

COLLIER-ORANGE RIVER #3 230-kV TRANSMISSION LINE  
FLORIDA POWER & LIGHT COMPANY  
CONDITIONS OF CERTIFICATION: TA 03-12

**I. CERTIFICATION CONTROL**

A. Under the control of these Conditions of Certification, Florida Power & Light Company (FPL) will construct and operate a 230-kilovolt (kV) transmission line consisting of an approximately 53.9 mile transmission line between the Orange River substation in Lee County and the Collier substation in Collier County, Florida, consisting of structures, conductors and appurtenant facilities to be located in a final ROW, typically up to 60 feet in width. The facility is known as the Collier-Orange River #3 230-kV transmission line and is to be located within a certified corridor located within Lee and Collier Counties, Florida.

B. These Conditions of Certification, unless specifically amended or modified, are binding upon FPL and shall apply to the construction, operation and maintenance of the certified facility. If a conflict should occur between the design criteria of this project 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.

I Citation: Section 403.531, F.S. (2002).

**II. APPLICABLE RULES**

The construction and operation of the certified transmission line shall be in accordance with all applicable non-procedural provisions of Florida Statutes and Florida Administrative Code, including, but not limited to, the following regulations, except to the extent a variance, exception, exemption or other relief is granted in the final order of certification: Chapter 403 (Environmental Control), Florida Statutes (F.S.), and Chapters 40E-4 (Environmental Resource Permits), 40E-6 (Works or Lands of the District), 40E-40 (General Environmental Resource Standard Permits), 62-4 (Permits), 62-17 Part II (Transmission Line Siting Act), 62-301 (Surface Waters of the State), 62-302 (Surface Water Quality Standards), 62-330 (Environmental Resource Permitting), 62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters), 62-343 (Environmental Resource Permit Procedures), and 62-814 (Electric and Magnetic Fields), Florida Administrative Code (F.A.C.).

II Citation: Section 403.531, F.S. (2002).

**III. DEFINITIONS**

Unless otherwise indicated herein, the meaning of terms used herein shall be governed by the definitions contained in Chapters 373 and 403, Florida Statutes, 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. In addition, the following shall apply:

- A. "Application" shall mean the Application for Corridor Certification for the Florida Power & Light Company Collier-Orange River #3 transmission line, as supplemented by the Sufficiency Response.
- B. "DCA" shall mean the Florida Department of Community Affairs.
- C. "DEP" or "Department" shall mean the Florida Department of Environmental Protection.
- D. "DHR" shall mean the Florida Department of State, Division of Historical Resources.
- E. "DOT" shall mean the Florida Department of Transportation.
- F. "Emergency conditions" shall mean urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity, and necessitating new or replacement transmission line components or access facilities.
- G. "Facility" or "Project" shall mean the Collier-Orange River #3 230-kV electrical "transmission line" as defined in Section 403.522(21), F.S.
- H. "Feasible" or "practicable" shall mean reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs as described in 62-4.540(10), F.A.C.
- I. "FFWCC" shall mean the Florida Fish and Wildlife Conservation Commission.
- J. "FPL" shall mean Florida Power & Light Company, the Applicant/Licensee.
- K. "Licensee" shall mean FPL, which has obtained a certification order for the subject electrical transmission line.
- L. "Listed species" shall mean the species listed in Table 2.3-3 or Table 2.3-2 of the Application as endangered, threatened or species of special concern by FFWCC, the Florida Department of Agriculture and Consumer Services, or the U.S. Fish and Wildlife Service.
- M. "Post-certification submittal" shall mean a submittal made by FPL pursuant to a Condition of Certification.
- N. "ROW" shall mean the transmission line right-of-way to be selected by FPL within the certified corridor in accordance with the Conditions of Certification.
- O. "SFWMD" shall mean the South Florida Water Management District.
- P. "State water quality standards" shall mean the numerical and narrative criteria applied to specific water uses or classifications set forth in Chapter 62-302, F.A.C., as revised through September 30, 2003.
- Q. "Sufficient" shall mean the post-certification filing provides the data required by the relevant condition of certification.
- R. "Transmission line" shall mean the Florida Power & Light Company Collier-Orange River #3 230-kV transmission line.

S. “Wetlands” shall mean those areas meeting the definition set forth in Section 373.019(22), F.S., as delineated pursuant to Chapter 62-340, F.A.C., and ratified by Section 373.4211, F.S.

III Citation: Section 403.531, F.S. (2002).

#### **IV. DESIGN AND PERFORMANCE CRITERIA**

Certification, including these Conditions of Certification, is predicated upon preliminary design ranges and performance criteria. Final engineering design will be within the range described in the Application and explained at the certification hearing. Conformance to those criteria, unless specifically modified in accordance with Rule 62-17.680, F.A.C., is binding upon FPL in the design, construction, operation and maintenance of the certified transmission line. In any instance where a conflict occurs between the Application’s design criteria and the Conditions of Certification, the Conditions shall prevail.

IV Citation: Section 403.531, F.S. (2002).

#### **V. RIGHT OF ENTRY/MONITORING**

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

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

(2) During business hours, to enter FPL’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, FPL 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 FPL 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.

V Citation: Section 403.531, F.S. (2002).

#### **VI. EMERGENCY REPORTING**

Replacement of ROW access roads or transmission lines constructed under this certification necessitated by emergency conditions shall not be considered a modification pursuant to Section 403.5315, F.S. (2002). An oral report of the emergency shall be made to DEP as soon as possible. Within 14 calendar days after correction of an emergency, which would require FPL to perform an activity not in accordance with the Conditions of Certification, a report to DEP shall be made outlining the details of the emergency and the steps taken for its temporary 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.

VI Citation: Section 403.531, F.S. (2002).

## **VII. CERTIFIED CORRIDOR**

The certified corridor is depicted in Figure 1.1-2 in the application as attached hereto in Attachment 1.

VII Citation: Section 403.531, F.S. (2002).

## **VIII. 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 FPL are for the purpose of facilitating the agencies' monitoring of the effects arising from the location of the ROW and the construction and maintenance of the transmission line. This monitoring is for DEP to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with the Conditions of Certification, without any further agency action.

B. Filings – All post-certification submittals of information by FPL are to be filed with DEP. Copies of each submittal shall be simultaneously submitted to any other agency indicated in the specific Condition requiring the post-certification submittal.

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. For the purposes of this condition, completeness shall mean that the information submitted is both complete and sufficient. DEP's finding of incompleteness shall specify the area of the right-of-way affected, and shall not delay further processing of the post-certification submittal for non-affected areas. Within 20 days after submittal the DEP shall hold a meeting with the applicant to discuss any sufficiency issues; the applicant may continue to supplement the submittal with additional information through the 30th day. If any portion of a post-certification submittal is found to be incomplete, FPL 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.

D. Interagency Meetings – Within 45 days of the filing of a complete post-certification submittal, DEP may conduct an interagency meeting with other agencies, which received copies of the 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 reasonable assurance of compliance with the Conditions of Certification has been provided. Failure of DEP to conduct an interagency meeting or 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, FPL shall conduct a field inspection with the agency representative in conjunction with the interagency meeting.

E. Reasonable Assurances of Compliance – Within 90 days of the filing of a complete post-certification submittal, DEP shall give written notification to FPL and the other agency(ies) to which the post-certification information was submitted of its determination whether there is reasonable assurance of compliance with the conditions of certification. If it is determined that reasonable assurance has not been provided, FPL shall be notified with particularity of the deficiencies and possible corrective measures suggested.

Failure to notify FPL in writing within 90 days of receipt of a complete post-certification submittal shall constitute a compliance determination.

