

**STATE OF FLORIDA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION**



**CENTRAL FLORIDA – KATHLEEN TRANSMISSION LINE
TA81-02**

CONDITIONS OF CERTIFICATION

Modified 11/03/04

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GENERAL CONDITIONS OF CERTIFICATION

I. Definitions

The meaning of terms used herein shall be governed by the definitions contained in Chapters 403, 373 and 253, Florida Statutes, and any regulation adopted pursuant thereto and the statutes and regulations of any party. In the event of any dispute over the meaning of a term used in these general or special 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 law.

The term 'keyhole fill' as used herein shall mean the leaving of a span no less than 1,150 feet between two towers without an access/maintenance road.

The term 'ROW' means the transmission line right-of-way to be selected by the permittee within the corridor in accordance with the conditions of certification.

The term "DEP" means the Florida department of Environmental Protection.

II. Performance Criteria

Certification, including conditions of certification, is predicated upon design and performance criteria indicated in the application. Thus, conformance to those criteria, unless specifically amended, modified, or as DEP and the parties are otherwise notified, is binding upon the permittee in the preparation, construction and maintenance of the certified project. In those instances where a conflict occurs between the application's design criteria and the conditions of certification, the conditions shall prevail.

III. Property Rights

Except as otherwise provided herein and under the Transmission Line Siting Act and rules thereunder, the issuance of this certification does not convey any property rights in either real or personal property, tangible or intangible, nor any exclusive privileges, nor does it authorize any injury to public or private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations. The permittee must obtain title, lease or right of use from the State of Florida to any sovereign lands submerged or otherwise, occupied by the ROW for the transmission line and structures.

IV. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact resulting from the construction, operation and maintenance of the transmission line in complying with any limitation specified in this certification.

V. Right of Entry

The permittee shall allow the Secretary of DEP and/or authorized representatives, upon the presentation of credentials:

A. To enter upon the ROW where any construction or maintenance is being undertaken or upon the permittee's premises in which records are required to be kept under the terms and conditions of this permit.

B. To have access to and copy all records required to be kept under the conditions of this certification.

VI. Civil and Criminal Liability

This certification does not relieve the permittee from civil or criminal responsibility or liability for non-compliance with any conditions of this certification, applicable rules or regulations in accordance with Chapter 403, F.S.

VII. 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 circumstances is held invalid, the application of such provision to other circumstances and the remainder of the certification shall not be affected thereby.

VIII. Revocation or Suspension

This certification may be suspended or revoked pursuant to section 403.532, F.S.

IX. Compliance

Except as otherwise provided herein, construction and maintenance shall comply with the applicable nonprocedural rules and regulations of DEP and those agencies specified in 62-17.54(2)(a) and (b), F.A.C., which would otherwise be applicable to the

construction and maintenance of the transmission line, access roads and ROW.

X. Right-of-Way Delineation and Compliance Verification

Aerial photographs of at least 1:24000 scale shall be submitted to DEP delineating the ROW route acquired. These photographs shall be submitted prior to commencement of construction on the various segments of the line; it is recommended that this information be submitted in segments rather than waiting until the entire ROW is acquired. DEP and any other party which requests to do so shall have 30 days from receipt by DEP to review the photographs and to call any apparent conflicts with the requirements of these conditions to the permittee's attention.

If DEP or any party has reason to believe that the construction of the transmission line and access roads within the permittee's designated ROW cannot be accomplished in compliance with applicable statutes and rules of DEP or of the party, the permittee shall be notified in writing. Failure of such a notice to be served on permittee within 30 days from filing the various segments in the aerial photographs with DEP constitutes approval for construction within the designated ROW or the various segments of ROW submitted for approval.

The acquisition of a particular ROW or the expenditure of funds toward acquisition of a particular ROW prior to DEP's review will be at the permittee's risk, and DEP or any other party is not stopped from disapproving the construction of the transmission line or access road within the ROW.

XI. Other Construction Activities

A. Existing access roads shall be used wherever practicable rather than constructing new roads.

B. No borrow ponds shall be constructed in hardwood hammocks.

C. The outer 20 feet of the ROW shall not be clear-cut but rather selectively cleared of danger trees. Danger trees are tall dead or diseased trees, or trees leaning toward the line which would contact the line by falling.

