with the evidence presented in the record and the attached Conditions of Certification, the Project will serve and protect the broad interest of the public and should be approved. It is therefore ORDERED that:

A. Site certification of FPMA and KUA's new Unit 4 at the existing Cane Island Power Park in Osceola County, Florida, as described in the Site Certification Application and the record as a whole, is hereby APPROVED.

B. The Project is subject to and FPMA and KUA shall comply with the Conditions of Certification that are attached as Exhibit A and are incorporated by reference herein.

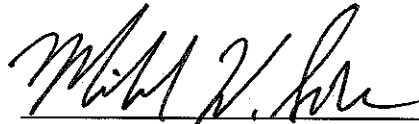
JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the 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 19th day of December, 2008, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



MICHAEL W. SOLE
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

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


CLERK

12/22/08
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by

United States Postal Service to:

Leon M. Biegalski, Esquire
Department of Transportation
605 Suwannee Street, Mail Stop 58
Tallahassee, Florida 32399-0450

Kelly A. Martinson, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Emily J. Norton, Esquire
Florida Fish and Wildlife
Conservation Commission
Farris Bryant Building
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Tallahassee, Florida 32399-1600

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Florida Public Service Commission
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Alexis M. Yarbrough, General Counsel
Department of Transportation
Haydon Burns Building
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Tallahassee, Florida 32399-0450

Claudia Llado, Clerk and
J. Lawrence Johnston, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

and by hand delivery to:

Mike Halpin, Program Administrator
Department of Environmental Protection
Office of Siting Coordination
2900 Commonwealth Blvd., M.S. 48
Tallahassee, FL 32399-3000

and

Jack Chisolm, Esquire
Toni Sturtevant, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 22nd day of December, 2008.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


for FRANCINE M. FFOLKES
Administrative Law Counsel

3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000
Telephone 850/245-2242

STATE OF FLORIDA
DEPARTMENT
OF
ENVIRONMENTAL PROTECTION



Conditions of Certification

Florida Municipal Power Agency and
Kissimmee Utility Authority
Cane Island Power Park
Unit 3 and Unit 4

PA 98-38A2

_____, 200_

Exhibit A