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

G. Water Quality Certification – For each post-certification submittal which addresses matters within DEP’s environmental resource permitting jurisdiction, DEP shall provide to the U.S. Army Corps of Engineers a letter in accordance with DEP Rule 62.17.665(7)(f), F.A.C. This letter shall be sent concurrently with a determination of compliance pursuant to paragraph E. above, or immediately upon request by FPL more than 90 days after the filing of a complete post-certification submittal addressing matters within DEP’s environmental resource permitting jurisdiction.

H. Coastal Zone Consistency – For each post-certification submittal, which addresses activities located within joint jurisdictional wetlands or surface waters, that provides reasonable assurance of compliance with the conditions of certification, DEP shall provide to the U.S. Army Corps of Engineers a letter indicating that the activities are consistent with the federally-approved Florida Coastal Zone Management Program

I. Revisions to Design Previously Reviewed for Compliance – The Licensee shall submit to DEP any proposed revisions to the project’s site specific design that were previously reviewed for compliance with these Conditions during the post-certification review process. The DEP shall review the proposed revisions for continued compliance pursuant to paragraphs C, D and E above. Such submittals shall include the same type of information required for the original submittal and shall be submitted prior to construction/implementation.

J. Variation to Submittal Requirements – DEP, in consultation with the appropriate agencies, and FPL 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.

K. Disputes – Any agency which received a copy of a post-certification submittal pursuant to paragraph A. above and a Specific Condition of Certification may dispute a determination by DEP that a post-certification submittal provides reasonable assurances of compliance with the Conditions of Certification by following the procedures set forth in General Condition G-IX within 30 days after receiving notice of DEP’s determination.

VIII Citation: Section 403.531, F.S. (2002); Rules 62-17.600 and 62-17.665, F.A.C.; Sections 373.413 and 373.416, F.S. (2002); Rules 40E-4.301, 40E-4.303 and 40E-4.381, F.A.C.

## **IX. DISPUTE RESOLUTION**

If a situation arises in which mutual agreement cannot be reached between DEP and another agency receiving a post-certification submittal or between DEP and FPL regarding compliance with the Conditions of Certification, then the matter shall be immediately referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, F.S. An expedited hearing under Section 120.57(1), F.S., shall be held as soon as practicable after the matter's referral to DOAH. The Administrative Law Judge (ALJ) shall issue a recommended order to the Secretary of DEP within 60 days after receipt of the hearing transcript. All exceptions to the ALJ's recommended order shall be filed with the Secretary of DEP within 10 days of the issuance of such recommended order. The Secretary of DEP shall issue a decision within 30 days of the filing of the exceptions, if any, or within 30 days of issuance of the ALJ's recommended order if no exceptions are filed. The time requirements under this condition may be altered by agreement of DEP, the Applicant and the other party to the dispute.

IX Citation: Sections 403.527, 403.531 and 120.57, F.S. (2002).

## **X. 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 or such provision to other circumstances shall not be affected thereby.

X Citation: Sections 403.529 and 403.531, F.S. (2002).

## **XI. 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, and 403.533, F.S. Any noncompliance with a Condition of Certification constitutes a violation of Chapter 403, F.S., and is grounds for enforcement action, permit termination, permit revocation, or permit revision. The Licensee is placed on notice that the Department will review this certification periodically and may initiate enforcement action for any violation of these Conditions.

B. All records, notes, monitoring data and other information relating to the construction or operation of this certified transmission line which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the certified source arising under the Florida Statutes or Department rules, except where such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

XI Citation: Section 403.141, 403.161 and 403.533, F.S. (2002)

## **XII. REVOCATION OR SUSPENSION**

This certification may be suspended or revoked pursuant to Section 403.532, Florida Statutes.

XII Citation: Section 403.532, F.S. (2002).

## **XIII. PROPERTY RIGHTS**

The issuance of this certification does not convey any property rights in either real or personal property, or any exclusive privileges thereto. The Licensee shall obtain title, lease, easement, or right of use from the State of Florida to any sovereignty submerged or other state-owned lands occupied by the right of way for the transmission line.

XIII Citation: Section 403.531, F.S. (2002).

## **XIV. PROCEDURAL RIGHTS**

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.

XIV Citation: Chapter 120, F.S. (2002).

## **XV. MODIFICATION OF CERTIFICATION**

A. Pursuant to Section 403.5315(1), F.S., Section 120.569(2)(n), F.S., and Rule 62-17.680, F.A.C., the Siting Board hereby delegates the authority to the Secretary of the Department of Environmental Protection to modify these Conditions of Certification, as follows:

1. The Secretary of the Department may modify any condition of this certification.

2. The Secretary of the Department may grant modifications necessary to meet licensing conditions or requirements imposed on FPL by any federal regulatory agency. FPL shall notify DEP at least 30 days prior to the issuance of the federal license that would require such a modification, if known, or in any event, as soon as the federal agency notifies FPL.

3. The Secretary of the Department may authorize the reconstruction of the ROW or transmission line necessary to avoid or mitigate an emergency condition. Such a modification shall be obtained only when an emergency replacement of a transmission line pursuant to Rule 62-17.695 is not required or when an emergency replacement must be further modified after the emergency conditions requiring the original reconstruction are no longer present.

B. DEP shall give written notice to the parties to the original certification, at their last address of record, of any requests for modification filed by FPL.

XV Citation: Sections 120.569(2)(n) and 403.5315, F.S. (2002); Rule 62-17.680, F.A.C.

## **XVI. SUBMITTALS AND NOTICES REQUIRED BY CONDITIONS**

A. Post-certification submittals and notices shall be sent to the agencies specified in these conditions at the following addresses, unless FPL 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  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

Florida Department of Environmental Protection  
South District Office  
Post Office Box 2549  
Fort Myers, Florida 33902-2549

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

Florida Fish & Wildlife Conservation Commission  
Division of Environmental Services  
620 South Meridian Street  
Tallahassee, FL 32399-1600

Division of Historical Resources and  
State Historic Preservation Officer  
Office of the Director  
R.A. Gray Building  
500 S. Bronough Street  
Tallahassee, FL 32399-0250

Southwest Florida Regional Planning Council  
Office of the Executive Director  
4980 Bayline Drive  
North Ft. Myers, FL 33917

South Florida Water Mgmt. District  
Office of the Executive Director  
P.O. Box 24680  
West Palm Beach, FL 33416-4690

Florida Department of Transportation  
Director of Planning and Production, District 1  
P. O. Box 1249

Bartow, FL 33831-1249

Collier County  
Office of Administrator  
Community Development and Environmental Services  
2800 N. Horseshoe Drive  
Naples, FL 34112

Lee County  
Department of Community Development  
1500 Monroe Street  
Fort Myers, FL 33902

City of Ft. Myers  
City Attorney's Office  
2200 Second Street  
P.O. Drawer 2217  
Fort Myers, FL 33902-2217

XVI Citation: Section 403.531, F.S. (2002).

## **XVII. TRANSFER OF CERTIFICATION**

This certification is transferable, upon Department approval, to an entity determined to be competent to construct, operate and maintain the transmission line in accordance with these Conditions of Certification. A transfer of certification of all or part of a certified facility shall be initiated by the Licensee's filing with the Department and the parties a notice of intent to transfer certification to a new licensee. The notice of intent shall identify the intended new certification holder or licensee and the identity of the entity responsible for compliance with the certification. Parties shall have 30 days to file in writing with the Department any objections to transfer of the certification. Upon the filing with the Department of a written agreement from the intended new licensee to abide by all conditions of certification and applicable laws and regulations, the transfer shall be approved unless the Department objects to the transfer on the grounds of the inability of the new licensee to comply with the conditions of certification, specifies in writing its reasons therefore, and gives notice and opportunity to petition for a Section 120.57, F.S., administrative hearing. A copy of the Department's action on the transfer of certification shall be sent to all parties.

