

**STATE OF FLORIDA
SITING BOARD**

**IN RE: FLORIDA POWER & LIGHT
COLLIER-ORANGE RIVER #3, 230 kV
PROJECT, TRANSMISSION LINE
SITING APPLICATION NO. TA03-12**

and

**BARRON COLLIER COMPANIES, COLLIER
ENTERPRISES, LTD.; DIVOSTA AND
COMPANY, INC.; and PARKLANDS
DEVELOPMENT LIMITED PARTNERSHIP,**

Intervenors.

**OGC CASE NO. 03-0833
DOAH CASE NO. 03-1629TL**

FINAL ORDER OF CERTIFICATION

On May 3, 2004, an administrative law judge with the Division of Administrative Hearings (DOAH) submitted his Recommended Order in this transmission line certification proceeding. Copies of the Recommended Order were served upon Kenneth E. Smith, and upon counsel for Florida Power & Light Company ("FPL"), Florida Department of Environmental Protection ("DEP"), Barron Collier Companies ("BCC"), Collier Enterprises, Ltd. ("CE"), Lee County, South Florida Water Management District, City of Bonita Springs, City of Fort Myers, Responsible Growth Management Coalition, Florida Audubon Society, Florida Wildlife Federation, Collier County Audubon Society, Conservancy of Southwest Florida, and other designated agencies. A copy of the Recommended Order is attached as Exhibit A. The matter is now before the Governor and Cabinet, sitting as the "Siting Board," for final action under the Florida Transmission Line Siting Act ("TLSA"). See §§ 403.52-403.5365, Florida Statutes.

BACKGROUND

On April 30, 2003, FPL filed its Application for Corridor Certification for the Collier-Orange River ("COR") #3 Line (Application) with the DEP and paid the appropriate application fee. FPL's Application was filed under the TLSA for a new 230-kV overhead transmission line and related facilities connecting the existing Collier substation near Naples in Collier County to the existing Orange River substation east of Fort Myers in Lee County (the Project).

DOAH PROCEEDINGS

On May 13, 2003, the DEP determined that the Application was complete. DEP determined that the Application was sufficient on August 21, 2003.

The various reviewing agencies submitted reports on the Project, and proposed Conditions of Certification. On October 10, 2003, the DEP issued its Written Analysis on the Project, incorporating the reports of the reviewing agencies and proposing a compiled set of Conditions of Certification. During the final hearing, revised Conditions were admitted into evidence as Joint Exhibits 5 and 5A. An amended version of the Conditions was submitted with the Proposed Recommended Order filed by FPL and other parties. On April 19, 2004, FPL filed a Notice of Filing Corrected Conditions of Certification.

The certification hearing was originally scheduled to begin on October 30, 2003. On September 10, 2003, BCC and CE filed a notice formally proposing an Alternate Corridor (referred to as the Primary Alternate Corridor in this proceeding). On September 10, 2003, CE also filed a notice formally proposing a Secondary Alternate Corridor. On September 17, 2003, the DEP filed a notice accepting both alternate corridors for consideration in this proceeding, and FPL filed a notice rejecting the Primary Alternate Corridor because it did not meet FPL's goal for the Project of providing geographic separation from the existing common right-of-way (ROW). FPL filed a separate notice accepting the Secondary Alternate Corridor for consideration.

On October 28, 2003, after considering supporting data and information filed by CE, the DEP filed a notice of insufficiency concerning the Secondary Alternate Corridor. On November 26, 2003, the DEP filed a second notice of insufficiency concerning the Secondary Alternate Corridor. Pursuant to Section 403.5271(1)(e), Florida Statutes, this second notice of insufficiency was deemed a withdrawal of the Secondary Alternate Corridor.

FPL filed a Motion in Limine on December 29, 2003, requesting that participants at the final hearing be precluded from offering testimony or evidence relating to whether the location of the COR #3 Line on a ROW that is geographically separate from the existing Common ROW will enhance electric system reliability more than location of the new line on the existing Common ROW. The existing Common ROW is the location for all other 230-kV transmission lines between the Orange River and Collier substations. FPL asserted in its Motion that the findings on that issue previously made by the PSC in its final order were binding on the parties to the certification hearing. See § 403.537(1)(c), Fla. Stat. BCC and CE filed a Joint Response opposing the Motion in Limine. On January 26, 2004, after a telephonic hearing, the Motion in Limine was denied without prejudice.

On February 6, 2004, the parties filed a pre-hearing stipulation.

All notices required by law were timely published in accordance with Section 403.527, Florida Statutes. The certification hearing was held as noticed on February 10 through 13, and 17 through 19, 2004. The public hearing portion of the certification hearing was held on February 11, 2004, commencing at 4:00 p.m. The final hearing was conducted for the purpose of receiving oral, written, and documentary evidence concerning whether the Project should be approved in whole, or with such modifications and conditions as the Siting Board deems appropriate, or denied under the TLSA.

In its case-in-chief, FPL presented nine witnesses, and FPL Exhibits numbered 1 through 5, 6-1 through 6-7, 7 through 13, 15 through 21, 23 through 24, and 26 through 28, and Joint Exhibits numbered 1 through 4, 5, 5A, and 6 through 9 were admitted into evidence. In its rebuttal case, FPL presented eight witnesses and eleven Rebuttal Exhibits numbered 1 through 6, 7A through 7E, 8, 9A through 9F, 10A through 10B, and 11 were admitted into evidence.

Daniel R. Hronec, P.E., an expert in electrical transmission line engineering; Robert A. Croes, P.E., an expert in electrical transmission operations and planning; Analee M. Mayes, AICP, an expert in land use planning; Anthony N. Arcuri, an expert in botany, vegetative mapping and listed plant species; Philip W. Simpson, an expert in wildlife ecology and transmission line impacts to terrestrial ecological resources; James K. Wiley, P.E., an expert in electric system planning and reliability; and Dan E. Summers, C.E.M., an expert in disaster response and recovery, testified on behalf of FPL in its case-in-chief. The following fact witnesses also testified on behalf of FPL: Stephen D. Tirey, president of the Chamber of Southwest Florida, and Robert Tomlin, P.E., of the Lee County Electric Cooperative (LCEC).

In its rebuttal case, FPL presented the testimony of Robert Dunn, an expert in electric transmission line construction and maintenance; Vicente Ordax, P.E., an expert in electrical transmission planning; Paul Hebert, an expert in meteorology; and Martha McNeal, an expert in landscape architecture, along with Daniel R. Hronec, Robert A. Croes, Analee M. Mayes, and Philip W. Simpson, expert witnesses who also testified during FPL's case-in-chief.

Lee County presented one witness and introduced Lee County Exhibits 1 and 2 into evidence. Lindsey Sampson, P.E., Director of the Solid Waste Division for Lee County testified on behalf of Lee County.

BCC Exhibits 1, 2, 3A through 3E, and 4 through 9 were admitted into evidence. Thomas W. Sansbury, an expert in land development and real estate; Michel B. Armand, P.E., an expert in transmission planning, transmission planning engineering, and transmission system

design as to configuration but not as to structures; and John Duncan Glover, Ph.D., P.E., an expert in transmission system planning, transmission system planning engineering, transmission system reliability, and transmission system design engineering, including structures, configuration, and equipment, testified on behalf of BCC.

CE Exhibits 1, 3, 4, 10, 18, 21, 29, and 60 through 63 were admitted into evidence. CE Exhibit 18 was admitted with the caveat that anything in the document relating to the Secondary Alternate Corridor would not be considered unless otherwise shown to be relevant. CE Exhibit 61 was limited in its admittance into evidence for the sole purpose of depicting in yellow CE's Alternate Corridor. The deposition of Bruce Tyson, a landscape architect and planner, taken on February 3, 2004, was admitted into evidence as CE Exhibit 62. During the hearing CE offered CE Exhibit 8 into evidence. FPL objected on the record and filed written objections to Exhibit 8 on February 17, 2004. CE filed a response on February 27, 2004. An Order was entered on March 4, 2004, admitting portions of Exhibit 8 and excluding other portions.

Carron Day, AICP, an expert in land use planning; Karen M. Johnson, an expert in wetland ecology and environmental resource permitting; and Thomas E. Conrecode, P.E., an expert in the field of civil engineering, testified on behalf of CE.

Kenneth E. Smith, a party, resides on the east side of Green Meadows Road and testified in his own behalf.

The following parties also submitted exhibits (stipulations) that were admitted into evidence: Parklands Development Limited Partnership, Exhibit 1; DiVosta Homes L.P., Exhibit 1; Collier County Audubon Society and Florida Wildlife Federation Exhibits 1 through 3. Other stipulations were filed, but not admitted into evidence, including stipulations between FPL and Responsible Growth Management Coalition; FPL and Conservancy of Southwest Florida; and FPL and Florida Audubon Society. In all of the stipulations mentioned in this paragraph, each party adopted the position and witnesses of FPL.

A public hearing was duly noticed and commenced at 4:00 p.m. on February 11, 2004, for the purpose of allowing members of the public an opportunity to present evidence and testimony. Members of the public were placed under oath, testified, and were subject to cross-examination. Fourteen members of the public spoke at the public hearing, including Donald Scott, director of Collier County's Transportation Planning Department, and Collier County Commissioner Tom Henning. Art Dobberstein, a planner for Collier County Public Schools, also

spoke at the public hearing and entered five documents, Exhibits 1 through 5, into the public hearing record.

After the close of the final hearing, by agreement of the parties, the deposition of Mr. Conrecode was taken on March 9, 2004. The transcript of the deposition was filed with DOAH on March 19, 2004, with CE Rebuttal Exhibits 1, 1-A, 2, 3, and 4, and FPL Rebuttal Exhibits 12 and 13. By Order dated March 30, 2004, without objection, the deposition transcript and the Rebuttal Exhibits were admitted into evidence.

The transcript of the final hearing was filed with the DOAH on March 1, 2004, and the transcript of the public hearing was filed on March 2, 2004.

On March 22, 2004, a Proposed Recommended Order was filed on behalf of FPL, DEP, South Florida Water Management District, Lee County, City of Bonita Springs, Collier County Audubon Society, Florida Wildlife Federation, Conservancy of Southwest Florida, Responsible Growth Management Coalition, DiVosta and Company, Inc., and Parklands Development Limited Partnership. On March 22, 2004, a Joint Proposed Recommended Order was filed on behalf of BCC and CE. FPL also filed a Post-Hearing Memorandum of Law on March 22, 2004, and CE filed a Post-Hearing Memorandum of Law on March 23, 2004.

After the close of the final hearing and the filing of the deposition transcript of Mr. Conrecode and rebuttal exhibits, several letters from non-parties were filed with DOAH. These letters were the subject of two notices of ex-parte communication. On April 21, 2004, FPL filed a motion to exclude these letters or, in the alternative, a response to these letters. The motion to exclude is granted.

CONCLUSION

The record in this case is devoid of objections by any governmental agencies to certification of the Collier-Orange River #3 230 kV Project. One exception to the Recommended Order was filed in this case by FPL. On June 9, 2004, FPL filed a Conditional Withdrawal of FPL's Exception to Recommended Order, conditioning FPL's withdrawal of the exception upon the Siting Board taking final action on this matter at its meeting of June 24, 2004. On June 24, 2004, the Siting Board took final action on this matter, approving certification of the Collier-Orange River #3 230 kV Project. Therefore, FPL's exception to the Recommended Order is withdrawn.

Based on a review of the record and the governing law, the Siting Board concludes that the FPL Collier-Orange River #3 230 kV Project complies with the certification requirements of

the TLSA and that site certification of the Project serves to fully balance the need for transmission lines with the broad interests of the public.

It is therefore ORDERED that:

A. The Recommended Order is adopted and incorporated by reference herein.

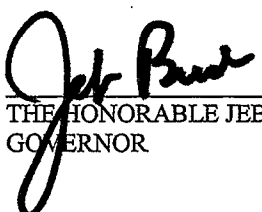
B. Certification of the location, construction, and continued operation of the Collier-Orange River #3 230 kV Project as described in FPL's certification application and by the evidence presented at the certification hearing is APPROVED, subject to the Conditions of Certification contained in Joint Exhibit 5, as amended by FPL's Corrected Conditions of Certification filed on April 19, 2004 (copies of which are attached to this Final Order and incorporated herein by reference).

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

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

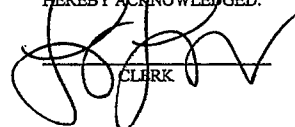
DONE AND ORDERED this 13th day of July, 2004, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on June 24, 2004.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE JEB BUSH
GOVERNOR

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



CLERK

7/19/04

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

Carolyn S. Raepple, Esquire
Richard S. Brightman, Esquire
Hopping, Green & Sams, P.A.
123 South Calhoun Street
Post Office Box 6526
Tallahassee, FL 32314

Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Landers & parsons, P.A.
310 West College Avenue
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David E. Bruner, Esquire
Southwest Florida Regional
Planning Council
4980 Bayline Drive
North Fort Myers, FL 33917

Mary Anne Helton, Esquire
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Craig Varn, Esquire
Paul Darst, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
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April H. Gromnicki, Esquire
Florida Audubon Society
444 Brickell Avenue, Suite 850
Miami, FL 33131

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2951 61st Avenue, South
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The Conservancy of Southwest Florida
1450 Merrihue Avenue
Naples, FL 34102

Jeffrey Brown, Esquire
Terry Cole, Esquire
Oertel, Fernandez, Cole & Bryant, P.A.
301 South Bronough Street, 5th Floor
Post Office Box 1110
Tallahassee, FL 32302-1110

Ann Cole, Clerk and
Charles A. Stampelos, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

James V. Antista, Esquire
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Bryant Building, Room 108
Tallahassee, FL 32399-1600

Grant Alley, Esquire
David M. Migut, Esquire
City of Fort Myers
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Fort Myers, FL 33902

Ashley D. Foster, Esquire
Southwest Florida Water
Management District
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West Palm Beach, FL 33406

David Weigel, Esquire
Collier County Attorney
3301 East Tamiami Trail
Naples, FL 34112

Audrey E. Vance, Esquire
City of Bonita Springs Attorney
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Bonita Springs, FL 34135

Wayne Daltry, Chairman
CREW Land & Water Trust
23998 Corkscrew Road
Estero, FL 33928

Kenneth E. Smith
Post Office Box 1513
Lehigh Acres, FL 33970

Mimi S. Wolok, Esquire
112 Trail Terrace Drive
Naples, FL 34103

James G. Yaeger, Esquire
Thomas L. Wright, Esquire
Donna Marie Collins, Esquire
Lee County Attorney
Post Office Box 398
Fort Myers, FL 33902-0398

Sheauching Yu, Esquire
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Mail Station 58
Tallahassee, FL 32399-0450

and by hand delivery to:

W. Douglas Beason, Esquire
Scott A. Goorland, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000

this 19 day of July, 2004.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


J. TERRELL WILLIAMS
Assistant General Counsel

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

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FLORIDA POWER & LIGHT
COLLIER-ORANGE RIVER #3, 230 kV
PROJECT, TRANSMISSION LINE
SITING APPLICATION NO. TA03-12

and

Case No. 03-1629TL

BARRON COLLIER COMPANIES,
COLLIER ENTERPRISES, LTD.;
DIVOSTA AND COMPANY, INC.; and
PARKLANDS DEVELOPMENT LIMITED
PARTNERSHIP,

Intervenors..

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 10 through 13, and 17 through 19, 2004, in Estero, Lee County, Florida, and a public hearing was held on February 11, 2004, in the same location, before the Division of Administrative Hearings, by its designated Administrative Law Judge Charles A. Stampelos.