D. Compliance with the most recent version of the National Electric Safety Code adopted by the Public Service Commission is required.

E. Open burning in connection with land clearing shall be in accordance with the applicable rules of the department of Agriculture and Consumer Services.

XII. Maintenance

A. Herbicides applied in the ROW shall only be those registered by the U.S. Environmental Protection Agency and by the state of Florida for use in power line right of ways and other transportation corridors. 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 targeted to the undesirable vegetation. Broadcast application of herbicide shall not be used in the ROW unless effects on non-targeted vegetation are minimized.

B. When maintenance trimming is necessary the outer 20 feet shall be selectively cleared of danger trees and not clear-cut.

XIII. Archaeological Sites

Any archaeological sites discovered during construction of the transmission lines shall be disturbed as little as possible and such discovery shall be communicated to the department of State, Division of Archives, History and Record Management (DAHRM). Potentially affected areas crossed by the ROW deemed likely to contain archaeological or historic sites as identified by DAHRM shall be investigated by pedestrian survey, and if a significant site is located, the site shall be protected and reported to DAHRM.

XIV. Road Crossings

A. For all locations where the transmission line will cross state highways, the permittee shall submit materials pursuant to the department of Transportation's (DOT) "Utility Accommodation Guide" to DOT's district office within 30 days prior to starting construction for a particular crossing. The- permittee shall comply with the criteria in the Utility Accommodation Guide and with all applicable regulations pertaining to roadway crossings by transmission lines, including these conditions of certification, unless the DOT and the permittee agree to change those requirements for good cause shown.

B. All crossings of state highways shall be as nearly perpendicular to, and all towers as far from, state, county and city roads, rights-of-way as practicable and still maintain proper road clearance, in order to allow future widening and expansion of those roads.

C. The transmission line shall not be constructed across any state, county or city bridge, which is supported by pilings.

D. For all locations where the transmission line will cross county roads, and in counties where crossing permits are generally required, the permittee shall submit the applicable road crossing information to the County Engineer as normally required by the

county for such permit. The permittee shall comply with all applicable county regulations pertaining to roadway crossings by transmission lines.

XV. Modifications of Conditions

A. Notwithstanding Section XV.B. herein, the DEP Secretary is delegated the authority pursuant to 403.5315(l), F.S., to modify conditions of certification relating to:

1. A modification of the project that would not cause any significant adverse environmental impact.
2. Modifications necessary to meet licensing conditions or requirements imposed on the permittee by any federal regulatory agency. The permittee shall notify DEP at least thirty (30) days prior to the issuance of the federal license that would require such a modification.
3. A reconstruction of the ROW or transmission line necessary to avoid or mitigate an emergency involving the loss of human life or property resulting from any natural or manmade cause, including hurricane, tornado, fire, flood, explosion, windstorm or other calamitous accident when new right-of-way or access facilities are necessary.

B. Unless objected to by a party to these proceedings 20 days after notification by DEP or the permittee, the DEP Secretary is delegated the authority pursuant to 403.5315(l), F.S., to modify these conditions of certification. To comply with applicable non-procedural regulations of agencies, the permittee may be required to use different construction or maintenance techniques other than those represented in the application.

XVI. Emergency Reporting

Emergency replacement of previously existing ROW or transmission lines shall not be considered a modification pursuant to 403.5315(1), F.S., A verbal report of the emergency shall be made to DEP as soon as possible.

Within fourteen (14) calendar days after correction of the emergency which would require the permittee to perform an activity not in accordance with the condition certification, a report to DEP shall be made outlining the details of the emergency and the steps taken for its temporary relief. The relief 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.

SPECIAL CONDITIONS OF CERTIFICATION

These special conditions are predicated upon the particular facts and issues in this transmission line corridor certification proceeding and as such are not expected to have applicability to future certifications.

I. Certified Corridor

- A. The corridor for which certification is granted is depicted in Attachment I.
- B. Modified Corridor Boundary

At a point identified as the southwest corner of Section 4, Township 24 South, Range 23 East, the corridor turns due south, expands, to 1,060 feet with the eastern 60 feet inside the SWFWMD west property line, and proceeds directly south paralleling the SWFWMD proposed levee for approximately one and one-half miles through “Devil’s Creek Swamp” to a point where the transmission line corridor and the SWFWMD proposed levee diverge.