XVII Citation: Section 403.531, F.S. (2002), Chapter 62-17, F.A.C.

## **XVIII. ROW LOCATION**

A. The ROW shall avoid the wetland areas indicated by cross-hatching on the attached aerials except as noted below:

1. To the extent practicable the ROW shall avoid the wetland areas indicated by cross hatching on the attached aerial identified as Attachment 2, except as may be allowed by condition XVIII.F below, or,

2. To the extent practicable the ROW shall avoid the wetland areas indicated by cross hatching on the attached aerial identified as Attachment 3. Should it be necessary to locate the ROW on the north side of the road in the area of these wetlands, the ROW shall be limited to 15 feet directly adjacent to the road right of way, unless an additional adjacent amount is required to accommodate FWC panther crossings.

B. To the extent feasible, FPL shall locate the transmission line ROW so as to avoid the taking of homes.

C. To the extent feasible, as described in the Application, FPL shall collocate within or adjacent to existing ROWs for those portions of the corridor which include such existing ROWs.

D. FPL agrees to locate the transmission line north of Homestead Road and Tice Lane in order to minimize potential impacts to the existing residential areas adjacent to the preferred corridor.

Agency: Lee County, revised

E. To the extent practicable, FPL must finalize a route that minimizes potential adverse impacts to the existing residential areas on Green Meadows Road by locating the transmission line on the west side of Green Meadows Road.

F. Prior to placement of the transmission line in the portion of the corridor located along the west side of Immokalee Road (CR-846) in Section 34, T47S, R27E, and Section 3, T48S, R27E, indicated by cross-hatching on the attached aerial identified as Attachment 4, FPL shall attempt through all available means, including the exercise of the power of eminent domain, to locate the transmission line ROW on the east side of Immokalee Road in this area. If FPL is unable to obtain the necessary property interest to place the transmission line ROW on the east side of Immokalee Road in this area, the transmission line shall be located adjacent to the western edge of the road right-of-way – such that there is no intervening land between the transmission line ROW and existing or proposed road right-of-way.

Agency: Collier County Ordinance No. 2002-32, which established the Rural Fringe Mixed Use District in the Collier County Growth Management Plan, revised.

G. FPL will, through all lawful means available to it, locate the subject transmission line structures south of the northern right-of-way line of Buckingham Road in Lee County, with the exception of a single stub pole and associated anchors installed to accommodate the transmission line turning a sharp angle to turn south in the easternmost portion of the corridor along Buckingham Road. If FPL is unable to obtain the necessary property interests to place the transmission line right-of-way within this area, FPL will locate the transmission line adjacent to the northern edge of the road right-of-way, such that there is no intervening land between the transmission line and the Buckingham Road right-of-way. Any trees or shrubs disturbed by FPL north of the centerline of Buckingham Road right-of-way will be replaced on adjacent Lee County property at FPL's expense.

Agency: Lee County

## **XIX. PROCESS FOR REVIEW OF ROW LOCATION**

A. Prior to the finalization of the ROW location, three copies of blue-line reproductions of the most recent available aerial photographs at a scale of 1" = 400' with wetland locations generally identified shall be submitted to DEP, and one copy each to SFWMD, DOT, DCA, Lee County and Collier County, delineating the certified corridor, and

the selected transmission line ROW. In addition, FPL shall note on the aerial photographs new development within the corridor that has occurred since the photograph was taken. FPL shall notify all parties of such filing and shall meet with DEP to discuss the ROW location. This information may be submitted in segments. The agencies receiving copies of the aerial photographs from FPL shall have an opportunity to review the photographs and to notify DEP of any apparent conflicts with the requirements of the Conditions of Certification within 10 working days from receipt of the photographs. However, this paragraph shall not operate to avoid the need for post-certification submittals and compliance reviews otherwise required by the Conditions of Certification.

B. After review of the aerial photographs and comments from the other reviewing agencies, if DEP has reason to believe that the construction of the transmission line, access roads or pads within FPL's designated ROW cannot be accomplished in compliance with the Conditions of Certification, FPL shall be so notified in writing, with copies to other parties to the certification proceeding, within 15 working days from receipt of the aerial photographs. Such notice shall specify with particularity the basis for DEP's conclusion, and possible corrective measures shall be suggested which would bring the Project into compliance. If such notice is provided, FPL may relocate the ROW within the certified corridor to address the specified concern, or FPL may proceed with design of the transmission line on the noticed ROW at its own risk that construction can be accomplished in compliance with the Conditions of Certification.

C. The acquisition of a particular ROW or the expenditure of funds toward acquisition of a particular ROW prior to the agencies' review pursuant to this condition will be at FPL's risk, and no party will be estopped by such acquisition to seek disapproval of the construction of the transmission line or access road within the ROW in accordance with these Conditions of Certification.

D. After FPL has acquired interest in the entire length of the transmission line ROW in a county, FPL shall:

1. File a statement with the clerk of the circuit court for each county through which the corridor passes certifying that all lands required for the transmission line ROW within the corridor have been acquired. FPL shall also file with the county Planning Department a map at the scale of 1" = 400' showing the boundaries of the acquired ROW.

2. File with DEP a map at a scale of 1" = 400' showing the boundaries of the acquired ROW, if such boundaries are different from those shown in the filing required by paragraph A. above. Such maps shall comply with the requirements of paragraph A. If the boundaries have not changed, FPL shall file a statement with DEP accordingly.

XIX Citation: Sections 403.531 and 403.4312, F.S. (2002); Rule 62-17.600(4), F.A.C.

## **XX. ROW SURVEYS**

A. Endangered Species - Prior to ROW acquisition where access is available, but in any event prior to start of construction within any of the ROWs, FPL shall survey the final right-of-way in areas characterized by habitat features for listed species to identify the occurrence of any listed species. The survey shall be conducted in accordance with USFWS/FWC guidelines by a person or firm that is knowledgeable and experienced in conducting flora and fauna surveys for endangered species. The survey shall be done in

accordance with recognized methodologies. This survey shall also identify any wading bird colonies within one-half mile of the project ROW that may be affected. If listed wildlife species are found, their presence shall be reported to the DEP Siting Coordination Office, the DEP South District Office, the FFWC's Office of Environmental Services, Collier County and U.S. Fish and Wildlife Service. 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 practicable. If avoidance is not practicable, FPL shall consult with DEP, FFWC, and, if possible, 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, FFWC and Collier County.

XX.A. Citation: Sections 372.072 and 403.531, F.S. (2002); Chapters 5B-40 and 39-27, F.A.C., Collier County.

B. Red-cockaded Woodpeckers - Prior to the ROW acquisition where access is available, but in any event prior to construction, all pine forests in the proposed ROW shall be surveyed for the possible occurrence of red-cockaded woodpeckers, colony trees or any adjacent mature timber, which could potentially become colony trees. If any of the above are found, the ROW shall be routed around the colony. In addition, FFWC shall be contacted for site-specific coordination.

C. Gopher Tortoises - Prior to final design of the transmission line facilities, all open woods, scrub, and grasslands in the proposed ROW shall be surveyed for the possible occurrence of Gopher tortoise, active burrows, inactive burrows, or habitat suitable for potential burrowing. If Gopher tortoise, active burrows, and or inactive burrows are found, the poles, pads, or access road shall be located to avoid the burrows or appropriate permits shall be obtained from the FWC. In addition, FFWC shall be contacted for site-specific coordination.