APPEARANCES

For the Applicant Florida Power & Light Company:

Carolyn S. Raepple, Esquire
Richard S. Brightman, Esquire
Hopping, Green & Sams, P.A.
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314-6526

Exhibit A

For the Department of Environmental Protection:

W. Douglas Beason, Esquire
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard, Room 353-I
Tallahassee, Florida 32399-3000

For Barron Collier Companies:

Robert Scheffel Wright, Esquire
Landers & Parsons, P.A.
310 West College Avenue
Post Office Box 271
Tallahassee, Florida 32302

For Collier Enterprises, Ltd.:

Jeffrey Brown, Esquire
Oertel, Fernandez, Cole & Bryant, P.A.
301 South Bronough Street, Suite 500
Post Office Box 1110
Tallahassee, Florida 32302-1110

For Lee County: Thomas L. Wright, Esquire
Donna Marie Collins, Esquire
2115 Second Street
Post Office Box 398
Fort Myers, Florida 33902

For the South Florida Water Management District:

Ashley D. Foster, Esquire
South Florida Water Management District
3301 Gun Club Road
Post Office Box 24680
West Palm Beach, Florida 33416-4690

For the City of Bonita Springs:

Audrey E. Vance, Esquire
City of Bonita Springs Attorney
9220 Bonita Beach Road, Suite 111
Bonita Springs, Florida 34135

For the City of Fort Myers:

David M. Migut, Esquire
2200 Second Street
Post Office Box 2217
Fort Myers, Florida 33902-2217

For the Responsible Growth Management Coalition:

Mimi S. Wolok, Esquire
1112 Trail Terrace Drive
Naples, Florida 34103

For the Florida Audubon Society:

April Gromnicki, Esquire
Florida Audubon Society
444 Brickell Avenue, Suite 850
Miami, Florida 33131

For the Florida Wildlife Federation and Collier County
Audubon Society, Inc.:

Thomas W. Reese, Esquire
2951 61st Avenue, South
St. Petersburg, Florida 33712

For the Conservancy of Southwest Florida:

Gary Davis, Qualified Representative
1450 Merrihue Drive
Naples, Florida 34102

Kenneth E. Smith, pro se
Post Office Box 1513
Lehigh Acres, Florida 33970

STATEMENT OF THE ISSUES

The issues for determination are whether either ~~of~~ the properly proposed corridors (the FPL Corridor or the Alternate Corridor) for the Collier-Orange River #3 230-kV transmission line (the COR #3 Line) comply with the criteria in Section

403.529(4)(a)-(e), Florida Statutes (2003); and, if so, which of the corridors have the least adverse impacts with respect to the criteria in Section 403.529(4)(a)-(e), Florida Statutes, including cost. (All citations are to the 2002 version of the Florida Statutes unless otherwise indicated.)

If the Florida Power & Light Company (FPL) Preferred Corridor (FPL Corridor) is determined to have the least adverse impacts, or if the two corridors are determined to be substantially equal in adverse impacts, the Siting Board must determine whether the FPL application for corridor certification should be approved in whole, with modifications or conditions, or denied. . . § 403.529(4) & (5)(c), Fla. Stat. . .

If it is determined that the Alternate Corridor proposed by Collier Enterprises, Ltd. (CE) and Barron Collier Companies (BCC) has the least adverse impacts, including costs, since this corridor was rejected by FPL for consideration pursuant to Section 403.5271(1)(b), Florida Statutes, certification shall be denied or FPL shall be allowed to submit an amended application to include such corridor. . . § 403.529(5)(b), Fla. Stat. . .

PRELIMINARY STATEMENT

Pursuant to Section 403.537, Florida Statutes (2002), the Applicant, FPL, submitted a Petition to Determine Need for the COR #3 Line project to the Public Service Commission (PSC) on

February 26, 2003. The PSC issued Order No. PSC-03-0551-FOF-EI, dated April 28, 2003, determining the need for the COR #3 Line.

On April 30, 2003, FPL filed its Application for Corridor Certification for the COR #3 Line (Application) with the Department of Environmental Protection (DEP) and paid the appropriate application fee. (FPL's proposed corridor is referred to in these proceedings as FPL's Preferred Corridor and herein as FPL Corridor.) FPL's Application was filed under the Transmission Line Siting Act (TLSA), Section 403.52-403.5365, Florida Statutes, for a new 230-kV overhead transmission line and related facilities connecting the existing Collier substation near Naples in Collier County to the existing Orange River substation east of Fort Myers in Lee County (the Project).

On May 13, 2003, the DEP determined that the Application was complete and determined that the Application was sufficient on August 21, 2003.

The various reviewing agencies have submitted reports on the Project, and have proposed Conditions of Certification. During the final hearing, revised conditions were admitted into evidence as Joint Exhibits 5 and 5A. An amended version of the conditions was submitted with the Proposed Recommended Order filed by FPL and other parties. On April 19, 2004, FPL filed a Notice of Filing Corrected Conditions of Certification.

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admitted into evidence, including stipulations between FPL and Responsible Growth Management Coalition; FPL and Conservancy of Southwest Florida; and FPL and Florida Audubon Society. In all of the stipulations mentioned in this paragraph, each party adopted the position and witnesses of FPL. (See also Findings of Fact 12 and 13, for an additional stipulation among FPL, CE, and BCC.)

A public hearing was duly noticed and commenced at 4:00 p.m. on February 11, 2004, for the purpose of allowing members of the public an opportunity to present evidence and testimony. Members of the public were placed under oath, testified, and were subject to cross-examination. Fourteen members of the public spoke at the public hearing, including Donald Scott, director of Collier County's Transportation Planning Department, and Collier County Commissioner Tom Henning. Art Dobberstein, a planner for Collier County Public Schools, also spoke at the public hearing and entered five documents, Exhibits 1-5, into the public hearing record.

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2004, without objection, the deposition transcript and the Rebuttal Exhibits were admitted into evidence.

The Transcript of the final hearing was filed with the Division of Administrative Hearings (DOAH) on March 1, 2004, and the Transcript of the public hearing was filed on March 2, 2004.

On March 22, 2004, a Proposed Recommended Order was filed on behalf of FPL, DEP, South Florida Water Management District (SFWMD), Lee County, City of Bonita Springs, Collier County Audubon Society, Florida Wildlife Federation, Conservancy of Southwest Florida, Responsible Growth Management Coalition, DiVosta and Company, Inc., and Parklands Development Limited Partnership. On March 22, 2004, a Joint Proposed Recommended Order was filed on behalf of BCC and CE. FPL also filed a Post-Hearing Memorandum of Law on March 22, 2004, and CE filed a Post-Hearing Memorandum of Law on March 23, 2004.

After the close of the final hearing and the filing of the deposition transcript of Mr. Conrecode and rebuttal exhibits, several letters from non-parties were filed with DOAH. These letters were the subject of two notices of ex-parte communication. On April 21, 2004, FPL filed a motion to exclude these letters or, in the alternative, a response to these letters. The motion to exclude is granted.

All of the post-hearing submissions have been considered and used in preparing this Recommended Order.

FINDINGS OF FACT

I. THE PARTIES

1. The TLSA establishes FPL and the DEP as parties to this proceeding, as well as the following upon their filing of a notice of intent to be a party, which each has done: Florida Department of Transportation, SFWMD, Lee County, City of Fort Myers, and the City of Bonita Springs. The following agencies did not participate in the proceeding and did not file a notice of intent before the 30th day prior to the certification hearing and each one is therefore deemed to have waived its right to be a party: PSC, Department of Community Affairs, Florida Fish and Wildlife Conservation Commission, Southwest Florida Regional Planning Council, and Collier County. § 403.527(4), Fla. Stat.

2. Approximately five linear miles of FPL's Corridor is located on real property owned by BCC. One section, i.e., 640 acres, is located along SR 82 adjoining FPL's Corridor, one section north and east of Lake Trafford to the east of the FPL Corridor, and four sections along the north side of Immokalee Road, CR 846. Virtually all of those lands along Immokalee Road on the north side are stewardship-receiving areas, which means they can receive a density of up to four dwelling units per acre. See Findings of Fact 90 and 102.

3. Locating the proposed transmission line on real property owned by BCC may result in adverse environmental impacts to BCC's real property if not subject to appropriate conditions of certification. Such impacts could include, but may not be limited to, impacts to wetlands. Additional buffering may be required for BCC's property. BCC's substantial interests are affected by and subject to determination in this proceeding.

4. Approximately 5.5 linear miles of FPL's Corridor is located on real property owned by CE in Collier County. Material here, CE owns land just north (and west) of the intersection of Immokalee Road (CR 846) and south of the Lee County Electrical Cooperative (LCEC) 138-kV ROW that turns to the east. CE land proceeds south of Oil Well Road, with the southernmost tip adjacent to I-75. (BCC also owns adjacent land east of this location.) See Findings of Fact 93-94 and 99. These lands are among a large group of landholdings designated as the Rural Land Stewardship Area that is designated in comprehensive plan amendments. The allowed density as noted above is up to four dwelling units per acre in a variety of forms, including compact rural development, village, towns, and hamlets that could provide for a range of mixed uses on these lands. These lands can be classified as either sending or receiving lands. See Finding of fact 99.

5. Locating the proposed transmission line on real property owned by CE may result in adverse environmental impacts to CE's real property if not subject to appropriate conditions of certification. Such impacts could include, but may not be limited to, impacts to wetlands. CE may also need to undertake additional landscaping and buffering in order to conceal the view of the transmission line. The view of the Camp Kaeis slough (located approximately one mile west of the intersection described in Finding of Fact 4) from CE property may be impacted in the future. See Finding of Fact 94. CE's substantial interests are affected by and subject to determination in this proceeding.

6. Intervenor, Parklands Development, L.P. (Parklands), is the owner of the east one-half (1/2) of Section 4, Township 48 South, Range 26 East in Lee County, Florida, less approximately 83 acres in the northeastern portion of the east one-half of Section 4 which is owned by DiVosta and Company, Inc. Parklands has also developed the western one-half of Section 4 and still owns portions of that one-half section that have not been sold to individual lot owners. These parcels are within the City of Bonita Springs. In addition, Parklands is the owner of substantially all of Section 9, Township 48 South, Range 26 East in Collier County, Florida. Parklands further has a contract to purchase 180+ acres in the northwest corner of Section 3,

Township 48 South, Range 26 East in Lee County, Florida, from Corkscrew Growers, Inc. Parklands' substantial interests will be affected by action of the Transmission Line Siting Board because construction of the Alternate Corridor could affect Parklands' use and development of its property. In addition, Parklands has an interest in assuring the availability of a reliable source of power for its developments. Accordingly, Parklands' substantial interests are affected by and subject to determination in this proceeding.

7. Intervenor, DiVosta Homes L.P., successor by merger with DiVosta and Company, Inc. (DiVosta), is the owner of approximately 468 acres of real property in the City of Bonita Springs, Lee County, Florida, as identified in the Warranty Deed attached to its Petition to Intervene. In addition, DiVosta owns approximately 83.61 acres in the Northeast Quarter of Section 4, Township 48 South, Range 26 East; approximately 109.05 acres in the Southwest Quarter of Section 3, Township 48 South, Range 26 East in Lee County; approximately 214 acres in Section 26, Township 50 South, Range 26 East and approximately 6 acres in Section 34, Township 50 South, Range 26 East, both in Collier County, Florida. DiVosta's substantial interests will be affected by the action of the Transmission Line Siting Board because construction of the Alternate Corridor could affect DiVosta's use and development of its property. In addition,

DiVosta has an interest in assuring the availability of, a reliable source of power for its developments. Accordingly, DiVosta's substantial interests are affected by and subject to determination in this proceeding.

8. The City of Bonita Springs is a municipality in Lee County, Florida.

9. The City of Ft. Myers, a municipality, appeared at the final hearing.

10. Pursuant to Section 403.527(4)(c)2., Florida Statutes, domestic non-profit corporations formed, in whole or in part, to promote the conservation and protection of the environment or to promote comprehensive planning or orderly development of the area in which the proposed transmission line or corridor is located are parties to the proceeding upon the filing of a notice of intent to be a party. Having complied with these statutory requirements the following are parties to this proceeding: Collier County Audubon Society, Inc., Conservancy of Southwest Florida, Florida Audubon Society, Florida Wildlife Federation, and Responsible Growth Management Coalition.

11. Kenneth E. Smith's substantial interests are affected by and subject to determination in this proceeding because FPL's Preferred Corridor includes real property owned by Mr. Smith east of Green Meadows Road. See Findings of Fact 80 and 243.

II. STIPULATIONS ENTERED INTO BY THE PARTIES

12. The following parties signed stipulations with FPL in which they adopted the position and witnesses of FPL at the certification hearing: DiVosta Homes, L.P., Parklands Development Limited Partnership, Florida Wildlife Federation, Collier County Audubon Society, Florida Audubon Society, Conservancy of Southwest Florida, and Responsible Growth Management Coalition.

13. FPL, BCC, and CE also entered into a stipulation that the location, construction and maintenance of the COR #3-230 kV transmission line (COR #3 Line) in either the FPL Corridor or the portion of the Alternate Corridor within the existing Common ROW between the Orange River and Collier substations could both be consistent with applicable local government comprehensive plans and would comply with all non-procedural requirements of agencies. The stipulation reserved the right of BCC and CE to argue as to the extent to which locating, constructing and maintaining the COR #3 Line in either corridor would be consistent with applicable comprehensive plans and non-procedural requirements of agencies. FPL reserved the right to argue as to the inapplicability of any provisions of local government comprehensive plans to the location, construction and maintenance of electric transmission lines within established ROWs. The stipulation was entered into the record as Joint

Exhibit 9. The parties also stipulated that the COR #3 Line could be constructed on either the FPL Corridor or the Alternate Corridor in compliance with the electric and magnetic field standards of Florida Administrative Code Chapter 62-814.

III. FPL APPLICATION

A. General

14. FPL submitted the application to the DEP on April 30, 2003. The DEP determined that the application was complete on May 13, 2003, and sufficient on August 21, 2003.

15. On October 10, 2003, the DEP issued its Written Analysis, incorporating the reports of the reviewing agencies and including proposed conditions of certification.

B. Project Description

16. An electrical transmission line's purpose is to transport large amounts of electricity from a generating facility to one or more substations. At the substation, the electricity can be either increased or reduced in voltage through transformers and other electrical equipment for further transportation or for distribution at lower voltages directly to customers.

17. Florida has a highly integrated electric transmission line system. High voltage transmission lines connect the various electric generating utilities to one another. The interconnected electric grid provides benefits to the state

because it allows electric utilities to share generation capacity, resulting in lower electrical rates, and to back up one another in emergencies.

18. FPL's service area generally covers the eastern half of the Florida peninsula and Southwest Florida.

19. FPL is seeking certification of a corridor between the Orange River substation (east of Ft. Myers, Lee County) and the Collier substation (near Naples, in Collier County) within which it will ultimately construct the COR #3 Line on a narrow ROW. Once all property interests in the ROW are acquired, the boundaries of the corridor will shrink to the width of the 15-foot to 60 foot ROW. (A ROW consists of the actual property rights that FPL will acquire to construct the transmission line. A corridor is a much larger area that includes the boundaries of the ROW within it. Once a ROW is established, the boundaries of the corridor become moot. See generally § 403.522(10), Fla. Stat.)

20. The service area for the proposed COR #3 Line (the "Project Service Area") is southern Lee County and Collier County. The Project Service Area is bounded on the north by the Fort Myers Power Plant switchyard and the Orange River substation, on the east by a line that follows the boundary between Lee and Hendry Counties, on the west by the Gulf of Mexico, and on the south by FPL's southernmost customer in

Collier County.¹ (FPL's Ft. Myers Power Plant is north of and nearby the Orange River substation and is interconnected with that substation with transmission lines.)

21. The proposed FPL Corridor is approximately 53.9 miles in length. If approved, FPL expects to incorporate an approximately 14-mile 230-kV transmission line into the new line between the Orangetree substation, located (south) on Immokalee Road (CR 846), and the intersection of FPL's existing Collier-Orange #1 and #2 transmission Common ROW and Livingston Road. (See FPL Exhibit 4 for the location of the proposed FPL Corridor, the FPL Common ROW, and other landmarks.)

22. There are three 138-kV lines flowing south out of the Ft. Myers Power Plant and a fourth radial line that is not included in the Project Service Area. There are four existing 230-kV lines flowing southeast out of the Ft. Myers Power Plant to the Orange River substation. (See FPL Exhibit 10.)

23. There are three 230-kV lines that flow south out of the Orange River substation and eventually terminate at the Collier substation to the south. One phase is known as Collier-Orange River #1 and the other is Collier-Orange River #2. A third 230-kV line runs from the Orange River substation south along the Common ROW then west to the Alico substation and then from Alico (loops back to the east) and south along the Common ROW to the Collier substation. (See FPL Exhibit 10.)

24. One 500-kV line flows south out of the Orange River substation along the Common ROW and then, east of the Southwest Florida International Airport, flows east to Andytown. Id.