II. Right-of-Way Route Selection

A. Prior to right-of-way siting, all sandhills and flatwoods in the corridor shall be surveyed for the possible occurrence of red-cockaded woodpeckers and colony trees. If woodpeckers or such trees are found, the permittee shall notify the Florida Game and Fresh Water Fish Commission and in cooperation with that Commission attempt to site the right-of-way so that the identified red-cockaded woodpecker colony shall be avoided if such siting can occur without the addition of otherwise unnecessary turning angles in the transmission line. In any event, construction of the transmission line will be conducted in such a manner as to preserve, if possible, red cockaded woodpecker colony trees when such are identified within the right-of-way selected.

B. The ROW shall be located along the county line in the vicinity of SR 48 such that minimal disturbance is made to the R-1-M zoning area (Mobile Home Residential) and C-1 zoning area (Neighborhood Commercial) located thereabouts.

C. The Row shall be located parallel and immediately contiguous to the west side of the existing Central Florida to Windermere transmission line in the area delineated in the map attached as Figure I in Appendix III.

D. The ROW shall be located along the county line south of SR 50 in Section 24, Township 22S, Range 23E, to avoid the hardwood hammock.

III. Activities in Submerged and Transition Zones of Waters of the State

A. Swales shall not be used if possible. However, where swales are used swale plugs shall be provided between low areas to prevent drainage.

B. Turbidity Control. Turbidity control measures, including but not limited to hay bales, sodding, mulching and seeding, or turbidity screens, shall be employed as needed to prevent violation of water quality standards.

C. Vegetation Removal/Planting

1. Where the transmission line crosses water- courses (rivers, creeks, sloughs, etc., in which water usually flows in a defined bed or channel), existing vegetation not in excess of 25 feet in height shall be left undisturbed within 100 feet of the ordinary high water mark of the bed or channel, but in any case it shall not exceed more than 150 feet from either side of the centerline of the open water. if it is necessary to remove trees, the root mat shall-be left undisturbed.

2. The slope of the maintenance/access roads built on new fill in waters of the State shall be seeded or planted immediately after construction with endemic or benign non-endemic species to prevent potential erosion and subsequent water quality degradation.

D. Site-Specific Dredge/Fill Information and Compliance Verification

For all construction activities in submerged and transition zones of waters of the State as defined in Subsection 62-4.02(17), F.A.C., the permittee shall file a copy of the Dredge/Fill Joint Application, department of Army/Florida department of Environmental Regulation for Activities in Waters of the State, SAJ Form 983 (July 21, 1977) with the DEP, Bureau of Permitting, Power Plant Siting Section. The application form shall also be forwarded by DEP to the Corps of Engineers, identifying that certification has already been granted by the State.

Within 45 days of filing of complete information, DEP shall determine whether or not a probable violation of the conditions of certification would occur if the plans were executed as filed. If it is determined that a probable violation would occur, the permittee shall be notified and the probable violation specified with particularity as well as possible corrective measures suggested. Failure to notify the permittee in writing within-45 days shall constitute a compliance verification. Since certification is the only form of permit required by the State, it is understood that the permittee and DEP shall strive to resolve such matters by mutual agreement. If mutual agreement cannot be reached, then the matter shall be referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, F.S. The hearing pursuant to Section 120.57, F.S., shall be held within 30 days after its referral to DOAH.- The Hearing Officer shall issue the decision 15 days after termination of such hearing.

Referral of an issue to DOAH pursuant to this condition shall neither affect other conditions, nor shall it operate as a stay on any other portion of the transmission line.

E. Water Quality Certifications

Any necessary water quality certification which must be provided to the Corps of Engineers and the permittee by DEP shall be made at the time of a finding of compliance for specific work at specific locations.