D. Archaeological Survey - After the ROW has been selected, FPL shall conduct a survey of archaeological sensitive areas, as determined in consultation with the Department of State, Division of Historical Resources (DHR), where they are crossed by the ROW. This report shall be submitted to DHR. If practicable, sites considered to be eligible for the National Register shall be avoided during construction of the transmission line and access roads, and subsequently during maintenance of the ROWs. For any other significant site, FPL shall consult with DHR to determine appropriate action. If avoidance is not practicable, impact shall be mitigated through archaeological salvage operations or other methods acceptable to DHR. If historical or archaeological artifacts are discovered at any time within the project site, FPL shall notify the DEP Southwest District office and the Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, Tallahassee, Florida 32399-0250, telephone number (850) 487-2073.

XX.D. Citation: Sections 267.061 and 403.531, F.S. (2002).

## **XXI. ACTIVITIES IN WETLANDS**

### **A. Activities Within Wetlands or Other Surface Waters**

At least 90 days prior to the projected commencement of construction of any portion of the transmission line in wetlands or other surface waters, FPL shall submit to DEP's South District Environmental Resource Permitting Section and the U.S. Army Corps of Engineers a Joint Environmental Resource Permit Application, DEP Form No. 62-343.900(1).

Information may be submitted by discrete sections of the ROW; FPL shall consult with the DEP to identify mutually agreeable section for purposes of wetlands submittals. The completed application for each section shall be reviewed pursuant to Condition VIII. "Construction" in this context shall include land clearing, excavation the placement of structure pads, access roads, culverts, fill materials, and related activities. Construction activities shall not include the stringing of conductors on existing transmission line structures or on structures located outside wetlands or other surface waters.

XXI.A. Citation: Sections 373.414 and 373.416, F.S. (2002); Rules 40E-4.091, 40E-4.101, 40E-4.301, 40E-4.302, 40E-4.303 and 40E-4.381, F.A.C.

### **B. Reduction and Elimination of Impacts**

1. Where the ROW crosses wetlands or other surface waters, FPL shall utilize adjacent existing FPL access roads and public roads for access to the transmission line ROW for construction, operation and maintenance purposes to the greatest extent feasible.

2. Finger roads, connecting the existing road to the structure pads and access roads, which must be constructed in areas where an existing FPL access road or public road is not available shall be constructed in a manner which does not impede natural drainage flows and reduces or eliminates adverse impacts to on-site and adjacent wetlands to the extent practicable. FPL shall be deemed to have satisfied this condition if the access and finger roads satisfy the criteria of Rules 40E-4.301 and 40E-4.302, F.A.C., and the applicable portions of the Basis of Review for Environmental Resource Permit Applications.

3. FPL shall make an effort to reduce or eliminate impacts to wetlands and other surface waters within the certified corridor. The length of the span between transmission line structures shall be varied as appropriate and other design changes, which shall include but not be limited to a reduction in pad size, elimination of access roads, use of finger fill from existing ROWs and/or modification of construction techniques shall be considered to eliminate or reduce wetland impacts.

4. To the extent practicable and utilizing the typical structures shown in the Application, access roads, culverts and structures shall be located:

- a. to reduce or eliminate wetland impacts from the project; and
- b. to avoid conflict with existing underground water and sewer facilities properly documented in county records.

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

Agency: Collier County

C. Consultation with Wetland Agencies - At the request of FPL, DEP shall conduct an interagency meeting for FPL to consult with the wetlands resource permitting staffs of DEP and SFWMD, and the FWC's staff, prior to the finalization of possible access road locations, transmission line structure locations, and the establishment of water control

structure types and general locations in wetlands which are to be reflected in any post-certification submittals. At DEP's request, FPL shall conduct a field inspection with the agencies' staff representatives in conjunction with the interagency meeting.

## **XXII. DRAINAGE AND EROSION CONTROL**

A. Maintenance of Drainage/Hydroperiod – FPL shall employ best management practices, construction techniques, and adequate culverting in order to maintain existing drainage patterns along the transmission line ROW. Within all wetland areas affected, wetland control elevations shall be established and maintained. This condition shall not preclude FPL from improving preconstruction hydroperiods provided such improvement can be achieved in compliance with the other Conditions of Certification. FPL shall be deemed to have satisfied this condition if the access and finger roads satisfy the criteria of Rules 40E-4.301 and 40E-4.302, F.A.C., and the applicable portions of the Basis of Review for Environmental Resource Permit Applications.

XXII.A. Citation: Sections 373.416 and 403.531; Rules 40E-4.091 and 40E-4.301, F.A.C.

B. Erosion/Runoff Control

1. FPL shall compact or otherwise stabilize any fill material placed around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters.

2. Grass seed and mulch or sod must be installed and maintained on exposed slopes prior to finalization of construction, and at all times measures must be taken to prevent erosion, sedimentation or turbid discharges into wetlands and or waters of the state.

3. To control runoff which may reach and thereby pollute waters of the state, necessary measures shall be utilized to settle, filter, treat or absorb silt-containing or pollutant-laden storm water to ensure against spillage or discharge of excavated material that may cause turbidity in excess of 29 Nephelometric Turbidity Units (NTU) above background in waters of the state. Control measures may consist of sediment traps, barriers, berms, and vegetation plantings, and must be maintained in effective condition at all locations until construction in the area is completed and disturbed soil areas are stabilized. Exposed or disturbed soil shall be protected and stabilized as soon as possible to minimize silt and sediment-laden runoff. The pH of the runoff shall be kept within the range of 6.0 to 8.5. FPL shall comply with the applicable nonprocedural requirements in Rule 40E-4, F.A.C.

XXII.B. Citation: Section 403.531, F.S. (2002); Rule 40E-4.381, F.A.C.

## **XXIII. CONSTRUCTION PRACTICES**

A. Wetland Clearing

1. FPL shall use only restrictive clearing practices during construction and maintenance of the transmission line 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 in the post-certification review process. Restrictive clearing includes the

removal of vegetation from areas extending from the transmission line centerline to 20 feet on each side of the outer conductors and in the structure pad areas (approximately 60 feet by 50 feet). Removable construction matting in conjunction with best management practices may be used in wetlands to support equipment. The remainder of the ROW in wetland areas, beyond 20 feet on either side of the outer conductors and the structure pads, shall not be cleared; however, vegetation that has an expected mature height greater than 14 feet may be removed. In addition, danger timber (trees or limbs likely to contact a conductor if felled) within or outside the right-of-way may be removed.

2. Stumps may be removed in wetlands where a structure is to be placed (typically a 10-foot by 10-foot area within the cleared structure pad). Tree stumps under the conductors and in the structure pad may be removed, sheared, or ground to 6 inches below the ground line to allow for travel and construction activities. Tree stumps in the area beyond 20 feet on either side of the outer conductors shall be left in place to preserve the root mat.

XXIII.A. Citation: Section 403.531, F.S.

B. 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, and any other applicable county regulation. 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., FPL shall seek approval from the DEP South District Office whose approval may be granted in conjunction with the Division of Forestry and any other county regulations that may apply. 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.

XXIII.B. Citation: Section 403.531, F. S. (2002); Chapters 5I-2 and 62-256, F.A.C.

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

XXIII.C. Citation: Section 403.531, F.S. (2002); Chapter 62-701, F.A.C.

D. Hazardous Substances – If hazardous substances are used in the construction or maintenance of the transmission line, FPL shall provide the DEP with reasonable assurances that such hazardous substances will not enter the surface water management system for the transmission line.

XXIII.D. Citation: Sections 403.531 and 403.414, F.S. (2002); Chapter 40E-4, F.A.C.