25. The Project Service Area is an electrical "peninsula," that is, all electricity is brought into the area and flows from the north to the south from the Fort Myers Power Plant or the Orange River substation and then south. (See FPL Exhibits 9 and 10.) The Project Service Area is dependent on the transmission line system to import electricity from the north. (The Florida Public Service Commission (PSC) found, in part, that "[t]he principal bulk transmission link into the region south of Ft. Myers is an existing 230-kV connection between the Orange River substation, just east of Ft. Myers, and the Collier substation adjacent to Naples. Thus, the area south of Ft. Myers, including Naples, is considered an electrical peninsula.")

26. The primary path for transmission lines bringing electricity into the Project Service Area is on the existing Common ROW between the Orange River substation east of Fort Myers in Lee County and the Collier substation east of Naples in Collier County. This single Common ROW contains all three of the 230-kV transmission lines, as well as some other 138-kV and a 500-kV transmission line segments, that collectively bring about 70-75 percent of the electricity into the Project Service Area. See also Findings of Fact 22-24.

27. The three objectives of the COR #3 Line project are:

(1) to address the need, as confirmed by the PSC, to provide FPL's existing and future customers in the Project Service Area with additional electricity; (2) to enhance the reliability of electric service to the customers in the Project Service Area by locating the new line on a geographically separate route from the existing lines on the Common ROW; and (3) to provide a secondary feed, known as "looping," to the new Orangetree distribution substation in eastern Collier County.

Need for the COR #3 Line

28. The PSC determined a new 230-kV transmission line between the Orange River substation and the Collier substation is needed, taking into account the need for electric system reliability and integrity in Southwest Florida and the need to provide abundant, low-cost electrical energy to assure the economic well-being of the citizens of the State, particularly those in Southwest Florida.

29. The PSC noted that FPL's planning studies indicate this additional transmission capacity will be needed by December 2005 to alleviate potential overloads and low voltage conditions that could result from a single contingency event.²

30. The PSC found that construction of the COR #3 Line on a route that is geographically separate from the Common ROW will enhance system reliability, integrity, and restoration of

service more than locating the line on the existing Common ROW. The PSC also found that placement of the COR #3 Line on the existing Common ROW is "not optimal" due to concerns with serving the Project Service Area via a "single corridor"³ and the "inability for future expansion of FPL's transmission system to the east of the existing corridor" or Common ROW.

31. The PSC recognized, however, that any party to the site certification hearing may propose an alternate corridor and that the Siting Board will make the final corridor selection upon consideration of the factors and criteria specified in Section 403.529, Florida Statutes.

Transmission Line Design

32. The typical design for the COR #3 Line will be a single-pole unguyed concrete structure, 90 feet above grade in height, with the conductors framed in a vertical configuration. Each of the three conductors is anticipated to be a 1,431 thousand circular mils (kcmil), aluminum conductor, steel reinforced alumoweld core (ACSR/AW). There will also be a smaller overhead ground wire to provide shielding and lightning protection for the conductors. The maximum current rating (MCR) for the line will be 1,905 amperes.⁴ In some locations, electric distribution lines and communication cables may also be attached to the structures beneath the conductors.

33. The span length between structures will typically vary between 250 feet and 700 feet, depending on site-specific ROW widths and other design considerations. Both pole height and span length may vary to accommodate such things as locating poles to coincide with property boundaries or existing collocated utility facility poles, to minimize or avoid wetland impacts, to cross other utility lines, and to facilitate wide crossings of water bodies and roadways. Shorter structures may be required in proximity to an airstrip to comply with applicable clear zones.

34. Where the transmission line turns angles in excess of 10-15 degrees, the structures may be guyed to support the differential tension.

35. Access roads and structure pads will be constructed only where necessary to provide access for construction, maintenance, and emergency restoration. Pads may be installed in low or wet areas. Access roads may be built in some areas where linear features, such as an existing line or road, do not exist. Where constructed, the typical road top width will be about 14 feet, with a 2:1 side slope, and a minimum elevation of 6 inches over mean or seasonal high water. Structure pads will have variable sizes (e.g., 45'X50', 34'X50', and 35'X60'), depending on site-specific requirements, but will be of sufficient size to provide access to structure locations for the

large construction equipment. Access roads and structure pads will not be paved. Culverts will be installed beneath access roads and structure pads with spacing, diameter, and length to maintain pre-construction flows.

36. The design of the COR #3 Line complies with good engineering practices.

Transmission Line Construction

37. The transmission line will be constructed in seven phases: surveying; ROW clearing; construction of access roads and structure pads; line construction; pole framing; line stringing; and ROW restoration.

38. Surveying the ROW to facilitate acquisition of the necessary property interests is a first step towards construction. Since 95 percent of the FPL Corridor is collocated with existing roads and utility facilities, the need for acquisition of private property has been minimized.

39. After property rights have been acquired, the initial phase of construction is to clear the ROW. Collocation of the FPL Corridor with existing roads and utility facilities will enable required clearing to be minimized. Clearing will consist mainly of tree trimming and the occasional removal of trees that exceed or are capable of exceeding 14 feet in height.

40. In wetlands, trees capable of exceeding 14 feet in height that could come in conflict with the line will be removed

by hand-clearing or use of very low ground pressure equipment. Low-growing herbaceous vegetation will not be cleared from wetlands.

41. After the ROW is cleared, any necessary access roads and structure pads will be constructed. Typically, access road and pads are only required in wet and low areas. This enables all subsequent construction activity in those wet areas to remain on the newly constructed access road and pad.

42. The next phases of construction involve the physical transmission line construction. Initially, materials are brought to the jobsite. Next, holes are augered at each pole location and the poles are then erected using cranes or other heavy equipment. The hole is then backfilled with the excavated material or, if that material is unsuitable, with suitable fill from offsite. Typically, the pole is embedded into the ground approximately 16 feet to 20 feet.

43. After the poles are set, the poles are framed; that is, the insulators and hardware are installed on the pole.⁵ Then through a wire pulling operation the conductors and overhead ground wires are installed. The conductors are then properly sagged and tensioned to provide the proper vertical clearances. Next, the conductors are "clipped in" to the insulator assemblies. The final stage of construction is ROW restoration or clean up.

44. During all stages of construction, FPL will maintain traffic on any adjacent county, state or federal roadways in compliance with applicable Management of Traffic (MOT) regulations or plans.

45. Throughout construction, sedimentation management techniques, such as the use of silt screens and hay bales, will be employed as necessary to minimize potential impacts from erosion and sedimentation. Turbidity testing is also performed.

46. While each phase of construction will typically take only one to seven days in an area, the entire COR #3 Line construction process will last approximately 13 months.

47. The COR #3 Line will be constructed in compliance with all applicable design codes, including the National Electrical Safety Code, the DEP's regulations on electric and magnetic fields,⁶ the Florida DOT Utility Accommodation Manual, the Lee County and Collier County noise ordinances, and standards of the American Society of Civil Engineers (ASCE), the Institute of Electronic & Electrical Engineers (IEEE), American Society of Testing Materials (ASTM) and American National Standards Institute (ANSI), as well as FPL's own design standards. See Findings of Fact 226 and 252.

C. Methodology for Choosing the FPL Corridor

Importance of Geographic Separation

48. On project initiation, FPL management instructed its multi-disciplinary corridor selection team to identify, if it could ("to the greatest extent practicable"), a corridor for the COR #3 Line that is geographically separate from the existing Common ROW. This instruction was based on the importance of maintaining some geographic separation between the existing Common ROW and the new COR #3 Line to enhance reliability of electric service in the electrical peninsula to be served by the new line. It is not prudent utility planning or practice to carry excessive amounts of power on any one line, substation, transformer or transmission ROW.

49. While FPL has approximately 15 common ROWs on its system with power transfer capability equivalent to four 230-kV transmission lines or more, no common ROW, other than the one between the Orange River and Collier substations, is an electrical peninsula that lacks a power generation source at one end. In other words, the existing Common ROW between the Orange River and Collier substations is the only Common ROW on the FPL system that serves an electrical "peninsula."

50. Since all other FPL common ROWs have a generation source at both ends, the historical outages, resulting when all of the transmission lines on those ROWs were taken out of

service, have generally been on the order of hours or minutes. This may be because FPL has the ability to respond quickly, if by no other means, by restarting those power plants on either end of the common ROW to get electricity back to its customers. This strategy is not a reasonable option in the Project Service Area because there are no electric generating plants connected to the transmission system within the Project Service Area south of the Orange River substation.

51. The planning standards of the North American Electric Reliability Council (NERC) provide that there are situations when it is appropriate for a utility to decide to do more than is required by those standards. In determining whether to go beyond NERC standards, the consequences of a situation occurring may be considered even if the frequency of such a situation causing an electrical outage would be rare.

52. In this case, FPL decided that a worst case scenario loss of up to 80 percent of the electric capacity (all transmission lines on the Common ROW including the COR #3) in the Project Service Area potentially for as long as six days, which could affect about 600,000 people (less the population of the Project Service Area that may be served via the 138-kV transmission lines), was a severe enough consequence to warrant identifying a geographically separate ROW to the extent possible.⁷ See also Findings of Fact 185 and 297.

Corridor Selection and Public Involvement

53. FPL established a multi-disciplinary team to identify and evaluate routing alternatives within the Project Study Area. This multi-disciplinary team was comprised of a transmission line engineer, a land use planner, and an ecologist.

54. As noted herein, FPL management provided the team with the major premise that FPL wanted a geographically separate corridor for the COR # Line. During the route evaluation study, the multi-disciplinary team did not identify or evaluate the Common ROW as a route option, nor did they seek input from the public on use of the Common ROW for the COR #3 Line. However, the team responded to public inquiry on this subject and explained to the public the basis for FPL's desire for a geographically separate corridor.

55. FPL's multi-disciplinary team gathered data on siting opportunities and constraints within the study area,⁸ and identified dozens of line segments which could be assembled into more than 3,700 alternate routes for the COR #3 Line.

56. FPL also engaged in an extensive public participation program to gather input for its route evaluation study. This public participation program included several open houses, establishment of a Community Advisory Panel, mass mailings, a community survey, a toll-free telephone number, a website, and numerous meetings with regulatory agencies, community

associations, homeowner groups, and individual homeowners and property owners.

57. The public participation program provided substantive input to the route evaluation study in terms of a study area boundary, siting opportunities and constraints in the area, identification of route segments to be evaluated, and weights to be assigned to the route evaluation criteria. For example, the study area is dominated by a very large area of environmentally-sensitive lands, wetlands, and lands acquired or proposed for acquisition under several land acquisition programs for conservation purposes, generally referred to as the Corkscrew Swamp System.

58. Due to input from the community during the public participation program, the multi-disciplinary team expanded the study area to the east to include route alignments suggested by the public/agency participants that could avoid the environmentally sensitive Corkscrew Swamp System.

59. FPL's multi-disciplinary team evaluated the 3,700+ routes quantitatively, using ten weighted criteria, and then evaluated in more detail, using both quantitative and qualitative criteria, the top three distinct routes.

60. The Gencore (literally generates corridors) computer software was used to help the team identify highly ranked distinct alternatives (combinations of segments), which were

then subject to further, more detailed evaluation. (The FPL Corridor was ranked using the Gencore computer analysis and it became number 16 out of 3,784 alternatives studied.)

61. Ultimately, FPL's multi-disciplinary team identified the route of the FPL Corridor as providing the most appropriate minimization and balance of factors to address the project objectives.

62. At the public hearing held on February 11, 2004, a representative of the CREW Land and Water Trust, a non-profit public/private partnership organization formed in 1989 to protect the Corkscrew Regional Ecosystem Watershed expressed appreciation for FPL's public participation work with other interests in the area to identify its FPL Corridor. Collier County Commissioner Tom Henning also noted FPL's impressive public involvement efforts in selecting its FPL Corridor.

63. Once the preferred alignment was identified, the multi-disciplinary team delineated the boundaries (width) of the FPL Corridor to provide flexibility, including efforts to avoid or minimize impacts, for locating the eventual ROW within that corridor.

64. The southernmost 1.8-mile segment of the FPL Corridor uses the existing Common ROW. After FPL's multi-disciplinary team met significant community opposition to the geographically separate alternative routes identified by FPL in this area, FPL

determined that the risk of using the Common ROW for this short segment was acceptable because:

a. the Common ROW is significantly wider in this segment than to the north and allows for some physical separation between the COR #3 Line and the existing 230-kV lines;

b. if a multiple outage of all lines on the Common ROW occurred in this 1.8-mile segment, fewer people would be affected than if the outage occurred further to the north because power could still be provided to several substations located to the north of this 1.8 mile segment; and

c. the likelihood of a multiple outage of all lines in this 1.8-mile segment is lower than anywhere else along the Common ROW because there is extensive development on either side of the ROW and a major roadway on the east, lessening the likelihood of a wildfire, vandalism, sabotage or terrorism.

D. Agencies' Review of FPL's Application and Resulting Determinations

65. Each state, regional, and local agency with regulatory authority over the project reviewed FPL's Application and submitted to the DEP a report as to the impact of the proposed COR #3 Line on matters within the agency's jurisdiction, as required by Section 403.526(2), Florida Statutes. The DEP then compiled these reports and made a recommendation that the COR #3 Line be granted approval, subject to appropriate conditions, which have been amended. See Preliminary Statement, p. 5.

IV. DESCRIPTION OF THE FPL CORRIDOR

66. Approximately 95 percent of the FPL Corridor is collocated with existing linear features, such as roads and transmission lines. This collocation will minimize impacts of the new COR #3 Line. Approximately three miles of the total line length of the FPL Corridor is not immediately adjacent to either a dedicated road ROW and/or an existing transmission line ROW. The width of the FPL Corridor varies along the route to provide flexibility within the corridor to minimize or avoid impacts to such areas as existing developments and large wetland areas.

67. A large portion of the FPL Corridor is within the territory of the LCEC.

A. From the Orange River Substation to State Road (SR) 82

68. The FPL Corridor begins at the north at the Orange River substation, which is east of Fort Myers. From the Orange River substation, the FPL Corridor proceeds west for about one mile along the north side of, and generally paralleling, Homestead Lane/Tice Street. In this area, the corridor is 2,600 feet wide to provide flexibility in meeting the FAA and Lee County tall structure ordinance clearance requirements from the Strayhorn airstrip south of Homestead Lane. Approximately one mile west of the substation, the corridor turns south and is

located on an existing FPL 138-kV 100 and 160 foot-wide transmission line ROW for about three miles to SR 82...

69. The land uses around the substation are primarily agricultural and some low-density residential. Along the existing FPL ROW in this segment, the land uses are primarily agricultural, with some low-density development to the west of the FPL Corridor.

70. This segment of the FPL Corridor includes development, lands undergoing development, and agricultural lands that have very little or no value from a vegetation and wildlife perspective. The few isolated natural habitats in this segment have already been affected by man's activities.

71. At the public hearing, two residents who live on Tice Street expressed concern for the COR #3 Line being placed close to their homes and asked that the line be placed on the existing Common ROW or in the far northern section of the FPL Corridor. FPL has agreed to a condition of certification that requires it to locate the COR #3 Line north of Tice Lane (and Homestead Road) in order to minimize potential impacts to the existing residential areas. (See Joint Exhibit 5A, p.11-Condition of Certification XVIII.D. See also March 17, 2004, draft of conditions, p. 11, filed at DOAH with the Proposed Recommended Order submitted by FPL and other parties and April 19, 2004, Notice of Filing Corrected Conditions of Certification,

paragraph 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 subject to the preferred corridor." This latter set of draft conditions were not admitted into evidence and should be considered by the Siting Board with all parties given an opportunity to comment thereon.) Notwithstanding, the residents were concerned that the precise location of the line was unknown.

B. Along SR 82 to Sunshine Boulevard
(Including "Line Swap")

72. At SR 82, the FPL Corridor turns east and follows SR 82 in a southeasterly direction for about 7.5 miles to the intersection with Sunshine Boulevard and Green Meadows Road. In this area, the corridor is 500 feet wide, centered on SR 82, to allow the possibility of placing the COR #3 Line on either side of the roadway. Where this segment crosses the existing Common ROW, FPL will use a "line swap" configuration to maintain a separation of about one-half mile between the new COR #3 Line and the existing transmission lines on the Common ROW.⁹ See FPL Exhibits 6-7.) Thus, the FPL Corridor includes a lateral 400-foot-wide segment in this area that follows Buckingham Road for about 2,500 feet to the east of the Common ROW and then traverses south along the west side of the section line to SR 82.

73. The land use along the north side of SR 82 is the Lehigh Acres residential subdivision. On the south side of SR 82, the land uses are largely agricultural. In the vicinity of the "line swap," on the north side of Buckingham Road, is Lee County's resource recovery facility. See Finding of Fact 75.