IV. Areas for Further Consideration

Those areas delineated in red on the Appendix III maps are areas where DEP finds that construction in certain Dredge/Fill Jurisdiction Areas is acceptable, but only with conditions. More detailed review as provided by Special Condition III.D. will be necessary before a final determination can be made. In general, however, it will be DEP's policy, except in the Devils Creek Swamp area, to only approve keyhole fills rather than continuous access roads which bisect the areas delineated in red on the Appendix III maps. In the Devils Creek Swamp area the permittee will build a continuous access/ maintenance road in the easternmost 20 feet of the ROW. If prior to construction of the access/maintenance road, the SWFWMD Board votes to drop its plan to build a levee in the Devils Creek Swamp area, the permittee shall construct keyhole fills in Devils Creek Swamp.

V. Access/Maintenance Roads

A. Access/maintenance roads shall not be constructed in waters of the state where DEP has dredge and fill jurisdiction pursuant to Chapter 62-4, F.A.C., except in the following circumstances:

1. Where the permittee would not have access to other portions of the ROW adjacent to such waters of the State, except by constructing roads or acquiring easements outside of the ROW; provided that the cost of constructing the access/maintenance roads in the waters of the State does not exceed the cost of obtaining any necessary easements and construction of roads outside of the permittee's ROW. An affidavit of the cost comparison shall be submitted with the dredge/fill informational filing required by Special Condition III.D. in these instances. OR

2. Where by-passing the waters of the State would require the permittee to travel a distance outside of its ROW in excess of three miles to return to the next tower structure. A map indicating the route to be traveled and the distance shall be submitted with the dredge/ fill informational filing required by Special Condition III.D. in these instances. OR

3. Where more environmental harm would result from routing the

access/maintenance road outside the waters of the State than in the waters of the State. Justification for this decision shall be submitted with the dredge/fill informational filing required by Special Condition III.D. in these instances. OR

4. Where the environmental benefits to be gained by not building the access/maintenance roads in waters of the State are outweighed by other land use factors. Justification for this decision shall be submitted with the dredge/fill informational filing required by Special Condition III.D. in these instances.

B. Where access/maintenance roads are constructed in waters of the State, the permittee shall comply with the following conditions:

1. Access/maintenance roads shall be constructed and maintained to provide reasonable assurances of compliance with water quality standards; turbidity control measures, including but not limited to, hay bales, sodding, mulching and seeding, shall be employed as necessary to prevent violations of water quality standards;

2. Access/maintenance roads shall be constructed and maintained to provide reasonable assurances for the passage of flood waters equal in volume to the 1-in-25 year storm and that post-construction flow volumes will not vary significantly from pre-construction flow volumes;

3. The slope of access/maintenance roads constructed in waters of the State shall be planted with vegetation to prevent Potential erosion and subsequent water quality degradation.

VI. Scrub Jay Habitat

Prior to final ROW clearing, the scrub oak thickets near the intersection of SR 469 and SR 50 and those occurring within the broad area icted as possible locations for the Kathleen Substation, with the exception of the substation itself, shall be located on the best available aerial photographs with the aid of soils maps which depict soils types which support scrub jay habitat. These scrub oak thickets shall be then surveyed for the occurrence of scrub jays. Where the scrub jays are found, the oak understory shorter than 25 feet in height beneath the transmission line shall be left intact with the exception of a 20-foo'6 wide access/maintenance road pathway.

VII. Activities Within Works of the Southwest Florida Water Management District

A. For all construction activity in works of the District, the permittee shall file, at least forty-five (45) days prior to commencement of construction in the works of the District with the Southwest Florida Water Management District (SWFWMD) in

Brooksville, Florida, a copy of the Dredge/Fill Joint Application, department of Army/Florida department of Environmental Regulation, for Activities in the Waters of the State, SAJ Form 983 (July 21, 1977) or, at the permittee's option, the following information:

1. A centerline profile of existing topographic features along proposed access road(s).
2. Preliminary design of proposed access road(s) with elevation marked.
3. Typical cross-section of access road(s).
4. Cross-section of each-stream or creek at those points to be crossed by access road(s) or other facilities.
5. Specifications showing size and type of water control structure (pipe, culvert, etc.) to be placed within or on the works of the District, with proposed flowline elevation marked.
6. Specifications showing design capacity of all water control structures to be employed.
7. Specifications showing location and type of each transmission tower and access road(s) to be constructed within or on the works of the District.