## XXIV. MITIGATION

A. If the project complies with the following, DEP shall not require mitigation:

1. All permanent fill shall be at grade. Fill shall be limited to that necessary for the electrical support structures, towers, poles, guy wires, stabilizing backfill, and at-grade access roads limited to 20-foot widths; and

2. The Licensee may utilize access and work areas limited to the following: a linear access area of up to 25 feet wide between electrical support structures, an access area of up to 25 feet wide to electrical support structures from the edge of the right-of-way, and a work area around the electrical support structures, towers, poles, and guy wires. These areas may be cleared to ground, including removal of stumps as necessary, and

3. Vegetation within wetlands may be cut or removed no lower than the soil surface under the conductor, and 20 feet to either side of the outermost conductor, while

maintaining the remainder of the project right-of-way within the wetland by selectively cleaning 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

4. 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

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

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

7. 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. If the project does not comply with the requirements of paragraph A. above, mitigation can be required. For construction in wetlands that does not comply with those requirements, FPL shall propose a mitigation plan as a post-certification submittal under Condition VIII., providing the following information to the DEP South District 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 impact at each such site;

3. narrative, drawings, location map, and aerial photographs showing and explaining the proposed mitigation;

4. detailed description of the existing conditions at the impact site and at the mitigation area;

5. acreage and wetland type of the proposed mitigation;

6. 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.

C. Mitigation plans must be found to fully offset the functions and values provided by wetlands that will be degraded or eliminated. DEP will work with FPL in the development of acceptable mitigation plans. The mitigation plans proposed by FPL shall be submitted for review and compliance monitoring to DEP under Condition VIII.

D. If DEP, upon review of the proposed mitigation plan, determines that the proposed mitigation is inadequate to offset the wetland loss and habitat degradation from this project, FPL may propose additional or alternative mitigation or dispute the determination pursuant to Condition IX.

E. If the proposed mitigation plan is deemed acceptable by DEP, DEP shall establish construction conditions, success criteria and a monitoring plan to be carried out for the approved mitigation in accordance with DEP Rule 62-354, F.A.C. These conditions, criteria and monitoring plan shall be incorporated into the certification conditions as an Attachment.

F. 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., shall commence until DEP approves a mitigation plan, and mitigation construction conditions, success criteria and a monitoring plan are incorporated into the certification conditions.

H. FPL shall be deemed to have met the requirements of this condition if FPL satisfies the criteria of either Section 4.3 or 4.4 of the Basis of Review for Environmental Resource Permit Applications.

XXIV. Citation: Sections 373.414 and 403.531, F.S. (2002); Rules 40E-4.091, 40E-4.301, 40E-4.302, and 62-341.620, F.A.C.

## **XXV. ELECTRIC AND MAGNETIC FIELD EFFECTS**

A. Bee Hives - FPL shall advise known beekeepers having bee hives within or near the ROW of the potential effect of the transmission line on bee hives.

XXV.A Citation: Section 403.531, F.S.

B. Radio and Television Interference – FPL shall investigate all complaints and take appropriate corrective action for impacts to radio or television reception caused by the proposed transmission line.

XXV.B Citation: Section 403.531, F.S.

C. Electric and Magnetic Fields – The Collier-Orange River #3 230-kV transmission line shall comply with the applicable electric and magnetic field standards set forth in Chapter 62-814, F.A.C. The electric and magnetic fields associated with any configuration developed during the final design of this project that is not shown in the Application shall be provided to DEP on DEP Form 62-814.900 at least 90 days prior to the start of construction, as required by Rule 62-814.520(3), F.A.C.

XXV.C Citation: Section 403.523(10), F.S. (2002); Chapter 62-814, F.A.C.

## **XXVI. HERBICIDES**

Herbicides applied in the 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 in the ROW unless effects on non-targeted vegetation are minimized.

XXVI Citation: Sections 403.061, 403.088, 487.031 and 487.041, F.S. (2002)

## **XXVII. OPERATION AND MAINTENANCE OF FACILITIES**

FPL shall properly operate and maintain the transmission line to achieve compliance with the Conditions of Certification.

XXVII Citation: Section 403.531, F.S. (2002).

## **XXVIII. SOUTH FLORIDA WATER MANAGEMENT DISTRICT WORKS AND LANDS**

### **A. *Legal/Administrative Conditions***

#### **1. Compliance Requirements**

This project must be constructed, operated and maintained in compliance with and meet all non-procedural requirements set forth in Chapter 373, F.S., and Chapter 40E-6 (Works or Lands of the District), F.A.C., unless otherwise authorized in this Certification.

#### **2. Construction, Operation, and Maintenance Responsibilities**

The Licensee shall be responsible for the construction, operation, and maintenance of all facilities installed for the proposed project.

XXVIII.A. Citations: 373.044, 373.085, 373.086, 373.113, and 373.129, F.S.; Rule 40E-6.381, F.A.C.

### **B. *Enforcement***

1. The SFWMD may take any and all lawful actions that are necessary to enforce any condition of this Certification related to SFWMD Works and Lands (Condition XXVIII). Prior to initiating such action, the SFWMD shall notify the Secretary of DEP of the proposed action.

Agency: SFWMD Reference: Section 373.603, F.S.; Rule 40E-6.501, F.A.C.

2. Licensee agrees to pay all removal and restoration costs, investigative costs, court costs and reasonable attorney's fees, including appeals, resulting from any action taken by the SFWMD to obtain compliance with this Condition XXVIII.

Agency: SFWMD

### **C. *Right of Way Conditions within Works and Lands of SFWMD***

#### **1. GENERAL:**

a. Construction Within SFWMD Right-of-Way: Prior to the commencement of construction of any portion of the transmission line which will cross over, on, under, or otherwise use the SFWMD's right-of-way, the Licensee shall submit a pre-construction videotape of that portion of SFWMD's right-of-way that is crossed or overlapped by the transmission line right-of-way except where the crossing of the SFWMD right-of-way is an aerial crossing in which case no videotape is required. In addition, the Licensee shall submit complete scaled or fully dimensioned 8½" by 11" drawings to the SFWMD showing the proposed facilities for a determination of compliance with the requirements of Chapter 40E-6, F.A.C. The drawings shall depict the proposed crossings/parallel runs within SFWMD's right-of-way in both plan and profile views and shall show, at a minimum, the following:

- (1) The canal right-of-way lines;
- (2) The top of the canal bank and its elevation;
- (3) The width and elevation of any berms or levees;

- (4) The canal maintenance berm and its elevation at its highest point;
- (5) The location of any poles, towers, and/or access roads located within the SFWMD's right-of-way;
- (6) The location of any anchors, downguys or spanguys within the SFWMD's right-of-way;
- (7) The elevation of the lowest line, wire, or cable crossing over the SFWMD's right-of-way;
- (8) The location and elevation of any buried facilities;
- (9) The location of the facilities in relation to a section line, major road or other prominent well-known landmark by which the facilities may be located in the field.

XXVIII.C.1.a. Citations: 373.085 and 373.086, F.S.; Rules 40E-6.091(1) and 40E-6.201(1)(h), F.A.C.

b. Vertical Clearances: Vertical clearances for any aerial crossings over SFWMD canals and rights-of-way shall conform to SFWMD criteria, as required by Chapter 40E-6, F.A.C., unless otherwise authorized in this Certification.