74. Due to the presence of a major roadway, Lehigh Acres, a large subdivision north of SR 82, and developing lands and farmlands south of SR 82, there are some natural habitats, but in this segment of the FPL Corridor, the natural habitats have been somewhat diminished. The approximately one-mile portion of this segment that is not collocated with existing roads or transmission lines crosses pine flatwoods and mixed forest habitat in an area that is already disturbed by the east-west crossing of Colonial Boulevard.

75. Lee County's resource recovery (or "waste-to-energy") facility, including an incinerator and recycling facility, is located on the north side of Buckingham Road. Lee County plans to expand the recycling facility by extending it about 140 feet-150 feet to the south, towards Buckingham Road. The recycling facility's rezoning approval requires a 200-foot setback from Buckingham Road, including a significant vegetative buffer. These requirements will continue to be met with the expansion of the recycling facility, even though some of the vegetative buffer that exists between the recycling facility and Buckingham

Road will have to be removed. Lee County is concerned that even more vegetation in that buffer will have to be removed if the COR #3 Line is placed on the north side of Buckingham Road.

76. FPL has agreed to locate the COR #3 Line south of the northern ROW line of Buckingham Road in Lee County, if possible. If FPL is unable to obtain the necessary property interests to place the transmission line ROW within this area, FPL will locate the transmission line adjacent to the northern edge of the road ROW, such that there is no intervening land between the transmission line and the Buckingham Road ROW. Any trees or shrubs disturbed by FPL north of the centerline of Buckingham Road ROW will be replaced on adjacent Lee County property at FPL's expense. (See Joint Exhibit 5A, p. 12, Condition of Certification XVIII.G. See also March 17, 2004, draft of conditions, p. 11.)

C. From the Intersection of SR 82 and Sunshine Boulevard/Green Meadows Road to FPL's 500-kV Transmission Line ROW

77. At the intersection of SR 82 and Sunshine Boulevard and Green Meadows Road, the FPL Corridor turns south and follows Green Meadows Road, a private road, for about two miles to the existing FPL 500-kV transmission line ROW. A new ROW will be required here. In this area, the corridor is 200 feet wide, is centered on Green Meadows Road, and includes the roadbed of Green Meadows Road within its boundaries.

78. The land uses on the west side of Green Meadows Road are primarily agricultural. On the east side, there is some vacant land, some agricultural land, and some low-density residential land use, perhaps with a density of five residential units per acre. (During the public hearing, there was testimony that there are approximately five residences on Green Meadows Road.)

79. Other than the isolated freshwater marsh along the southwest side of Green Meadows Road, the agricultural and residential areas along Green Meadows Road are of little or no ecological value.

80. Intervenor, Kenneth E. Smith, owns a home on the east side of Green Meadows Road. Mr. Smith expressed concern about the aesthetics of the transmission line, property values, the potential proximity of the line to his home and potential health risks associated with the line being nearby his home, and emergency evacuation if an extreme event brought down one or more transmission structures. Mr. Smith suggested that the FPL line be "co-located to existing facilities" and not along Green Meadows Road.

81. Lines of similar design to the COR #3 Line exist in all types of land uses throughout Florida. The National Electrical Safety Code (NESC) governs the proximity of transmission lines to structures, and FPL has committed to

comply with that Code. In emergency situations where there is a concern that evacuation could be hampered, residents have the option to go to a shelter established within the County for such purposes. Moreover, FPL has agreed to a condition of certification that requires it to finalize a route that minimizes potential adverse impacts to the existing residences on the east side of Green Meadows Road by locating the transmission line on the west side of the road to the extent practicable. (Joint Exhibit 5A, p. 11, Condition of Certification XVIII.E. See also March 17, 2004, draft of conditions, p. 11 and April 19, 2004, corrected conditions, paragraph 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.")

82. At the public hearing, a property owner with mining interests on both sides of Green Meadows Road expressed support for placement of the COR #3 Line on the existing Common ROW. The same person is president of the Corkscrew Island Neighborhood Association, which is located in a rectangular area at the south bend in Immokalee Road, near Corkscrew Swamp and Bird Rookery Swamp to the west. See Finding of Fact 98. (See FPL Exhibit 4.)

D. Along the FPL 500-kV Transmission Line ROW

83. At the intersection of Green Meadows Road and the FPL Andytown-Orange River 500-kV 330 foot-wide transmission line ROW, the FPL Corridor turns southeast and runs along the 500-kV ROW for approximately 13 miles. In this segment, the FPL Corridor is 400 feet wide to include the existing FPL 500-kV ROW plus 70 feet to the north of that ROW.

84. The land uses along this segment are primarily agricultural and some vacant land.

85. The western portion of this segment (Lee County) of the FPL Corridor includes many natural areas; however, the wildlife habitats that actually occur on the FPL 500-kV ROW are shrub and brushland and some freshwater marshes. The eastern portion (Collier County) of this segment of the FPL Corridor is mostly citrus lands, which have very little or no value to wildlife.

E. From the FPL 500-kV Transmission Line ROW to Immokalee Road

86. At a point approximately two miles west of the intersection of SR 82 and SR 29, the FPL Corridor turns south and follows section lines and an existing LCEC 138-kV transmission line ROW for approximately six miles. In this six-mile segment, the corridor is 300 feet wide, centered on the LCEC transmission ROW, except in an area of development near

Lake Trafford Road where the corridor is reduced to 200 feet to avoid intrusion into existing residential development to the west. About two miles north of Immokalee Road, the LCEC line turns to the east, but the FPL Corridor continues south to Immokalee Road. In this two-mile segment, the corridor is 500 feet wide.

87. The land uses in this segment are primarily agricultural and vacant land, except in the vicinity of Lake Trafford, where there is residential development on the west side of the FPL Corridor around Lake Trafford Road. On the east side of the FPL Corridor, just north of Lake Trafford Road, there is a proposed Habitat for Humanity subdivision. See Finding of Fact 91.

88. The portion of this segment north of Lake Trafford Road is largely citrus and residential lands, which have very little or no value to wildlife.

89. South of Lake Trafford Road, the FPL Corridor crosses two small wetland systems that are a part of the Corkscrew Swamp System. The first of these is crossed in a location where the FPL Corridor is collocated with the LCEC 138-kV transmission line and access road. This prior disturbance has created a shrub swamp habitat in this wetland. (The "unnamed flowway" is located east of Lake Trafford.) Farther to the south along this segment, the FPL Corridor crosses agricultural lands and a

narrow section of Baucomb Strand, which is primarily forested and somewhat undisturbed. (See FPL Exhibit 4.)

90. BCC owns four sections of land along the north side of Immokalee Road, west of the intersection of Immokalee Road and the LCEC ROW in this segment. This property is within the Immokalee urban area, which allows for a more intense future residential use. See also Finding of Fact 2.

91. At the public hearing, an officer of Habitat for Humanity of Collier County, Inc., expressed concern that placement of the COR #3 Line in this segment would preclude use of five lots within a proposed adjacent 165-lot Habitat for Humanity development. However, in this location FPL will collocate the COR #3 Line entirely within the LCEC easement, and there is not likely to be an impact on any of the proposed Habitat building lots.

92. This segment of the FPL Corridor is within the territory of the LCEC. Currently, LCEC receives its electricity from FPL's Buckingham substation, from which it serves about 29,000 of its customers on a radial line.¹⁰ If the COR #3 Line is located in this segment of the FPL Corridor, LCEC plans to construct a 230- to 138-kV substation in Collier County near the LCEC's Immokalee substation to provide reliability looping to three of its four existing substations and two proposed substations in this portion of its territory. The proposed

interconnection between the COR #3 Line and the LCEC system will also improve the reliability to its fourth existing substation by taking 20-30 miles off its single source line. Without looping of LCEC's substations, if the source of power is lost at the FPL Buckingham substation or if LCEC's radial line is taken out of service at any location, it would cause a blackout to the residents served downstream from that loss of service. Currently, there is no alternative source of power for LCEC's substations.

F. Along Immokalee Road to Orangetree Substation

93. The FPL Corridor follows the Immokalee Road (County Road (CR) 846) alignment, turning west, south, and west again for approximately 15 miles to the Orangetree substation, which is located on the south side of Immokalee Road, just west of Wilson Boulevard in eastern Collier County. For most of this 15-mile segment, the corridor is 400 feet wide, centered on Immokalee Road, allowing collocation along either side of the road ROW. For the last two miles northeast of the Orangetree substation, while the corridor continues to include both sides of Immokalee Road, it is narrowed on the east side to exclude existing residential development and is 300 feet wide.

94. This segment of the FPL Corridor traverses largely agricultural land, some low-density residential areas, and vacant land, some of which is a portion of the Corkscrew Swamp

System proposed for acquisition as conservation lands. This crossing of Camp Keais Strand (a Cypress and freshwater marsh system) is designated as Save Our Rivers lands, and occurs where Camp Keais Strand is already impacted by the crossing of Immokalee Road. (See FPL Exhibit 4.) Along this segment of the FPL Corridor, there is little existing residential development. There is one planned residential area, the Orangetree and Waterways of Naples community, and the low-density development of the Golden Gate Estates subdivision that is a very large residential subdivision. The gross densities of these developments are .77 units per acre for Orangetree/Waterways of Naples, and .44 units per acre for Golden Gate Estates.

95. Farther to the west, after Immokalee Road has turned to the south, the FPL Corridor crosses the eastern edge of Bird Rookery Swamp. It is in this location that a Cardinal Air Plant was observed on the west side of Immokalee Road. See Finding of Fact 269. FPL has agreed to Condition of Certification XVIII. F. that requires FPL to use all available means to locate the transmission line ROW to the east of Immokalee Road in this area. (Joint Exhibit 5A, Condition of Certification XVIII. F., p. 11.) To the east of Immokalee Road lie predominantly agricultural and developing lands, which have very little or no value to wildlife.

Transmission Lines in Rural Areas

96. CE offered testimony expressing concern for placement of the COR #3 Line in this rural area. However, transmission lines are common in such rural areas since these lines are used to:

- a. provide connections between urban areas, as would the COR #3 Line;
- b. interconnect systems of different electric utilities;
- c. transport power from power plants, which are often in rural areas, to where the electricity is used;
- d. bring electricity to processing facilities, such as phosphate and juice processing plants, which are also often in rural areas.

97. In rural areas, transmission lines are commonly sited along rural roadways.

98. At the public hearing, the president of the Corkscrew Island Neighborhood Association expressed support for placement of the COR #3 Line on the existing Common ROW. His concern with the FPL Corridor in this segment was the aesthetic impact on the rural area and the increased cost of using the FPL Corridor.

See also Finding of Fact 82.

Plans for Future Development

99. Adjacent to the eastern area of this segment of the FPL Corridor, CE owns approximately 1,920 acres north of

Immokalee Road and approximately 19,000 acres to the south of the road. See Finding of Fact 4. CE's property, which is already bisected by Immokalee Road, is not subject to urban development, such as commercial, residential, industrial, or recreational development, except some lands are used for recreational hunting. The property is used for agriculture, water management and environmental uses. These lands are part of the Collier County Rural Lands Stewardship Area, within which a property owner may designate agricultural lands and sensitive habitats as sending areas to transfer development rights to other property, called receiving areas. (Mr. Conrecode identified land north and south of Immokalee Road until Oil Well Road, as holdings or parcels of concern. The uses are "primarily cattle grazing, vegetation grow crop production and environmental.") CE is in the process of designating these lands, but has not yet decided which of this property to designate as sending or receiving areas.

100. The rural character of this area may be short-lived, as CE plans to develop its property adjacent to this segment of the FPL Corridor within the next 5 to 10 years. Such development could include residential, commercial, industrial, agricultural, ecological, and mining and minerals extraction.

101. One of CE's goals is to maximize the potential return on its properties. CE is concerned placement of the COR #3 Line

adjacent to its property would impact the viewscape of the Camp Keais flowway area, the access to its property from Immokalee Road, and its ability to use the 20+ mile-long Camp Keais natural environmental system as a visual amenity to other properties. (See FPL Exhibit 4 for the location of Camp Keais.) CE is also concerned that when it develops its land adjacent to the COR #3 Line it will have to spend money to buffer and offset the visual and perceived impacts to residents and other business uses in the area by installing berming and landscaping.

102. In the eastern area of this segment, west of the lands referenced above that are owned by CE, BCC owns four square miles of property on the north side of Immokalee Road. See Finding of Fact 2. As noted herein, most of the BCC lands that border Immokalee Road are Stewardship Receiving Areas under the Collier County Comprehensive Plan. This land could receive future residential development up to a density of four dwelling units per acre. BCC anticipates this land will be developed (residential with commercial within the community) within the next 10-15 years.

G. Incorporation of Existing 230-kV Line from
Orangetree Substation to FPL Common ROW
(Not To Be Certified)

103. The COR #3 Line will incorporate an existing 230-kV transmission line from the Orangetree substation west along the north side of the Immokalee Road ROW, south along Collier

Boulevard or CR 951, and then west following an existing FPL transmission ROW (with a single 138-kV transmission line within the ROW) to a point along the existing Common ROW at its intersection with Livingston Road, approximately 1.8 miles north of the Collier substation. Certification is not being sought for this segment of the line.

H. Southernmost 1.8 Miles of Existing Common ROW

104. The final segment of the FPL Corridor follows the easternmost 250 feet of the existing 405 foot-wide Common ROW from the western end of the Orangetree 230-kv transmission line, south to Collier substation. The corridor follows the west side of Livingston Road.

105. The land uses in this area are primarily existing planned residential development.

106. The urbanized character of this segment precludes the presence of any significant wildlife habitat in this area.

V. DETAILED DESCRIPTION OF THE ALTERNATE CORRIDOR

107. The Alternate Corridor is approximately 36.8 miles long and is proposed to lie generally in or adjacent to FPL's Common ROW transmission corridor that runs between the Orange River and Collier substations. As described in more detail above, the Alternate Corridor will leave the Common ROW at the intersection of the Common ROW and Immokalee Road and proceed east along Immokalee Road across CR 951 to the Orangetree

substation. Like the FPL Corridor, the Alternate Corridor will connect at the Orangetree substation to incorporate FPL's new 14-mile long 230-kV line (currently under construction) to accomplish completion of the new 230-kV circuit from FPL's Orange River substation to the Collier substation.

108. Unlike the FPL Corridor, the Alternate Corridor was selected by the CE/BCC consultants without any public outreach to obtain input from the community.¹¹ The consultants gathered information about the location of properties owned by CE and BCC.

109. Other than the Grey Oaks Development adjacent to the existing Common ROW, which ROW is incorporated into the southernmost 1.8 miles of both the FPL Corridor and the Alternate Corridor, there is no CE or BCC property adjacent to or traversed by the Alternate Corridor. See Findings of Fact 2-5.

110. During the public hearing, Collier County Commissioner Tom Henning stated, in part, that he "would have hoped" that CE and BCC would have had a public meeting in the community prior to selecting the Alternate Corridor like FPL had done when selecting its FPL Corridor.

A. Utilization of the Existing Common ROW

111. The BCC and CE Alternate Corridor exits the Orange River substation on the existing Common ROW and proceeds south

approximately 30 miles to Immokalee Road. (See FPL Exhibit 4 and CE Exhibit 61.)

112. The existing Common ROW within the Alternate Corridor is wide enough to accommodate at least two additional 230-kV circuits.

113. This segment of the Alternate Corridor within the Common ROW traverses over nine miles of wetlands. See Finding of Fact 286. The specific number of acres of wetlands that may be impacted by placing the COR #3 Line in the Alternate Corridor is unknown. On-site wetland delineations would be performed, if the Alternate Corridor were chosen, to locate the jurisdictional limits of the wetlands. Specific pole locations and pad locations and sizing would need to be determined. Thereafter, impacts to wetlands would be determined.

114. From a review of aerial photography it appears that the Common ROW has not been cleared from edge to edge and certainly not maintained routinely edge-to-edge. Some wetland vegetation clearing may be required in order to construct a new line on the opposite side of the existing poles if those are selected.

B. Immokalee Road From Existing Common ROW to
Orangetree Substation

115. At the intersection of the Common ROW and Immokalee Road, the Alternate Corridor turns east and follows Immokalee

Road approximately 8.5 miles to the Orangetree substation.

(See FPL Exhibit 4 and CE Exhibit 61.)