If the permittee chooses to submit a DEP/Corps dredge/fill form, the specific information detailed in this paragraph must be incorporated with the DEP/Corps dredge/fill form. SWFMD and the permittee may jointly agree to vary the informational requirements herein for good cause shown.

B. Construction activities in works of the District means the placement of a structure, e.g. access/ maintenance roads, tower structures, culverts and fill materials in a works of the District. Construction activity shall not include any activity exempted from Chapter 40 D-6, F.A.C., by 40 D-6 051(3), F.A.C.

C. "Works of the District" means the following works of the SWFMD to the ordinary high-water mark:

1. Devils Creek Swamp, in Sections 8 and 17, Township 24 South, Range 23 East, as shown on the U.S.G.S. Quadrangle Map-D-Clay Sink, Florida (1960).
2. Cross Creek Swamp in Section 5, Township 25 South, Range 23 East, and Section 32, Township 24 South, Range 23 East, as shown on U.S.G.S. Quadrangle Map-Branchborough, Florida (1960).
3. Cross Creek in Section 8, Township 25 South, Range 23 East, as

shown on U.S.G.S. Quadrangle Map-Branchborough, Florida (1960).

4. Withlacoochee River in Section 8, Township.25 South, Range 23 East, as shown on U.S.G.S. Quadrangle Map-Branchborough, Florida (1960).

5. Colt Creek in Sections 20 and 17, Township 25 South, Range 23 East, as shown on U.S.G.S. Quadrangle Map-Branchborough, Florida (1960).

6. Gator Creek in Section 32, Township 25 South, Range 23 East, as shown on U.S.G.S. Quadrangle Map-Branchborough, Florida (1960).

D. Within forty-five (45) days of filing all the information required herein, SWFWMD shall determine, and notify the permittee in writing, whether the permittee has provided reasonable assurances that the conditions of certification would not be violated by the proposed construction activity. If SWFWMD determines that reasonable assurances have not been given, SWFWMD shall notify the permittee in writing of the probable violation specified with particularity, as well as specify corrective measures. Failure to notify the permittee in writing within forty-five (45) days shall constitute compliance verification. Since certification is the only form of permit required by any agency, it is understood that the permittee and the SWFWMD shall strive to resolve such matters by mutual agreement. If mutual agreement cannot be reached, then the matter shall be immediately referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, Florida Statutes. A hearing under S 120.57, Florida Statutes, shall be held within thirty (30) days after its referral to DOAH. The Hearing Officer shall issue the decision fifteen (15) days after the termination of such hearing. All exceptions to the, Hearing Officer's order shall be filed with the Governor and Cabinet within ten (10) days of the issuance of such order. The Governor and Cabinet shall issue a decision within thirty (30) days of the filing of the exception. Construction shall not commence in the works of the districts affected until final agency action. Referral of an issue to DOAH pursuant to this paragraph shall neither affect other conditions nor operate as a stay on any other portion of the transmission line certified.

E. Where the transmission line crosses the site of the proposed SWFWMD levee in Sections 4 and 5 of Township 24 South, Range 23 East, the permittee shall coordinate construction with SWFWMD. The term "coordinate" shall mean that the permittee will disclose to SWFWMD the construction specifications of the transmission line for the crossing of that part of the levee described above prior to construction, and that the transmission line will be constructed so that the tower placement, height of the conductors, and other construction or placement of structures within the ROW, will not unreasonably interfere with the construction and operation of the SWFWMD levee. SWFWMD understands that the permittee will construct an overhead 500 kV transmission line over the SWFWMD levee in the area described in this paragraph, and that the term "coordinate" is limited to the placement of any structure within the ROW so that such structure does not unreasonably interfere with the construction and operation of the SWFWMD levee. It is agreed that, for the purposes of this condition, the design

height of the SWFWMD levee will not be greater than 108 feet above the National Geodetic Vertical Datum (NGVD).

VIII. Other Construction Activities

General Condition XI.C. shall not apply to those ROW areas where the ROW is immediately contiguous to the SWFWMD levee.

----- History Notes -----

Certified 07/26/82

Modified 01/11/83; signed by DEP Secretary Tschinkel

Modified 09/13/85; signed by DEP Secretary Tschinkel

Modified 11/03/04: signed by SCO Program Administrator Owen