XXVIII.C.1.b. Citations: Sections 373.085(1) and 373.086(1), F.S.

c. Use of SFWMD Right-of-Way During and After Construction: Should the Licensee desire to utilize the SFWMD's right-of-way for access during construction of the transmission line and/or for inspection and maintenance after construction, the Licensee shall submit to the SFWMD a detailed plan identifying the proposed route, type and number of vehicles to be used and the frequency of such use. All use of the SFWMD's right-of-way by the Licensee shall be in accordance with Chapter 40E-6, F.A.C., unless otherwise authorized in this Certification.

XXVIII.C.1.c. Citations: Sections 373.085 and 373.086, F.S.; Chapter 40E-6, F.A.C.

d. Construction Coordination Adjacent to SFWMD Right Of Way: In those areas where the transmission line is proposed to be located adjacent to SFWMD right of way, the Licensee shall coordinate with the SFWMD's right of way staff during the post-certification review process regarding any potential conflicts between the location/height of the proposed transmission line facilities and the SFWMD's use of heavy equipment to perform routine or emergency field maintenance operations within its right of way.

XXVIII.C.1.d. Citation: Section 373.086, F.S.

## 2. STANDARD LIMITING CONDITIONS:

a. All structures on SFWMD works or lands constructed by Licensee shall remain the property of Licensee, who shall be solely responsible for ensuring that such structures and other uses remain in good and safe condition. The Licensee is advised that other federal, state and local safety standards may govern the occupancy and use of the SFWMD's lands and works. The SFWMD assumes no duty with regard to ensuring that such uses are so maintained and assumes no liability with regard to injuries caused to others by any such failure.

b. Licensee solely acknowledges and accepts the duty and all associated responsibilities to incorporate safety features, which meet applicable engineering practice and accepted industry standards, into the design, construction, operation and continued maintenance of the authorized facilities/use. This duty shall include, but not be limited to, Licensee's consideration of the SFWMD's regulation and potential fluctuation, without notice, of water levels in canals and works, as well as the Licensee's consideration of upgrades and modifications to the authorized facilities/use which may be necessary to meet any future changes to applicable engineering practice and accepted industry standards. Licensee acknowledges that the SFWMD's review of this project and authorization to commence construction, including, but not limited to, any field inspections performed by the SFWMD, does not in any way consider or ensure that the authorized use/facilities are planned, designed, engineered, constructed, or will be operated, maintained or modified so as to meet applicable engineering practice and accepted industry standards, or otherwise provide any safety protections. Licensee further acknowledges that any inquiries, discussions, or representations, whether verbal or written, by or with

any SFWMD staff or representative during the Certification review process, including, but not limited to, any field inspections, shall not in any way be relied upon by Licensee as the SFWMD's assumption of any duty to incorporate safety features, as set forth above, and shall also not be relied upon by Licensee in order to meet Licensee's duty to incorporate safety features, as set forth above.

c. Licensee agrees to abide by all of the terms and conditions of this Certification, including any representations made in the application for Certification and related documents. Licensee agrees to pay all removal and restoration costs, investigative costs, court costs and reasonable attorney's fees, including appeals, resulting from any action taken by the SFWMD to obtain compliance with this Condition XXVIII where SFWMD is the prevailing party. If SFWMD legal action is not taken by staff counsel, "reasonable attorney's fees" is understood to mean the fair market value of the services provided, based upon what a private attorney would charge.

d. This Certification does not convey any property rights nor any rights or privileges other than those specified herein and this Certification shall not, in any way, be construed as an abandonment or any other such impairment or disposition of the SFWMD's property rights except as provided in this Certification. The SFWMD approves the use/facilities authorized in this Certification only to the extent of its interest in the works of the SFWMD. Licensee shall obtain all other necessary federal, state, local, special district and private authorizations prior to the start of any construction or alteration authorized by this Certification. Licensee shall comply with any more stringent conditions or provisions, which may be set forth in other required permits or other authorizations. The SFWMD, however, assumes no duty to ensure that any such authorizations have been obtained or to protect the legal rights of the underlying fee owner, in those instances where the SFWMD owns less than fee.

e. Unless specifically prohibited or limited by statute, Licensee agrees to indemnify, defend and save the SFWMD (which used herein includes the SFWMD and its past, present and future employees, agents, representatives, officers and Governing Board members and any of their successors and assigns) from and against any and all lawsuits, actions, claims, demands, losses, expenses, costs, reasonable attorneys fees, judgments and liabilities which arise from or may be related to the Licensee's interest in the ROW, construction, maintenance or operation of the transmission line or the possession, utilization, maintenance, occupancy or ingress and egress of the SFWMD's right of way which arise directly or indirectly and/or are caused in whole or in part by the acts, omissions or negligence of the Licensee or of third parties acting as agents of Licensee. Licensee agrees to provide legal counsel acceptable to the SFWMD if requested for the defense of any such claims.

f. The SFWMD does not waive sovereign immunity in any respect.

g. The Licensee shall not engage in any activity regarding the authorized use which interferes with the construction, alteration, maintenance or operation of the works of the SFWMD, including:

- (1) discharge of debris or aquatic weeds into the works of the SFWMD;
- (2) causing erosion or shoaling within the works of the SFWMD;
- (3) planting trees or shrubs or erecting structures which limit or prohibit access by SFWMD equipment and vehicles, except as may be authorized by this Certification. Licensee shall be responsible for any costs incurred by the SFWMD resulting from any such interference, as set forth in (1), (2), and (3), above;
- (4) leaving construction or other debris on the SFWMD's right of way or waterway;
- (5) damaging SFWMD berms and levees;
  - (a) the removal of SFWMD owned spoil material;
  - (b) removal of or damage to SFWMD locks, gates, and

fencing;

vehicular access; or

- (c) opening of SFWMD rights of way to unauthorized
- (d) running or allowing livestock on the SFWMD's right of way.

h. The SFWMD is not responsible for any personal injury or property damage which may directly or indirectly result from the use of water from the SFWMD's canal or any activities which may include use or contact with water from the SFWMD's canal, since the SFWMD periodically sprays its canals for aquatic weed control purposes and uses substances which may be harmful to human health or plant life.

i. Licensee shall not interfere with any other existing uses or existing facilities authorized by the SFWMD. SFWMD will notify the Licensee's Manager Projects – Siting and Permitting, at POB 14000 Juno Beach, FL 33408, in writing of any ROW application it receives within fifty (50) horizontal feet from Licensee's transmission line. However, if a conflict arises between FPL's and another licensee's use of SFWMD works or lands, SFWMD shall not be required to mediate the dispute, nor shall SFWMD be responsible to pay for any necessary relocation of FPL facilities, should such relocation be determined by a court of competent jurisdiction to be required.

j. Licensee shall be responsible for the repair or replacement of any existing facilities located within the SFWMD's right of way which are damaged as a result of the installation or maintenance of the authorized facilities.

k. It is the responsibility of the Licensee to make prospective bidders aware of the terms and conditions of this Certification. It shall be the responsibility of the Licensee's contractors to understand the terms and conditions of this Certification and govern themselves accordingly.

XXVIII.C.2. Citations: 373.044, 373.113, 373.085(1), 373.086, 373.103, 373.129, and 373.603, F.S.; Rule 40E-6.381, F.A.C.