116. To provide for making the eastward turn at the intersection, the proposed Alternate Corridor is extended to 500 feet on either side of the centerline of the existing Common ROW from a point 1,000 feet north of the intersection of the Common ROW and Immokalee Road to the same intersection. From that intersection, the Alternate Corridor extends east to the Orangetree substation, along Immokalee road, at a width of 500 feet, north and south from the centerline of Immokalee Road (for a total of 1,000 feet in width). (See CE Exhibit 29, p. 2.)

117. There are 20 planned residential communities and one section of the Golden Gate Estates subdivision along the Immokalee Road portion of the Alternate Corridor. The gross densities of these residential developments range from .51 to 12 units per acre on the north side of Immokalee Road, and from 2.11 to 12.84 units per acre on the south side of the road. On the north side of Immokalee Road, all but one of the residential developments has gross densities greater than one unit per acre. On the south side of Immokalee Road all but one of the residential developments have gross densities greater than three units per acre.

118. There is one planned residential community that is actually developed into two communities, Orangetree (Orangetree

and Waterways of Naples), and eight units of Golden Gate Estates residential subdivision located along the north or west and south or east sides of the Immokalee Road portion of the FPL Corridor. The gross density for the Orangetree planned community is .77 units per acre and .44 units per acre for Golden Gates Estates. See Finding of Fact 94.

119. The land segment west of CR 951 is more urban and developed, as opposed to the land segment east of CR 951, which is more rural.

Siting Constraints within Immokalee Road ROW

120. There was diverging evidence on whether the COR #3 Line could be located and constructed within the Immokalee Road ROW along the ROW segment from the FPL Common ROW running east along Immokalee Road to the intersection of CR 951.

121. During the public hearing, Donald Scott, the director of Collier County's Transportation Planning Department, testified and appeared in this capacity. He stated that Collier County is going to widen to six lanes, the portion of Immokalee Road from Livingston Road (the FPL Common ROW) to CR 951, i.e., a portion of the Alternate Corridor. (See FPL Exhibit 4 for the location of the road-widening project.) He also stated that the County has "some concerns with where the poles might possibly be placed in regards to utilities and other issues we're dealing with within the corridor." He wanted "to be on the record to

raise our concerns - - and need for more work. [He understood] it can be within a wide corridor and it might not affect the road, but we have concerns with our widening, and would like to work with F.P.L. more and see if it's even feasible."

122. Mr. Scott further explained: "The section from Livingston to I-75 will start construction by the end of this year. It's about 90 percent design plans right now. The section from I-75 to County Road 951 is due to start 2006 with a design build." Mr. Scott also stated: "We're having a lot of problems particularly between Livingston and I-75."

123. During their case-in-chief, BCC and CE's experts, Dr. Glover and Ms. Day, opined that the COR #3 Line could be located within the Alternate Corridor along Immokalee Road from the FPL Common ROW east to the intersection at CR 951.

124. Dr. Glover opined, in part, that the COR #3 Line could be built on the north side of Immokalee Road, between the road and the SFWMD canal with good engineering practices. He based his opinion, in part, on the placement of an existing 230 kV line on concrete, single pole structures that start at the Orangetree substation and run westerly to Collier Boulevard (CR 951), located on the north side of Immokalee Road and south of the canal. Ms. Day thought that there may be room for the line within the 1,000-foot corridor. She was uncertain as to a

specific location for the line within the corridor, but suggested that it would be the subject of more detailed studies.

125. During rebuttal and in response to the testimony of Dr. Glover and Ms. Day that the COR #3 Line can be built in the Alternate Corridor segment as described above, FPL's transmission line engineer, Mr. Hronec testified over objection that he was doubtful that the COR #3 Line could be built within the Immokalee Road ROW in this segment due to road widening plans and the presence of multiple underground utilities. (As discussed in more detail below, Mr. Hronec also opined that a line could not be located within the SFWMD canal north of Immokalee road.) His opinion testimony was based upon conversations with the Collier County Transportation Planning and Engineering Departments, a review of the County's proposed road projects and plans to widen the segment, and personal observations of the segment. (As of FPL's case-in-chief when Mr. Hronec testified initially, he had not studied the ROW to the west of CR 951 in the same detail as he had to the east of CR 951.)

126. There are numerous utility facilities in place within Immokalee Road ROW in this segment of the Alternate Corridor, both north and south of the road pavement. There is also a generally continuous guardrail adjacent to the north side of the

roadway. There appear to be guardrails on the south side of the road, but not continuous.

127. By agreement of the parties, memorialized in the Order dated February 24, 2004, page 2, CE was authorized to file transcripts of deposition(s) in response to Mr. Hronec's rebuttal testimony. On March 19, 2004, CE timely filed the transcript of the deposition of Mr. Conrecode.

128. Mr. Conrecode, a Florida-registered Professional Engineer, was formerly the capital projects director for Collier County and the public works administrator for Collier County. In both positions, he had responsibility to design and plan the road network in Collier County as well as the construction of existing road facilities and new road corridors. He is also involved with other transportation-related entities.

129. Mr. Conrecode reviewed Collier County's plans for the widening of Immokalee Road within the Alternate Corridor. He also spoke with Clarence Tears, the director of the Big Cypress Basin, regarding the concerns of SFWMD.

130. Mr. Conrecode opined that there was "substantial amount of space between the guardrail at the north side of the road and the top bank of the canal" to place the transmission line poles. (He also took into consideration the location of existing underground utilities.) He also stated, "the configuration on the north side of Immokalee Road is very

similar to what FP&L encountered on [CR] 951 as they ran the connection from the Collier substation to the [n]ew Orange Street [sic] substation, the proximity from the top of the bank to the edge of the road."

131. Mr. Conrecode also opined that the transmission line could be located within the canal ROW north of the canal and on the south side of the canal. He felt that the area north of the canal had the best and most abundant access east of I-75, but that it was not the only engineering solution. He also opined that the transmission line could be placed within the SFWMD ROW, i.e., placed longitudinally in the SFWMD ROW, notwithstanding, Mr. Hronec's testimony to the contrary.

132. No persuasive evidence was offered regarding the specific setbacks required from the existing utilities, guardrails or pavement to establish the COR #3 Line in this area. DOT road-design standards would need to be consulted.

Siting Constraints to the North of Immokalee Road ROW

133. To the north of the Immokalee Road ROW between Livingston Road and CR 951, there is a SFWMD canal. Mr. Hronec opined that SFWMD prohibits construction of electric transmission lines longitudinally within their ROW ("works of the district," here the canal).

134. Florida Administrative Code Chapter 40E-6 pertains to the "works of the [SFWMD]." Florida Administrative Code Rule

40E-6.011(4) provides: "The District has determined that an unencumbered 40 foot wide strip of right of way, measured from the top of the bank landward, is required in order for the District to perform the required routine and emergency operations and maintenance activities necessary to insure flood protection to the entire community. In this 40 foot right of way, subject only to limited exceptions provided in this rule, the district shall not authorize any aboveground facilities or other encroachments." (See Fla. Admin. Code R. 40E-6.121(2) and (6) and 40E-6.221(2); CE Exhibit 18.).

135. The SFWMD published Volume V, "Permit Information Manual," pertaining to "Criteria for Use of Works of the District," September 15, 1999 (Manual). Regarding "Transmission Lines," the a portion of the Manual provides: "The use of the District's Works or Lands for the construction, operation, and maintenance of transmission lines has the potential to interfere with the District's operation, maintenance and allied purposes. Applicants should acquire their own right of way and should not look to the District to utilize District-controlled Works or Lands, which were acquired for water management and other allied purposes. This policy should not be construed as a prohibition against the construction of distribution or transmission line crossings, nor is it a prohibition against use of short segments of District's right of way for the construction of local

distribution facilities when such facilities will not interfere with operations and maintenance and are otherwise acceptable to the District."

136. The SFWMD also provides for five operational zones described in the Manual at page 28 and Florida Administrative Code Rule 40E-6.011(7), Figure 1, pertaining to Zones 1 through 5 and providing distances from the canal channel and the top of the bank outward. (Zone one is the canal channel from the top of the bank to the opposite top of the bank; Zone two is the point on the ROW from a point five feet landward from the top of the bank; Zone three is between five and 20 feet landward from the top of the bank; Zone four is from 20 to 40 feet landward from the top of the bank; and Zone five is any ROW located further than than 40 feet landward from the top of the bank.) (See CE Rebuttal Exhibit 2.)

137. Mr. Conrecode offered testimony regarding the potential placement of the COR #3 line within the "Zones." He observed that FPL, in its existing Orangetree line, has located the poles along CR 951 of the existing canal.

138. No representative from the SFWMD testified in this proceeding. However, the Governing Board of the SFWMD adopted Resolution No. 2003-1207, and concluded that the Alternate Corridor "would not adversely impact the water resources and other matters with the [SFWMD's] jurisdiction." (CE Exhibit

18.) Also, several ROW conditions are attached to this Resolution, including the requirement that the permittee submit drawings "showing the proposed facilities for a determination of compliance with the requirements of Chapter 40E-6, F.A.C." Id. at 8 of 19. (See also CE Exhibit 18, pp. 18 and 19 of 19, Land Management Footnotes (1)-(8).)

139. Aside from the brief public hearing testimony of Mr. Scott, no representative from Collier County Transportation Planning Department, testified regarding the possible placement of the COR #3 Line north or south of Immokalee Road in the location of the Alternate Corridor.

140. As noted, Mr. Conrecode opined, based upon conversations with Mr. Tears, in conjunction with his reading of the SFWMD rules and Manual provisions and Collier County plans for the area, that the COR #3 Line could be placed within the SFWMD canal ROW.

141. Locating and constructing the line in this area would depend on locating the line with precision and then consulting with SFWMD staff. (See CE Exhibit 18.)

142. In the areas north of the SFWMD canal, there are a number of places where development has already filled in up to and abutting the canal which may not leave room for placement of the COR #3 Line. It would be possible to construct portions of the COR #3 Line north of the SFWMD canal in the other areas

where development has not yet filled in immediately adjacent to the canal.

143. Several residents who live north of the canal in this segment of the Alternate Corridor, including the president of the Longshore Lake Homeowners Association (this subdivision is located a half of a mile east of the I-75 interchange on Immokalee Road (see FPL Exhibit 4), testified at the public hearing and expressed concern that the proposed transmission line might be placed adjacent to their existing development rather than in the largely undeveloped segment of the FPL Corridor along Immokalee Road.

Siting Constraints to the South of Immokalee Road ROW

144. The COR #3 Line might be able to be built on private easements adjoining the south side of Immokalee Road ROW, if private easements could be acquired. FPL's transmission line engineer is concerned about the ability to acquire a private easement adjacent to the Immokalee Road ROW within the Alternate Corridor because a showing would be required in eminent domain proceedings that this is the best available route.

145. Mr. Conrecode agreed that placing the transmission on the south side of Immokalee Road could be a problem in practice because of the locations of the existing ROW. He believes FPL would have to acquire additional ROW for the location of the poles. But, because of the adequacy of the ROW to the north

side of the road, Mr. Conrecode believed that it would not be necessary to consider the south side of the road.

146.. Placement of the COR #3 Line on the south side of Immokalee Road would likely negatively impact many existing buffers and visual amenities as follows:

a. The live oaks that presently buffer the Windsong Club Apartment townhomes from the road and existing distribution line, which goes along the south side of Immokalee Road in this area, would have to be removed or severely pruned. These townhomes face Immokalee Road and are set back only 20 to 30 feet from the sidewalk.

b. Most of the trees and palms that presently buffer the Ibis Cove homes from Immokalee Road and adjacent distribution line would have to be removed. The backs of these homes are about 30 to 40 feet from the sidewalk.

c. The Hong Kong orchid and sable palms that buffer the Pebblebrook Lakes homes from Immokalee Road and the existing distribution line would have to be removed. These homes are set back approximately 10 to 15 feet from the back of the property line.

d. The developer of Saturnia Lakes previously paid to have the existing overhead distribution line on the south side of Immokalee Road buried for several hundred feet in front of its development. In addition to adding an overhead power line in this area, the vegetative area that presently buffers the Saturnia Lakes homes from Immokalee Road would also probably need to be greatly reduced.

e. The Washingtonia palms and the large oak at the entrance to Heritage Greens would

conflict with the COR #3 Line and would need to be removed.

f. The pine trees in front of the Laurel Oaks Elementary School and Gulf Coast High School would be in conflict with the COR #3 Line if it were placed on the south side of Immokalee Road in this area.

g. The street trees in front of two of the churches would probably have to be removed if the COR #3 Line were constructed on the south side of the road.

Other Land Use Issues

147. This segment of the Alternate Corridor conflicts with the two highest-ranking criteria for corridor selection identified in the results of the community survey conducted by FPL's multi-disciplinary team during its route selection study-- avoidance of homes and schools.

148. There are two schools, Laurel Oaks Elementary School and adjacent Gulf Coast High School, and three churches on the south side of Immokalee Road between the Common ROW and the Orangetree substation. (One parcel is being purchased for another school east of CR 951.)

149. There is already a 230-kV transmission line on the north side of Immokalee Road from CR 951 east to the Orangetree substation. The structures for that line are not of sufficient strength to also support the COR #3 Line. If the COR #3 Line were built on the south side of Immokalee Road for this four-mile segment, there would be a transmission line on both sides

of Immokalee Road. FPL's experience has been that placement of a transmission line on both sides of a road is not supported by the community.

Other Engineering Considerations

150. Between the Common ROW and CR 951, it may be theoretically possible to cross back and forth across Immokalee Road in an attempt to avoid the proximate homes, churches and school sites on the south side, but such multiple crossings of the road may require taller structures to maintain required vertical clearances while crossing both the road ROW and the 100-foot-wide SFWMD ROW. If the crossings were not right angles, this configuration would require long expanses of conductor cables going over both the Immokalee Road ROW and the SFWMD canal, which would be undesirable.

151. Such a zigzag configuration would also require approvals from SFWMD for multiple crossings of its canal in a short area. No credible evidence was offered to show whether approval could be obtained. Mr. Hronec did not believe this configuration would violate any local laws or ordinances of Collier County.

152. A zigzag configuration may also require either guying or use of more substantial foundations to support the differential tension for structures where the conductors turned large angles, typically exceeding 10-15 degrees. This

configuration is likely to create visual clutter, accentuating the visual impact of the line.

153. The minimization of the number of crossings of a roadway or canal would be good engineering practice.

154. This segment of the Alternate Corridor also presents the engineering challenge of crossing I-75 at an interchange in excess of 1,200 feet in width. DOT restricts the ability to place structures within the confines of such an interchange. Therefore, this crossing may require multiple elevated structures, the tallest of which could exceed 120 to 130 feet in height, to achieve the required vertical clearances of about 24 feet above the pavement. However, there is no rule that would prohibit the construction of the COR #3 Line in and adjacent to the interstate interchange. See Finding of Fact 253.

C. Can the Alternate Corridor between the Common ROW and CR 951 accommodate the COR #3 Line?

155. CE offered the testimony of Mr. Conrecode, and others, suggesting possible alternatives for the placement of the COR #3 Line in this segment of the Alternate Corridor. FPL offered credible rebuttal evidence.

156. This segment of the Alternate Corridor may accommodate the COR #3 Line. However, the actual location and construction of the COR #3 Line within this segment of the Alternate Corridor presents significant engineering design and

construction constraints and potential impacts upon the public for the reasons stated herein. See also Findings of Fact 226, 230, 252, and Endnote 17.

D. Orangetree Substation to Collier Substation

157. The southernmost portion of the Alternate Corridor between the Orangetree and Collier substations is identical to the FPL Corridor.

VI. WHETHER AND THE EXTENT TO WHICH EACH CORRIDOR WILL COMPLY WITH SECTION 403.529(4), FLORIDA STATUTES, CRITERIA

A. Ensure Electric Power System Reliability and Integrity

158. The Project Service Area is presently served by (a) three 230-kV transmission lines (a fourth 230-kV line runs from the Ft. Myers Power Plant to the Orange River substation) that run from the Orange River substation into the Project Service Area, two of which run directly to the Collier substation, and the third runs (loops) to FPL's Alico substation and continues to the Collier substation; (b) three 138-kV lines that run from Ft. Myers Power Plant to the Project Service Area, generally in the western portion of the Project Service Area. See Findings of Fact 20-26.

159. Whether the COR #3 Line is built in FPL's Corridor or the Alternate Corridor will not change the electrical peninsula

character of the Project Service Area because the area will still be fed from the north only.