#### ***D. Special Conditions for Use of SFWMD Lands:***

##### **1. General Requirements**

a. Prior to commencement of construction or utilization of the SFWMD's right of way, the Licensee is required to contact the SFWMD's field representative at the Big Cypress Basin office to schedule a pre-construction meeting.

b. A copy of the Certification application, Certification order, SFWMD post-certification submittals, and the SFWMD's construction authorization letter will be kept at a location to be determined until completion of all phases of construction and acceptance of the constructed facilities and restoration of the right of way by the SFWMD's field representative.

c. The Licensee shall be responsible for the removal of all materials and debris from the SFWMD's canal and right of way; and, for the repair, replacement and restoration of any sections of the SFWMD's right of way damaged or disturbed resulting from the authorized activity. Restoration shall be to the satisfaction of the SFWMD and include grading/re-shaping, seeding, re-sodding with bahia, argentine, or other species recognized by the SFWMD as a drought tolerant species.

d. Should the authorized activities or placement of the authorized facilities within the SFWMD's right of way or maintenance of same contribute to shoaling, erosion, wash-outs or other damage of or to the SFWMD's right of way, berm or side slope of the canal, it is the Licensee's sole responsibility and expense to, upon notification from the

SFWMD, immediately take appropriate steps to restore, to the extent of its contribution, the right of way to its pre-construction condition to the satisfaction of the SFWMD.

e. At no time shall the Licensee place permanent or semi-permanent above-ground encroachments or facilities within the 40 foot wide strip of land lying parallel to the canal as measured from the top of the existing canal bank landward, unless otherwise authorized in this Certification.

f. At no time shall the Licensee place facilities crossing over SFWMD structures, unless otherwise authorized in this Certification.

g. At no time shall the Licensee place transmission line structures within the SFWMD's designated 100 foot long equipment staging areas located at all bridges and pile-supported utility crossings, unless otherwise authorized in this Certification.

h. Immediately upon completion of the authorized work, the Licensee shall contact the SFWMD's field representative at the Big Cypress Basin office to schedule a final inspection.

2. Licensee's Access Road Culvert Connections to SFWMD Works

If Licensee proposes any culvert connections within SFWMD right-of-way to SFWMD Works, then:

a. The crown of the authorized connection shall be set at a minimum of one-half foot below the design water surface elevation or lower.

b. The top of the rip-rap headwall must match the elevation of the existing ground.

c. The Licensee shall construct the endwall/headwall to include adequate returns to prevent erosion.

d. The Licensee shall take all feasible measures acceptable to the SFWMD to prevent the discharge of debris or aquatic weeds into any SFWMD project works by the authorized use.

e. All culverts 36 inches in diameter or larger that serve to connect to works of the SFWMD must be equipped with a skimmer or baffle which effectively precludes the discharge of aquatic weeds into SFWMD project works by the authorized use.

f. The Licensee is solely responsible for maintenance of the skimmer or baffle, if any are installed by Licensee.

g. The Licensee shall adequately identify all culvert connections with a permanent type, above ground marker placed within the SFWMD's right of way at location(s) specified by the SFWMD's field representative.

3. Temporary Use of SFWMD Right Of Way For Construction Activities

a. Prior to commencement of construction or utilization of the SFWMD's right of way, the Licensee is required to contact the SFWMD's field representative at the Big Cypress Basin office to schedule a pre-construction meeting. The Licensee shall prepare and present at the pre-construction meeting:

(1) A list of 24 hour contact personnel. The list shall include the contractor and designer, their titles and telephone numbers for office, mobile, beeper, home or local residences.

(2) A written inventory of the type of vehicles, construction equipment, other machinery and materials which will be located within the SFWMD's right of way.

(3) Written procedures for the clearing of all construction materials, machinery, equipment and vehicles from the canal and the area immediately adjacent to the canal within 24 hours notice from the SFWMD.

(4) A list containing the names and contact numbers of the individuals responsible for the various operations involved in the clearing procedures.

b. This temporary authorization is for the use of the Licensee and the Licensee's contractor(s)/sub-contractor(s) only.

c. The Licensee is solely responsible for providing necessary deposits associated with the issuance of required SFWMD key permit(s).

d. The Licensee shall be responsible for locking the SFWMD's access gate upon entering and leaving the SFWMD's right of way. The Licensee shall take all necessary measures to preclude the general public from accessing the right of way with motorized vehicles.

e. The Licensee is responsible for posting a watchman at the SFWMD's vehicular access gate during any working hours that the gate remains open. At no time shall an open SFWMD gate be left unlocked and unattended.

f. The Licensee is responsible for providing and utilizing acceptable dust control measures during the duration of this permit.

g. No vehicular maintenance/routine repair activities or substances or parts associated with the routine repair or maintenance of vehicles/equipment will take place, be used, stored or discarded within the right of way nor shall the SFWMD's right of way be used for storage or long-term parking of equipment, associated machinery or construction trailers. Equipment parked on SFWMD right of way overnight or for other short periods shall not block access for SFWMD vehicles performing maintenance activities. Refueling or emergency repair of construction vehicles/equipment shall only be conducted with a pan or other catchment mechanism in place which is of sufficient size and retention capability to prevent a spill of any hazardous substance.

h. The Licensee shall not stockpile excavated material in the canal or within the SFWMD's right of way. The Permittee is responsible for the removal of all excess project related material from the SFWMD's right of way, unless otherwise authorized in this Certification

i. To demonstrate financial ability to perform the requirements under this Condition XXVIII, prior to the commencement of construction on SFWMD's right of way, FPL shall submit to SFWMD a copy of its most recent annual report, including publicly available financial statements.

#### 4. Storm Event Notifications/Requirements During Construction Activities

a. If storm, hurricane, or emergency circumstances are developing, the SFWMD will attempt to provide a forty-eight (48) hour notice. The Licensee will be contacted by telephone or a visit to the construction site wherein the Licensee will be informed of the emergency situation. The Licensee is put on notice that the 48-hour notice is a warning that the SFWMD may or may not be able to provide the Licensee.

b. If storm, hurricane or emergency circumstances have developed, the SFWMD will contact the Licensee by telephone or visit the site to place the Licensee on 24-hour alert. At this time, the Licensee and the Licensee's contractor(s) and sub-contractor(s) must begin securing the project site per the SFWMD's approved contingency plans.

c. The Licensee is advised that the SFWMD's hurricane, storm event and/or emergency alert may differ from the National Hurricane Center or the local news and weather. The SFWMD takes into consideration the numerous factors concerning construction within the channel and canal rights of way. As such, upon the SFWMD's notification to the Licensee of a pending emergency, storm event, or hurricane, the Licensee has twenty-four (24) hours or less to comply with SFWMD orders and the previously submitted SFWMD-approved contingency plan.

5. Aerial Crossings Over Canals

a. Aerial crossings over SFWMD canals shall have a minimum vertical clearance of 48 feet above the highest elevation of the existing berm as measured from the point of maximum sag. If field conditions do not permit the installation of a crossing meeting this criterion, a sub-standard crossing is not authorized and shall not be constructed.

b. Prior to approval of the final right-of-way/project design on District Lands, the Licensee shall investigate all feasible options for placement of aerial transmission line facilities to provide at least fifty (50) feet horizontal clearance from the north end of the SFWMD's Corkscrew Water Control Structure No. 1, located at Immokalee Road and the SFWMD's Corkscrew Canal. If the Licensee determines that the placement of aerial transmission line facilities within fifty (50) horizontal feet of the north end of Corkscrew Water Control Structure No. 1 is unavoidable, the Licensee shall provide for alternative engineering acceptable to the District or the relocation of the structure at a location approved by the SFWMD. All design and relocation expenses shall be the responsibility of the Licensee.

6. Transmission Line Parallel To And Within Right of Way

Any and/or all aerial pole-supported parallel transmission line facilities authorized to be placed within the SFWMD's rights of way shall not interfere with the SFWMD's maintenance and operation activities as determined at the time of post-certification review. The Licensee shall provide a sufficient vertical clearance as specified in Chapter 40E-6, F.A.C., to allow SFWMD maintenance vehicles to ingress/egress and traverse the right of way to perform routine and emergency field maintenance operations.