160. FPL has a responsibility to provide safe and reliable service to its customers. The provision of reliable electric service to its customers is important to FPL. In the past, FPL has consistently demonstrated the ability to plan a reliable electric system consistent with NERC and FRCC planning standards.

161. Electric system reliability involves both the "adequacy" of the system to serve load (demand), and the "security" of the system to continue serving load, even after one system component is taken out of service.

162. Electric system integrity requires having all elements of the electric system in service, protected from overloads or abuse. System integrity is closely related to system reliability.

163. The NERC is a national organization that adopts standards for electric system planning and reliability that are used nationwide.

164. The FRCC, which represents all of the investor-owned utilities, cooperative systems, municipal electric utilities, independent power producers and power marketers that operate in peninsular Florida east of the Apalachicola River, participates in the development of, and has adopted the national planning

standards established by NERC for the reliability of electrical transmission lines.

165. NERC's planning standards, which are relied upon in the entire electric utility industry nationwide for the planning of new electrical transmission line facilities, address four transmission systems standards - normal and contingency conditions:

- a. Category A - all facilities in service and operating normally (voltages are appropriate) and no loss of load (customer electric demand or supply);
- b. Category B - a single element of the transmission system is out of service (also referred to as a "single contingency," transmission system is stable, and no loss of load to customers;
- c. Category C - two or more elements of the transmission system are simultaneously taken out of service, transmission system required to achieve a stable operating state without overloaded transmission lines and with appropriate voltages and without cascading outages and with a variable loss of some customer load; and
- d. Category D - an extreme event resulting in two or more (multiple) elements being removed or cascading out of service.

(FPL Exhibit 12, Table I.)

166. Construction of the COR #3 Line in either the FPL Corridor or the Alternate Corridor would be consistent with the NERC planning standards.

167. Similarly, whether the proposed COR #3 Line is located on the FPL Corridor or the Alternate Corridor, it will provide looping to the Orangetree substation.¹² Looping of this substation will improve the reliability of electric service to customers served by the Orangetree substation because it will provide an alternate source of electricity that can sustain the substation in the event one source is taken out of service.

168. The loss of the Common ROW has not been studied by FRCC as a Category D event. FRCC has studied extreme events, such as the loss of generating plants, e.g., Crystal River, St. Lucie, Turkey Point, and Martin, and the loss of 500-kV lines in Common ROWs.

169. According to Dr. Glover, under NERC standards, a utility has the discretion to address a Category D event that does not result in cascading outages. But he was not aware of another utility applying a Category D event to other than cascading system-wide outages.

170. FPL plans its system to withstand any single contingency without loss of load (loss of service) to any of its customers, consistent with the NERC planning standards.

171. Category D events (extreme events) include the loss of multiple generating units at a single site, loss of a substation, loss of a transmission line with three or four

circuits on it, and loss of all transmission lines on a common ROW. (FPL Exhibit 12, Table I.D.)

172. Following a Category D extreme event, one would expect at least some of a utility's customers to experience loss of electric service for some period of time.

173. A utility is required by the NERC planning standards to ensure that a Category D event on their system does not result in cascading outages, where the outage spreads in a domino fashion and impacts other utilities' systems.

174. A "cascading outage" is an outage event that begins in one area but spreads to another area, causing outages in the second area.

175. For example, an outage starting in another state and causing outages in Florida, or an outage starting in one Florida utility's service area and causing an outage in other Florida utilities service area, is considered to be a "cascading outage." The Project Service Area is an electrical peninsula and cascading of an outage to other areas is not likely.

176. A loss of a substantial electrical load in a large area caused by a single event taking multiple electric system elements out of service, even if it does not result in cascading outages, is also classified as a Category D event.

177. Under the NERC planning standards, although a utility is not required to evaluate all Category D extreme events, a

utility must exercise its judgment as to which extreme events it will evaluate and which non-cascading Category D events it will institute actions to mitigate. (See FPL Exhibit 12, Footnote e to Table I.D. of the NERC Planning Standards which states: "A number of extreme contingencies that are listed under Category D and judged to be critical by the transmission planning entity(ies) will be selected for evaluation. It is not expected that all possible facility outages under each listed contingency of Category D will be evaluated.")

178. Allowing some customers to temporarily lose their electric service (referred to as "load shedding") is an acceptable practice when needed to preserve reliability to the remainder of a utility's customers.

Electrical Vulnerability of Project Service Area

179. There are types of extreme single events that can take all of the transmission lines out of the service on the Common ROW including hurricanes, tornadoes, wind-blown debris, plane crashes, wildfires, vandalism, sabotage and terrorism.

180. The Common ROW in the Project Service Area is vulnerable to several extreme events that could take out of service all the transmission lines within that ROW. For example, there are five airports (including the Southwest Florida International Airport, approximately one mile from the

FPL Common ROW) in the vicinity of the Common ROW, resulting in a potential for plane crashes.

181. Portions of the Common ROW go through undeveloped areas where wildfires could cause an outage, as has happened on other FPL common ROWs. While no outages of the lines on the Common ROW have been caused by tornadoes or hurricanes since 1989, these types of weather events occur in the Project Service Area.¹³ These weather events and associated large wind-blown debris can also result in a complete outage of lines on a common ROW.

182. While FPL cannot control the frequency of Category D events that can result in a common ROW outage, it has some control over the duration and consequences of the outage.

183. Due to the electrical peninsula nature of the Project Service Area, an electrical outage caused by an extreme event affecting the Common ROW would last as long as it took to repair the damaged lines because there is no other way to deliver electricity to FPL's customers in the south end of the "peninsula."

184. If a transmission line is damaged by an extreme event like a plane crash, hurricane, tornado or sabotage, depending on the severity of the event, all of the phases of construction required for a new transmission line, other than possibly surveying, may be required to reconstruct the damaged line.

185. Depending on the severity of the damage, an extreme event damaging all of the transmission lines on the Common ROW could result in hundreds of thousands of FPL customers being out of service for approximately two to six days.¹⁴ See Finding of Fact 297. (Mr. Armand testified, in part, that FPL's assertion of an outage lasting up to six days is "totally unrealistic." He believed that there is a very small probability of a corridor outage in the Common ROW with the COR #3 Line located in it, and that if there were to be such an outage, it would be less than 12 hours in duration, i.e., to get one line operational. See Finding of Fact 296.) Even though FPL is recognized as an industry leader in service restoration efforts, and it has in place an emergency response plan to restore structurally damaged transmission facilities in the Common ROW, it may take a minimum of two days to get the first damaged circuit back in service, depending on the extent of the damage.

Reliability Enhancement from Geographic Separation

186. Placement of the COR #3 Line on a geographically separate ROW like the FPL Corridor spreads the risk and lowers the likelihood that all 230-kV lines serving the Project Service Area would be taken out of service by a single event.

187. While outages of all transmission lines on common ROWs (Category D events) are a relatively rare occurrence, they do occasionally occur. (FPL Exhibit 11.) It is difficult to

establish with any degree of certainty a mathematical probability of such a Category D event occurring.

188. Since 1985, FPL has experienced 12 events where all transmission lines on a common ROW on its system have been taken out of service due to hurricane, tornado, birds, plane crash or wildfire.¹⁵ (FPL Exhibit 11.) (In 1977, FPL experienced an outage on the Andytown line.) See Findings of Fact 295-297.

189. The typical corridor outage is of relatively brief duration. Of the 13 corridor outages reported in FPL Exhibit 11 and BCC Exhibit 7, several were 16 or fewer minutes in duration. The Turkey Point Corridor suffered a 120-hour outage as a result of Hurricane Andrew and, as a result of the hurricane, FPL experienced transmission line "outages in a large area of Dade and Broward Counties." While not accounting for all reported corridor outages, other corridor outages lasted approximately 11 hours (Volusia-Smyrna #'s 1 and 2 115-kV (plane)) and approximately 17 and 10 hours (Duval-Thalman 500-kV and Duval-Hatch 500-kV, respectively (plane)). Except for the outage occurring in the Turkey Point Corridor that has seven 230-kV lines, there have been no transmission line corridor outages involving four or more transmission lines. There have been no reported common corridor outages in the Common ROW or the Project Service Area.

190. There are many reported single-transmission line outages within the Collier-Orange River Corridor, but none attributable to a plane crash, hurricane, or tornado. Many of the reported transmission line outages in the Collier-Orange River Corridor have been attributed to unknown causes, equipment failures, foreign interference, lightning, birds, and human elements (other than vandalism). In the Collier-Orange River Corridor, there have been eight line outages on six different days caused by fire and one outage due to vandalism. (BCC Exhibit 5-(1989-2003).)

191. When planning a transmission line system in Florida, the loss of all transmission lines in a common ROW is one of the probable extreme events that should be evaluated. The loss of an entire generating plant is another.

192. All of the 230-kV transmission lines on the Common ROW are on two structures for much of its length. In these places, an extreme event would only have to destroy two structures to take all of the 230-kV lines on the Common ROW out of service.

193. Guide G6 in NERC's planning standards, which represents a good planning practice, provides that the transmission system should be planned to avoid excessive dependence on any one transmission circuit, structure, ROW or substation.

194. Guide G6 is a reasonable basis to plan a new ROW geographically separate from an existing ROW that already contains multiple transmission line circuits.

195. Similarly, the FRCC crisis response plan identifies physical security measures for which utilities should plan to enhance the reliability of Florida's transmission system. These physical security measures were adopted following September 11, 2001. That plan recommends that utilities consider not placing too many transmission lines on a common ROW because of terrorist-type threats, sabotage, or disgruntled employees.

196. Minimizing risk to infrastructure is also consistent with the planning philosophies of homeland security.

Deterministic vs. Probabilistic Contingency Assessment

197. In the context of contingency assessments for transmission lines, two types of evaluations are possible: deterministic and probabilistic.

198. When using a deterministic evaluation, a utility determines whether an event can occur and, if so, the consequences of that event. If the consequences are severe, the utility evaluates the steps it could take to mitigate the adverse effects.

199. When using a probabilistic evaluation, a mathematical computation is used, based on historical data. This method is

used when, for example, calculating the probability that all generators in Florida might not meet future loads in the future.

200. NERC's planning standards do not require a probabilistic evaluation when assessing Category D contingencies. The president of FRCC, Mr. Wiley, is not aware of any utility using a probabilistic evaluation for transmission line planning in his forty years of experience.

201. In planning the COR #3 Line on a geographically separate ROW, FPL used a deterministic evaluation. FPL determined that an extreme event could cause an outage of all lines on the Common ROW, and that the consequences of such an outage were severe enough to warrant looking for a geographically separate ROW.

202. If an extreme event like a plane crash takes out of service all of the transmission lines on the existing Common ROW, leaving the COR #3 Line undamaged on a geographically separate ROW within the FPL Corridor would allow FPL to restore service to about 60 percent of the demand in the Project Service Area in the worst case. With the available electricity, FPL could direct power to circuits with critical facilities within the Project Service Area, such as hospitals, police stations and fire stations, and rotate the blackout among many of its other customers until the damaged lines were reconstructed.

203. Alternatively, if the COR #3 Line were placed on the existing Common ROW and all of the transmission lines on the ROW were taken out of service by an extreme event, FPL would only be able to serve about 25-30 percent of the load in the Project Service Area through the 138-kV transmission network until the damaged lines were rebuilt. In such an event, there may not be enough electricity to energize all of the feeders that serve critical facilities in the Project Service Area.

Further Justification for Geographic Separation

204. The "not-in-my-backyard" approach of many landowners is a well-known impediment to transmission line construction, and obtaining property rights for new transmission lines is becoming increasingly difficult. Getting land for a new transmission line ROW is more difficult when development has already occurred than when land is still relatively undeveloped.

205. The population and demand for electricity in the Project Service Area are both growing rapidly. FPL projects there will be a need to add more transmission lines to bring power into the Project Service Area within the next 10 to 15 years.

206. Even though there is room on the existing common ROW to accommodate the addition of at least two new transmission circuits (one on the existing COR #2 structures and one on new structures), it is prudent for FPL to establish a geographically

separate transmission line ROW in the Project Service Area for the COR #3 Line before future development makes it more difficult to do so.

207. The Common ROW between the Orange River and Collier substations is the only common ROW on FPL's system with no generating plant connected on each end. For all the other FPL common ROWs, if there is an extreme event that takes out of service all the lines on that ROW, the resulting outage will last only as long as it takes to redirect power from FPL's fleet of generators. In the Project Service Area, there is currently no way other than the Common ROW to adequately feed the significant electrical demand in the Naples area. Thus, an outage in the Project Service Area caused by an extreme event on the Common ROW would last as long as it took to repair the damaged lines, which could take several days.

208. Collier County's Director of Emergency Management testified that, in his opinion, it is simple common sense planning to provide as much separation as possible between the COR #3 Line and the other 230-kV lines on the Common ROW. It is highly unlikely that an extreme event would affect both the Common ROW and the COR #3 Line on a geographically separate route. Thus, the geographic separation would enhance the ability to restore electric service to the community.

209. The FPL Corridor also facilitates the timely provision of reliability looping to LCEC's existing and future substations. If the COR #3 Line is not built in the FPL Corridor, this reliability looping would be farther in the future and it would cost substantially more to achieve because of the increased distance between the LCEC system and the closest point on the Alternate Corridor.

Other Projects that Might Improve Reliability of Electric Service in the Project Service Area Rejected

210. BCC offered testimony suggesting FPL has the option of upgrading its 138-kV transmission system located to the west of the Common ROW to 230-kV facilities in the Project Service Area rather than building a new 230-kV line. In making this suggestion, however, BCC's witness assumed, and concluded, that there would be physical space to accomplish such an upgrade. (He had not inspected all of the existing 138-kV facilities in this area.) FPL's transmission line engineer noted that a number of the existing 138-kV substations on that system have insufficient physical space to allow for the conversion, although he did not recall which substations are physically incapable of expansion to accommodate the conversion. No persuasive evidence was offered by BCC to explain how the electrical demands in the area could be met while the lines were being reconstructed.

211. As another alternative for eliminating the peninsula effect, BCC suggested that FPL could have resolved its reliability concern and eliminated the electrical peninsula nature of the Project Service Area by installing generation capacity in that Area.¹⁶ But this option was one of the alternative projects considered by the PSC in the need proceeding for this project, and it was rejected.

212. FPL has not pursued a suggested option to relocate the transmission lines off of common ROWs to increase reliability on its common ROWs outside the Project Service Area because they all have generation on both ends, allowing FPL to feed demand using generation facilities even if all the lines on a common ROW are out of service. Here, while FPL is not proposing to "relocate" a line off the Common ROW, it is proposing to take advantage of the fact that a new line is needed by constructing it off the Common ROW, achieving the same result suggested by this option.

213. BCC appears to be concerned that use of either the FPL Corridor or the Alternate Corridor for the COR #3 Line will increase the percentage of transmission capacity in the Project Service Area that comes through the Orange River substation. Although BCC offered testimony that loss of the Orange River substation would result in similar numbers of customers being out of service as a Common ROW outage, FPL's decision to not

duplicate that substation facility is reasonable. Duplication of the Orange River substation would probably be too expensive, although the specific amount is uncertain. Also, while a transmission line is a linear facility, a substation is a finite location, resulting in much less exposure to an extreme event. Moreover, substations are very robust facilities that are able to withstand higher wind and mechanical forces, and are less vulnerable to wildfires than transmission lines. For all these reasons, a complete outage of the Orange River substation is less likely than an outage of all the lines on the Common ROW.

FPL's Judgment to Seek a Geographically Separate
ROW Consistent with Prior Action

214. This is not the first time FPL has decided to seek a geographically separate route for a new transmission line even though space was available on a common ROW.

215. On one other occasion, FPL chose to locate a transmission line on a geographically separate route from an existing common ROW where there was room to accommodate the new line.

216. FPL made that decision for geographic separation for many of the same reasons it is seeking a geographically separate route for the COR #3 Line. FPL lost all three lines in the common corridor that resulted in a complete blackout and no amount of load shedding could arrest the frequency decline and

prevent the blackout. In that instance, after a 500-kV common ROW outage caused an electrical outage in South Florida for over three hours, FPL chose to put its next 500-kV transmission line on a geographically separate route.