7. Removal of Exotic/Nuisance Vegetation

a. The Licensee shall remove all exotic vegetation from within the FPL right of way where it is within SFWMD's lands and shall maintain this project area on a regular cycle to control the proliferation of exotic vegetation for the life of the project.

b. The Licensee is put on notice that successful removal of the exotic vegetation may require the application of a suitable herbicide on cut stumps, etc. by following manufacturers label instructions.

XXVIII.D. Citation: Sections 373.044, 373.113, 373.085(1), 373.086, 373.103, 373.129, and 373.603, F.S.

***E. Lake Trafford Critical Restoration Project***

The Licensee shall avoid any proposed temporary or permanent use of SFWMD-owned land located near Lake Trafford in Section 25/Township 46 South/Range 28 East that have been designated for use as a spoil disposal site for the Lake Trafford Critical Restoration (dredging) project. If the Licensee determines that the final right-of-way must be located on SFWMD-owned land to construct the proposed transmission line project and that no viable alternatives exist, the final right-of-way shall occupy no greater than a 60 foot wide corridor parallel to and adjacent to the SFWMD's eastern property boundary. In addition, the proposed transmission line project shall be consistent with all State and Federal environmental permits/approvals that have been issued for this project and shall not interfere with the SFWMD's implementation of this project. If any permits/approvals obtained by the SFWMD for this project need to be modified to accommodate the Licensee's proposed transmission line project, the Licensee shall be responsible for obtaining the required permit modifications and shall pay the cost of any related application/review fees. The Licensee shall coordinate with the SFWMD during the post-certification review process regarding any potential conflicts between the location/height of the proposed transmission line facilities and the SFWMD's use of heavy equipment on its lands to implement this project.

XXVIII.E. Citation: Sections 373.0695 and 373.1391, F.S.

**XXIX. TRANSMISSION LINE DESIGN**

A. Where feasible, FPL shall avoid the use of guyed transmission line tangent structures in residential areas.

B. In the construction of the transmission line, FPL shall make all road crossings as nearly perpendicular to the road as practicable, and place all transmission line structures at road crossings in such a manner as to accommodate future road widening to the extent practicable.

**C. Use of Air Space**

1. Any structures proposed in the application which exceed 200 feet in height will be subject to an aeronautical study by the Federal Aviation Authority under the provisions of 14 CFR Part 77. If the aeronautical study finds an adverse effect on the safe and efficient use of navigable airspace, the project will require the issuance of a variance by state or local government.

Agency: DOT

2. If either the permanent power line towers or any temporary construction cranes used for the project will penetrate the imaginary surfaces for public use airports outlined in Federal Aviation Regulations Part 77.13, Licensee must notify and coordinate airspace issues with the Federal Aviation Administration. This must be accomplished by submitting a complete "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) to the FAA Southern Region Office and obtaining a determination of no hazard on the application. If the tall structure review thresholds of Lee County Land Development Code Section 34-1008 are exceeded for any licensed airport or Helistop in the county, Licensee must also complete and submit to the Port Authority a Lee county Tall Structure Review Application and obtain approval prior to commencing construction.

Agency: Lee County

**D. Collier County Informational Requirements:**

The Licensee shall confer with Collier County Public Utilities to discuss the possibility of placing public water supply wells or sanitary lift stations in the FPL ROW prior to FPL's acquisition of the final ROW. Upon submittal of the ROW location to Collier County under Condition XIX., Collier County shall advise the Licensee of any proposed public water supply wells or sanitary lift stations the County would like to locate in the FPL ROW. Licensee shall also in the future negotiate in good faith with Collier County to reasonably accommodate future requests from the County to place additional public water wells and/or additional sanitary lift stations in the subject ROW, subject to Collier County's acquisition of the necessary property rights.

**XXX. FLORIDA DEPARTMENT OF TRANSPORTATION**

A. State Road Crossing Permits - The Florida Department of Transportation (FDOT) shall grant to FPL approval for the transmission line crossing of any State Roads within the FPL ROW within 30 days of FPL's submission of a complete utility permit application form and detailed construction plans for such transmission line crossing in compliance with Rule Chapter 14-46, F.A.C., and DOT's Utility Accommodation Manual, as a post-certification submittal pursuant to Condition VIII.

XXX.A. Citation: Section 403.531, F.S. (2002).

B. State Road Right-of-Way Standards - In the construction of the transmission line on or crossing State Road rights-of way, FPL shall:

1. Comply with the requirements of the FDOT Utility Accommodation Manual and permit conditions based on them; and
2. Place transmission line structures at crossings of State Roads in such a manner as to accommodate future road widening, to the extent practicable.

XXX.B. Citation: Chapter 14-46, F.A.C.

**C. Post-Certification Reviews of FDOT Matters**

1. Access Management to the State Highway System: No new access to the State Highway System is proposed in the siting application. If new access is later proposed, access permitting as defined in Rule Chapters 14-96, State Highway System Connection Permits, Administrative Process, and 14-97, State Highway System Access Management Classification System and Standards, F.A.C., will be required and submitted.

Same as DOT Condition

2. Overweight or Overdimensional Loads: Operation of overweight or overdimensional loads by the applicant on State transportation facilities during construction and operation of the transmission line will be subject to safety and permitting requirements as defined in Chapter 316, Florida Statutes, and Rule Chapter 14-26, State Highway System Access Management Classification System and Standards, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C., will be required.

3. Use of State of Florida Right of Way or Transportation Facilities: Any use of State of Florida right-of-way and certain activities on State transportation facilities will be subject to the requirements of the DOT's Utility Accommodation Manual (Document 710-020-001) and Rule Chapter 14-46, Utilities Installation or Adjustment, F.A.C. If Licensee's

structures are within DOT right-of-way, the cost of relocating the transmission line due to the widening of the state transportation facility shall be borne by the Licensee.

Agency: DOT

4. 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. Licensee shall submit information to DOT on adopted agency forms demonstrating compliance with applicable drainage-related standards. That submittal shall be governed by the procedures of Condition VIII for post-certification submittals. Licensee shall locate and construct the transmission line in such manner so as not to interfere with, obstruct, or otherwise adversely impact any drainage from the DOT's existing or announced planned transportation facilities. Licensee agrees to provide DOT a drainage easement to accommodate such transportation facilities in or across the fee-owned transmission line ROW consistent with the operation of the transmission line, if such becomes necessary to comply with requirements of a water management district or the State.

XXX.C. Citation: Chapter 316, F.S. (2002); Chapters 14-26, 14-46, , 14-86, 14-96 and 14-97, F.A.C.

**D. Best Management Practices**

Traffic control will be maintained during project construction and maintenance in compliance with the standards contained in the Manual of Uniform Traffic Control Devices, Rule Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C.; DOT's Design Standards; and DOT's Standard Specifications for Road and Bridge Construction, whichever is more stringent.

XXX.D. Citation: Chapter 14-94, F.A.C.

E. Overweight or Overdimensional Loads: If the Licensee 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 316, Florida Statutes, and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

Agency: DOT

## **XXXI. BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

The Board of Trustees of the Internal Improvement Trust Fund (Board), or its staff shall issue the appropriate approval for a transmission line crossing lands and waterways under the jurisdiction of the Board within 90 days of the submission of a complete application for such crossing demonstrating compliance with the applicable provisions of Chapter 18-21, F.A.C.

XXXI Citation: Section 403.531, F.S. (2002); Chapters 18-2 and 18-21, F.A.C.

4/19/04



## ATTACHMENT 2

ms/acad/622645/dmrmap/dmplan01



4/19/04

### ATTACHMENT 3



# ATTACHMENT 4

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