217. FPL's service area generally covers the eastern half of the Florida peninsula and southwest Florida. FPL has approximately 15 common transmission line corridors of varying lengths that have at least the transmission line capacity of four 230-kV lines. The total transmission line capacity of these corridors ranges from four 230-kV lines to as many as nine 230-kV lines, as well as (a) two 500-kV lines and three 230-kV lines; (b) three 500-kV lines; and (c) one 500-kV line and seven 230-kV lines. FPL has installed new 230-kV transmission lines in common corridors since 1992.

218. FPL is planning to add additional generating capacity at its Martin generating station and an additional 1,100 MW of capacity at its Turkey Point station. It does not appear that FPL has relocated any of the 230-kV lines out of the Turkey Point corridor in order to achieve geographic diversity.

219. CE and BCC suggest that the current state of FPL's corridors and generating plants described above is inconsistent with FPL's Corridor.

220. All of the reasons for FPL's decisions to plan and construct and add to the facilities noted above are not apparent

in this record. However, the unique nature of the Project Service Area, in part, distinguishes FPL's plans to locate the COR #3 Line in FPL's Corridor from other projects.

Geographic Separation Appropriate for COR #3 Line

221. The contingencies that FPL addressed in its evaluation of the reliability of the proposed COR #3 Line Project were reasonable and appropriate under the NERC planning standards.

222. Given the electrical peninsula nature of the Project Service Area, it is prudent to locate the new COR #3 Line on a route that is geographically separate from the existing Common ROW to enhance reliability for the customer.

223. Construction of the COR #3 Line in the FPL Corridor would provide greater system reliability and integrity for FPL's customers. Use of this geographically separate ROW would mitigate the possibility of all transmission lines on the Common ROW being taken out of service simultaneously and leaving a substantial percentage of FPL's customers in the Project Service Area without power for an extended period of time.

224. Construction of the COR #3 Line on a geographically separate ROW, such as the FPL Corridor, is prudent and will ensure electric system reliability, integrity and service restoration.

B. Meet the Electrical Energy Needs of the State
in an Orderly and Timely Fashion

225. The PSC recognized that FPL's planning studies indicate that the COR #3 Line is needed by December 2005 to alleviate potential overloads and low voltage conditions from a single contingency event.

226. The COR # 3 Line can be constructed in either the FPL Corridor or the Alternate Corridor and meet the requirements set forth in Finding of Fact 47, except as otherwise noted herein regarding the potential significant constraints to locate and construct the COR #3 Line within the Alternate Corridor between the Common ROW and CR 951 along Immokalee Road.

227. Location of the COR #3 Line on either the FPL Corridor or the Alternate Corridor would meet the electrical energy needs of the state in a timely fashion in that the single-contingency planning criteria established by NERC will be met.

228. However, the FPL Corridor would meet the electrical energy needs of the state in a more orderly fashion than the Alternate Corridor because:

a. The Project Service Area is a fast growing area of the state and new distribution substations will likely be required in the eastern portions of Lee and Collier County. Those future substations can be fed more efficiently from the FPL Corridor than if the COR #3 Line is placed on the existing Common ROW and long east-

west transmission lines (similar to the Immokalee Road segment of the Alternate Corridor) are required to feed those substations.

b. In transmission line siting, it is easier to locate a new transmission line in an area before it becomes developed. The Alternate Corridor incorporates a 4-mile stretch of Immokalee Road that is already densely developed. In contrast, much of the FPL Corridor's route is presently undeveloped or agricultural in nature. Both CE and BCC acknowledge plans to develop their lands adjacent to Immokalee Road along the FPL Corridor within the next 10 to 15 years. While there is space on the Common ROW for placement of additional 230-kV transmission lines that may accommodate electric demand for another 29 to 44 years, it is not prudent to wait that long to establish a geographically separate ROW. By that time, CE and BCC plan to have developed their lands and it is not unreasonable to expect that the then-existing residents and businesses on that eastern stretch of Immokalee Road will be in the same position as those currently located along the western stretch of Immokalee Road within the Alternate Corridor. These residents will be occupying development in place that has not been planned to accommodate an adjacent transmission line.

C. Comply with the Nonprocedural Requirements of Agencies

229. The location, construction, operation, and maintenance of the COR #3 Line in either the FPL Corridor or the Alternate Corridor could comply with all applicable nonprocedural requirements of agencies.

230. The segment of the Alternate Corridor between the Common ROW and CR 951 may accommodate the location and construction of the COR #3 Line, subject to the significant engineering design and construction constraints discussed herein. See Findings of Fact 120-156, 226.

D. Be Consistent with Applicable Local Government Comprehensive Plans

231. The location, construction, and maintenance of the COR #3 Line in either the FPL Corridor or the Alternate Corridor will be consistent with all applicable provisions of local government comprehensive plans.

232. The COR #3 Line ROW will be established through the grant of approval from an existing ROW owner or FPL's acquisition of an easement or fee simple interest in property. These acquisitions can be through purchase, eminent domain, or by grant.

233. No segment of the COR #3 Line will be constructed until the ROW for that segment has been established.

234. The Lee County Comprehensive Plan is essentially silent on transmission lines as a land use.

235. There are two potentially applicable policies in the Comprehensive Plan of the City of Fort Myers. One indicates that land should be provided for utilities, and the other explicitly provides that the City's land development regulations

shall only permit, among other identified uses, utility lines, poles, and/or pipes in wetland areas.

236. In the Collier County Comprehensive Plan, essential services (which include transmission lines) are permitted uses in all future land use designations crossed by the FPL Corridor or the Alternate Corridor.

237. Similarly, Section 2.6.9.3 of the Collier County's Land Development Code exempts "structures supporting lines or cables" from the regulations.

E. Effect a Reasonable Balance Between the Need for the Transmission Line as a Means of Providing Abundant Low-Cost Electrical Energy and the Impact Upon the Public and the Environment Resulting from the Location of the Transmission Line Corridor and Maintenance of the Transmission Lines

238. In determining whether it is practicable to locate the COR #3 Line on a route that is geographically separated from the existing Common ROW, three relevant factors to consider are the costs of the geographically separate route, the benefits of that route, and the technical ability to construct the COR #3 Line on the alternative route.

239. The need for the COR #3 Line is not disputed. All parties agree that reliable electric service is desirable.

240. The type of transmission line design proposed for the COR #3 Line occurs in all types of land uses throughout Florida. By collocating the new line with existing linear features, such

as roads, property boundaries and other transmission line ROWs, both the FPL Corridor and the Alternate Corridor conform to the existing patterns of land development, and will consolidate land use/environmental impacts to a single area, as opposed to locating the new line in a non-collocated alignment. Collocation also reduces the amount of new ROW needed. For example, next to a road, the new line will only need a ROW that is up to 15 feet in width, whereas up to a 60-foot ROW is required where the line is not collocated with an existing linear feature.

Impact Upon the Public

241. Two priorities expressed by the community in the Project Service Area during the public outreach activities were the minimization of impacts to homes and schools.

242. The FPL Corridor minimizes impacts to existing homes by following a route where there is little residential development and where planned residential development is low density. There do not appear to be any schools within or adjacent to the FPL Corridor, although the Collier County School Board is in the process of acquiring land on the south side of Immokalee Road approximately three miles east of CR 951 and west of the Orangetree substation. (See FPL Exhibit 6-5, proposed site designated with a circle.)

243. Intervenor, Kenneth E. Smith, whose residence is located on Green Meadows Road along the FPL Corridor, expressed concern about the potential for health effects from electric and magnetic fields. See also Findings of Fact 11 and 80.

244. BCC's representative, Thomas W. Sansbury, is employed by the Grey Oaks Development Corporation as its president; Grey Oaks Realty Corporation as its president and broker of record; and Grey Oaks Community Services. The Grey Oaks community is on the west side of Livingston Road and near the Collier substation. (FPL Exhibit 4.) (A member of the board of BCC owns Grey Oaks Development Corporation and Grey Oaks Community Services.) Mr. Sansbury has extensive experience in the sales, management, and operations of developments. He also advised that there is sales resistance when developments are close to or adjacent to transmission lines. He advised of the need and cost for buffering of properties that are nearby transmission lines. Mr. Sansbury also believed that BCC has the ability to plan and develop other commercially successful developments (like Grey Oaks, for example) that are adjacent to other transmission lines. He also expressed concern about the public's perception of effects from electric and magnetic fields and sales resistance he has received from being close to or adjacent to transmission lines. Mr. Sansbury, who served on the Environmental Regulation Commission when the DEP's rule limiting

the electric and magnetic fields associated with electric transmission lines and substations were adopted, agreed that the experts who testified at the Commission's hearings around the state supported a determination that there is no conclusive evidence that there is any danger or hazard to public health at the 60 Hertz electric and magnetic fields found in Florida, although he stated that typical buyers do not support such a determination.

245. The COR #3 Line will comply with the standards adopted by the DEP, limiting the electric and magnetic fields associated with transmission lines in all areas of the FPL Corridor.

246. The Alternate Corridor along Immokalee Road (from the Common ROW to CR 951) is adjacent to high-density residential development and two existing schools. See Finding of Fact 242. Yet, avoiding homes and schools are high priorities in this community.

247. There are several techniques that can be used to lessen the potential impact of an adjacent transmission line on development. They include the installation of an earth berm and/or landscaping to buffer the development from the transmission line; alignment of residential units so the living space at the rear of the homes are faced away from the line; and the placement of lesser-valued or non-residential units, like

golf courses and commercial uses, closest to the line. It is easier to implement these mitigation techniques prior to development taking place or prior to development being planned and approved, than after the development is complete or approved.

248. From a land use perspective, the Common ROW portion of the Alternate Corridor is suitable for the placement of the COR #3 Line. Also, from a land use perspective, the FPL Corridor from the Orange River substation south to its intersection with Immokalee Road is similar in land use impacts to the portion of the Alternate Corridor on the existing Common ROW north of the intersection with Immokalee Road. In these areas, both corridors follow existing linear facilities and are suitable for location of the COR #3 Line from a land use perspective. (See, e.g., FPL Exhibit 4.)

249. Aside from some environmental area issues discussed herein, the main difference in land use impacts between the FPL Corridor and the Alternate Corridor occurs along their two different Immokalee Road segments. There is little existing development in the FPL Corridor along Immokalee Road (east of CR 951), whereas the existing residential and commercial development in the Alternate Corridor between the Common ROW and CR 951 is quite extensive.

250. Placement of the COR #3 Line in the Alternate Corridor along Immokalee Road between Livingston Road (which is just east of the Common ROW) and CR 951 would have more significant impacts on residential areas than placement of the line within the FPL Corridor. The existing residential development within the Alternate Corridor in this area is much higher density, and the FPL Corridor provides greater opportunity for future development to accommodate or plan around the line as an existing feature. In addition to the existing residential development along Immokalee Road within the Alternate Corridor, several other developments are already planned and have received at least some of their approvals.

251. Also, to place the COR #3 Line in the Alternate Corridor along Immokalee Road between Livingston Road and CR 951, a zigzag configuration may be required. See Findings of Fact 150-153. This zigzagging would create visual clutter, whereas placement of the line in the FPL Corridor parallel to a road would allow the line to blend into the other linear elements and not predominate.

252. While construction of the COR #3 Line in the Alternate Corridor could comply with applicable standards as listed in Finding of Fact 47, compliance with good engineering practices may be difficult to achieve along the segment of Immokalee Road within the Alternate Corridor because of the

uncertainty of where the COR #3 Line can be located and the constraints discussed herein. See Finding of Fact 156.

253. The crossing of I-75/Immokalee Road interchange within the Alternate Corridor without placement of structures within the DOT I-75 interchange, may require the use of multiple elevated structures, some of which might exceed 120 feet or 130 feet in height to achieve the appropriate vertical clearances over the elevated roadway. See also Finding of Fact 154.

254. CE offered testimony that the COR #3 Line could have a negative impact on the quality of a car trip to the vehicle's occupants. Yet there are between two and three times the number of vehicles each day on the segment of Immokalee Road traversed by the Alternate Corridor, compared to the segment in the FPL Corridor.

255. Along Immokalee Road, the FPL Corridor is a better choice than the Alternate Corridor from a land use planning perspective.

256. In planning future development land holdings of CE and BCC, CE and BCC would have the flexibility to install berms and landscape materials to buffer future development from the COR #3 Line and Immokalee Road. Both CE and BCC have experience buffering development from transmission lines and achieving a commercial success with such development.

257. Evidence presented by BCC of the potential for the COR #3 Line to impact the "sales velocity" (speed with which a residential lot or home sells) and property value impact to its lands along the FPL Corridor has some merit but is not persuasive. When selling homes in Collier County, the preferred orientations that affect values of homes in Collier County are to have the living space facing west, toward a golf course or water.

258. The two villa properties used for comparison in this testimony are not comparable to one another from a landscape architecture perspective. The Muse villa properties are on the eastern portion of the Grey Oaks community and are buffered from the FPL ROW by a buffer area, landscape berm, and roadway. The units are faced away from the ROW. The Muse contains approximately 26 residential units of 2,600 to 3,000 square feet. The Santiva community has similarly sized and number of units and is on the east side of Airport-Pulling Road (western border of the property) and buffered from this road by a canal, a berm, and a road. The Santiva units sold out are essentially one year and six months while the Muse units, which buffered the power lines sold out in approximately three years. While the villas (The Muse) that sold more slowly face west and are adjacent and west of Livingston Road along the Common ROW, the view from the living space is over a single golf hole, whereas

the villas (Santiva) that sold more quickly have a view of both a lake and several golf holes. Accordingly, the villas that sold more quickly are more desirable from a landscape architecture perspective because of the lot layout. Also, the villas that sold more quickly were in a later phase of the development that occurred after the development had already achieved a good reputation in the community. Nevertheless, the units that do not border on a transmission line are more desirable and valuable than those that are adjacent to a transmission line in this area. Also, utilizing golf holes as a buffer increases the cost of the development.

259. Evidence was also presented regarding property value impacts and sales velocity regarding the estate homes section (on Dalia Way) lots on two sides of the street. The homes that face east on the right side of the street, and were buffered from multiple transmission lines on the existing Common ROW by a golf hole, sold for less and more slowly than the homes that faced west on the other side of the street. Part of the differential between the lots was because of the favorable western view. Mr. Stansbury observed that the prices of the lots facing the transmission lines were approximately 15 percent lower than the others. In any event, there was no persuasive evidence presented that the impact to property value or sales velocity from the multiple transmission lines on a wide ROW in

view of the eastern-facing estate lots is comparable to any impact from a single pole transmission line such as the proposed COR #3 Line.

260. Immokalee Road is adjacent to the properties owned by CE and BCC and is an arterial roadway that is planned for future expansion to four or possibly six lanes. Even without a transmission line, both CE and BCC use earth berms and landscaping to buffer development from adjacent arterial roadways. Any impact to CE and BCC there that may result from their desire to buffer the COR #3 Line adjacent to Immokalee Road from their future development along the FPL Corridor is likely to be incremental in that CE and BCC would already be planning to buffer that future development from the arterial roadway.

261. During the public hearing, several people inquired why the COR #3 Line would not be placed underground. The evidence shows that an underground configuration for the COR #3 Line is not cost-effective, and that repair times could increase from hours for an overhead line to days or weeks for an underground line.

Impact Upon the Environment

262. From an environmental perspective, the objective of the corridor selection process was to minimize crossings of the various land use and environmental siting constraints, as well

as to maximize any collocation opportunities with existing linear facilities. As a result, the FPL Corridor is collocated with existing linear facilities for approximately 95 percent of its length.

263. A new north-south transmission line corridor in this area of Florida cannot be established without crossing a significant wetland system. One major siting constraint in selecting a corridor from Orange River substation to the Orange Tree substation is the Corkscrew Swamp System. Avoidance of potential impacts to the Corkscrew Swamp System is the primary reason why the FPL Corridor extends so far to the east. Even the Alternate Corridor that uses the existing Common ROW crosses more than two miles of wetlands associated with the Corkscrew Swamp System.

264. The Corkscrew Swamp System is a large ecosystem dominated by wetlands, primarily consisting of cypress wetlands. It also includes large expanses of pine flatwoods and other natural systems. Throughout the Corkscrew Swamp System, there are numerous endangered and threatened species. It is the home to some of the high-profile endangered species in the State of Florida, including the Florida panther, bald eagle, and black bear. (The Corkscrew Swamp Ecosystem is estimated to encompass approximately 64,500 acres.)

265. The Corkscrew Swamp Sanctuary, a large Audubon-owned and managed wildlife sanctuary, and also a major tourist attraction in the area, is located in the area north of Immokalee Road and east of the big turn to the south.

266. The FPL Corridor essentially avoids the Corkscrew Swamp System by going around it to the east of the System along the north-south section of Immokalee Road, touching it only on the edges where disturbances already exist, such as existing roadways and transmission lines.

267. Since 95 percent of the FPL Corridor is collocated with existing linear facilities, already-existing access should be sufficient for construction and maintenance of the COR #3 Line in many areas. Where existing access is available, in some areas finger roads to the new structure locations may be required. This ability to use existing access in many areas will minimize the amount of filling required for this project.

268. There are two locations within the FPL Corridor where the Sleeping Beauty Water Lily, a listed plant species, is known to exist. One of these locations occurs just west of the Orange River substation along the eastern edge of an existing citrus grove in an agricultural ditch, and the other location occurs in a roadside ditch along the south side of SR 82.

269. In addition, the listed Cardinal Air Plant was observed to occur along the eastern edge of Bird Rookery Swamp

and on the west side of Immokalee Road. (See FPL Exhibit 4.)

They also could occur in other areas including other cypress trees along and outside the FPL Corridor. They are locally abundant.

270. FPL has generally agreed to avoid the removal of listed plant species that occur on public lands and waters where practicable. Where such removal is unavoidable, FPL has agreed to abide by the mitigation or other requirements of regulatory agencies with jurisdiction over listed plants. In addition, FPL has specifically agreed to avoid through all available means, including the exercise of the power of eminent domain, placing the COR #3 Line on the west side of Immokalee Road where the land has been designated as Rural Fringe Mixed Use District Sending Lands by Collier County. (Joint Exhibit 5A Conditions of Certification, Section XVIII.F, p.11, Attachment 4.) This is the same area where the Cardinal Air Plant was observed to exist.

271. As noted, the Corkscrew Swamp System is also home to endangered and threatened animal species, including the Florida panther. The Florida panther is one of the most endangered species in the State of Florida. The entire study area for the COR #3 Line is located in Florida panther habitat. The Florida Panther utilizes large expansive pine flatwoods and swamp systems and drainages to travel.

272. Radio-telemetry has indicated the presence of the panther along Immokalee Road to the south of the Corkscrew Swamp System. By collocating along Immokalee Road in these areas, the FPL Corridor will not result in the removal of significant additional habitat that could be used by the Florida Panther, and will not increase the animal's exposure to more human presence or vehicular traffic.

273. The wood stork, the bald eagle, and the Florida Black Bear are also found in the vicinity of the FPL Corridor.

274. The FPL Corridor avoids known wading bird breeding colonies, including wood stork breeding colonies. In addition, because it is collocated with existing linear facilities for approximately 95 percent of its length, the FPL Corridor is not likely to result in the removal of significant additional habitat that could be used by the wood stork. The construction and operation of the COR #3 Line in the FPL Corridor will have minimal adverse impacts on the wood stork.

275. There are no known active bald eagle nests within one half mile of the FPL Corridor, although they could be observed throughout the study area and are likely to occur along the FPL Corridor. In addition, as with the wood stork, only minimal habitat that the bald eagle might use will be removed. The construction and operation of the COR #3 Transmission Line in

the FPL Corridor will have minimal adverse impacts on the bald eagle.

276. There have been black bear observations along Immokalee Road in the vicinity of the FPL Corridor, including, unfortunately, black bear mortalities. The black bear, much like the Florida Panther, utilizes large thickets and swamp systems and move several miles in a day. As with the Florida panther, by collocating along Immokalee Road in these areas, the FPL Corridor will not result in the removal of significant additional habitat that could be used by the black bear, and will not increase the animal's exposure to more human presence or vehicular traffic. The construction and operation of the COR #3 Line in the FPL Corridor will not adversely affect the black bear.

277. The FPL Corridor avoids and minimizes impacts to wildlife and wildlife habitats because the existing habitats along much of the FPL Corridor are already disturbed. In addition, by avoiding known locations of endangered or threatened species, and by collocating with existing linear facilities for approximately 95 percent of its length, the amount of additional clearing that will be required is minimized. Consequently, the construction of the COR #3 Line in the FPL Corridor will not adversely affect fish and wildlife

resources and will not adversely affect endangered or threatened species and their habitats.

278. There will be some fill required in wetlands for the construction and operation of the COR #3 Line in the FPL Corridor. Where the line must cross wetlands, FPL may have to construct access roads and pole pads in the wetlands to facilitate construction and maintenance of the new transmission line.

279. FPL has agreed to follow a number of procedures to avoid and minimize the impacts from such fill in wetlands. First and foremost, the location selected for the FPL Corridor avoids numerous wetlands. Within the wetlands crossed by the FPL Corridor, wetland impacts will be minimized in the following ways: by careful alignment of the ROW, such as by taking advantage of upland islands located within these wetlands for pole locations where practicable, thus avoiding placing a fill pole pad in the wetlands; by incorporating the number and size of culverts necessary to maintain existing surface water hydrology and flow; and by minimizing the size of pole pads placed in wetlands based on site-specific conditions.

280. In addition, FPL has agreed to remove existing exotic vegetation from the wetlands within the FPL Corridor. This will provide a benefit to those wetlands from which exotic vegetation is removed.

281. CE offered testimony estimating that construction of the COR #3 Line in the entire length of the FPL Corridor would require the placement of 2.05 acres of fill in wetlands, with .75 acres through the construction of an access road to the Baucom Strand portion of the FPL Corridor (less than a mile north of the portion of Immokalee Road which turns north toward the LCEC 138-kV ROW) and another 1.3 acres by the placement of 25-fill pads in the remaining areas, e.g., four fill pads for the wetlands at the "unnamed flowway" located east of Lake Trafford on the LCEC 138-kV ROW; four structure pads for the entire length of Baucom Strand (assuming a continuous access road of 2,300 feet); seven fill pads at the Camp Keais Strand located over a mile west of the segment of Immokalee Road which turns west after leaving the LCEC 138-kV ROW; one fill pad at the "freshwater swamp" located on Green Meadows Road; and nine fill pads in the Bird Rookery Swamp area. (See FPL Exhibit 4.)

282. Ms. Johnson (for CE) assumed that the power lines would be placed to minimize impacts to wetlands; the approximate spacing of the poles would be 700-foot maximum and that the pads would be 45 feet by 50 feet.

283. Ms. Johnson stated that while the water management district employed her, permits were issued for projects with that amount or more of wetland impact, and agreed that it is

possible for a project to include 2.05 acres of impacts to wetlands and still meet the permitting requirements.

284. FPL offered rebuttal evidence regarding CE's wetland impact analysis. Mr. Simpson opined, in part, that there might be approximately 1.23 acres of impacts to the areas described by Ms. Johnson. See Finding of Fact 281.

285. FPL has agreed to appropriately mitigate for wetland impacts that cannot be avoided or minimized.

286. CE also offered testimony that construction of the COR #3 Line on the Alternate Corridor would not cause any significant impacts to wetlands. Based on the National Wetland Inventory Data Base, there are over nine miles of non-continuous wetlands along the Alternate Corridor. However, there was no precise quantification of adverse impacts to wetland areas within the Alternate Corridor. Also, the evidence is inconclusive where the actual boundary of the CREW Trust Lands is in relation to the Alternate Corridor.

287. It is difficult to determine at this stage of the siting process what the exact acreage of wetland impacts will be if the COR #3 Line is constructed in either the FPL Corridor or in the Alternate Corridor. Before wetland impact amounts can be calculated, site-specific wetland determinations would have to be made and site-specific pole placement and pad designs would have to be completed.

288. The construction of the COR #3 Line in either the FPL Corridor or the Alternate Corridor will be consistent with the wetland regulatory standards applicable to such projects. (See also Joint Exhibit 9.)

The Need for the COR #3 Line as a Means of Providing
Abundant Low-Cost Electrical Energy

289. The PSC determined that the COR #3 Line is needed, taking into account the factors set forth in Section 403.537(1)(b), Florida Statutes.

290. In the need proceeding, the PSC considered several alternative projects, including four alternative transmission projects in the Fort Myers-Naples region and the construction of new generation facility near Naples.

291. The PSC determined that "[t]he present value cost of the project proposed by FPL in a new right-of-way is estimated at between \$32 million and \$57 million, subject to final right-of-way routing and conditions of certification by the" Siting Board.

292. According to the PSC, placement of the COR #3 Line in the existing Common ROW, "was the least cost alternative with an estimated net present value cost of \$25 million," or potentially costing up to \$32 million less than a geographically separate route. However, the PSC found that "this alternative is not optimal due to concerns with serving an electrical peninsula via

a single corridor and the inability for future expansion of FPL's transmission system to the east of the existing corridor." Stated otherwise, the cost to construct the COR #3 Line in the Alternate Corridor will be approximately \$11 to \$12 million less than in the FPL Corridor without consideration of placing the COR #3 Line on a separate pole line along the Common ROW with an estimated incremental cost of approximately \$6.5 million above the previous estimate.¹⁷

293. The PSC also determined that "[t]he other four alternatives were either more costly (estimated net present value costs between \$101 million and \$138 million) or did not meet undervoltage and thermal overload conditions under all single contingency events." (See Joint Exhibit 1, App. A pp.5-6.)

294. The value of system line losses (lost energy) if the COR #3 Line is placed in the FPL Corridor would be between approximately \$120,000 to \$250,000 per year higher than if the Alternate Corridor is used.

295. The benefits of placing the COR #3 Line in the geographically separate FPL Corridor are best understood in terms of the consequences to be mitigated or avoided in the event of an extreme event taking out of service all transmission lines on the Common ROW. While loss of all the transmission lines on a common ROW due to an extreme event (such as plane

crash, wildfire, hurricane, tornado, wind-blown debris, vandalism, sabotage, or terrorism) is an unlikely event, it has happened at least 12 times on FPL's transmission system since 1985, even though some of the total corridor outages have been of relatively short duration. See Findings of Fact 188-190. (See also FPL Exhibit 11; BCC Exhibit 7.)

296. CE and BCC, through Dr. Glover and Mr. Armand, strongly contested the relative likelihood of such an extreme event and the extent of any outage, if the event occurred in the Common ROW. Dr. Glover concluded that the probability of a hurricane with sufficient force to disable all of the lines in the Common ROW would actually do so while not disabling another line located within a few miles of that ROW must be regarded as approximately zero, and the probability greater than zero regarding the impact of tornadoes, but still very, very small. He regarded the probability of a Common ROW outage due to a plane crash as very, very small or low, and due to terrorism as far-fetched and unrealistic at best. He further opined that transmission lines located in remote areas are more vulnerable to outages due to vandalism or sabotage as are the risks associated with wildfire. Mr. Armand opined that there would be a very small probability of a corridor outage on the Common ROW with the COR #3 Line located within it, and if there was, it would last less than twelve hours. He also stated that FPL's

assertion that an outage on the Common ROW could last up to six days was "totally unrealistic," based, in part, on the devastation caused by Hurricane Andrew to the transmission lines at Turkey Point that took five days to restore.

297. FPL's experts opined that if the COR #3 Line were added to the Common ROW, and an extreme event occurred there, it could result in a 30-minute to five to six-day blackout affecting between approximately 376,000 and 600,000 people (less the population of the Project Service Area that may be served via the 138-kV transmission lines), as a worst-case scenario. (It appears that the population of the Project Service Area as of January 2003 was 594,900 with population growth expected to be 18,800 per year.)

298. When an electrical outage occurs there are numerous adverse predicable consequences to the community. Traffic lights do not function and traffic accidents increase. Elevators get stuck. Fire alarm systems may become inoperable or may not operate properly. Response time for emergency vehicles is increased due to increased call volume and the emergency vehicles' loss of preemptive control of traffic signals. Fire hazard is increased due to use of candles, fuel-powered lanterns, barbecue grills and improper fueling of gasoline-powered generators. Community wellness services, like Meals on Wheels and dialysis centers, are impacted. Medical

emergencies increase due to injuries that occur during attempts to make emergency repairs, and the lack of light that results in more household accidents and affects the ability to mix and administer medications at home. Emergency management communications with the community regarding shelter locations, available retail operations for water, ice, emergency repair supplies, medicines, etc., are hampered due to many people not having adequate battery-powered receivers. Telephone communications are compromised due to many cordless phones not operating and cell phone batteries not being recharged due to the lack of electricity. There is no vertical water storage in Collier County; the pumping of potable water is mechanical and electrical. Pumps on private drinking water wells, most of which do not have back-up generators, do not function. Very few sewage lift stations have back-up power capability. Once those stations' capacities are exceeded, effluent can spill outside the station into creeks and roadways, and backup into homes.

299. Moreover, the Southwest Florida economy is dominated by hospitality and tourism-related organizations as part of its economic structure. These companies require continuous and reliable electric power in order to meet the needs of their clients and customers in the marketplace. Failure to have reliable electric power in the community, even for a brief period of time has significant impacts to business. By

affecting traffic flow, a power outage hampers the ability of

employees to get to and from work. During an electrical outage,

a business is not able to operate and be productive as an enterprise because sales do not take place and services are not delivered. Typically, businesses affected by an electrical outage cannot operate. This, of course, affects the ability of that company to generate taxable sales and thereby erodes productivity in the community.

300. FPL decided the consequences to the community in the Project Service Area of a widespread multi-day electrical outage would be too severe and, therefore, chose to seek a geographically separate route for the COR #3 Line to mitigate the impacts of such an outage. FPL's decision is reasonable and is supported by the weight of the evidence.

301. When the severity (length) and magnitude (number of people affected) of an electrical outage are relatively high, it does not matter that the risk is relatively low. From an emergency management perspective, it is worth providing redundancy to the transmission system and spreading the risk.

302. Putting the COR #3 Line on the geographically separate FPL Corridor is somewhat analogous to a homeowner buying homeowner's insurance. While the likelihood of any one home suffering a loss from fire, tornado, hurricane, or vandalism is also very low, a homeowner may decide it is prudent

to spend money to purchase insurance if the potential loss they could suffer would be catastrophic. In that type of decision, as in the one here, it is important to consider the consequences of the event even though the event is very unlikely to occur.

303. There would be no significant difference between the cost to maintain the COR #3 Line in either the FPL Corridor or the Alternate Corridor.

VII. CONDITIONS OF CERTIFICATION

304. The design, construction, and operation of the COR #3 line in the FPL Corridor will comply with the Conditions of Certification. (Joint Exhibit 5A.) See also Preliminary Statement, p. 5 and Findings of Fact 71 and 81 for recent amendments and corrections. (All parties should be given an opportunity to comment on all of the Conditions of Certification, including the amended and corrected Conditions of Certification filed post-final hearing. Id.)

305. The Conditions of Certification establish a post-certification review process through which the final right-of-way, access road and structure locations will be reviewed by agencies with regulatory authority over the project.

306. While the FPL Corridor has few homes in close proximity to it and limited wetland crossings, FPL has agreed to conditions of certification that further minimize land use and environmental impacts.

CONCLUSIONS OF LAW

Jurisdiction

307. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding. §§ 120.569, 120.57, and 403.527(2), Fla. Stat.

Standing

308. All parties identified in Findings of Fact 1 through 11 have standing in this proceeding.

Burden of Proof

309. FPL has the burden of proving that the FPL Corridor for the COR #3 Line meets the criteria under Section 403.529(4)(a)-(e), Florida Statutes, and should be certified as proposed based upon a preponderance of the evidence presented at the certification hearing. See Fla. Dept. of Transportation v. J.W.C., 396 So.2d 778, 788 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat. See also Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349, 350 (Fla. 1st DCA 1977) ("The general rule is, that as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." (Citations omitted.)) CE and BCC have the burden of proving by a preponderance of the evidence that the Alternate Corridor meets the criteria under Section 403.529(4)(a)-(e) and, if it does, has less adverse impacts than the FPL Corridor regarding

the criteria in Section 403.529(4)(a)-(e), including costs. Id.

See also § 403.5271(3), Fla. Stat.

Intent

310. This certification proceeding was held pursuant to the Transmission Line Siting Act, Sections 403.52-403.5365, Florida Statutes, and Florida Administrative Code Chapter 62-17,

Part II. The intent of this certification process is:

to fully balance the need for transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing abundant low-cost electrical energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction and maintenance of transmission lines.

§ 403.521, Fla. Stat. The Legislature has set forth specific requirements for the PSC to determine the "need" for the proposed transmission line and address other matters within its jurisdiction; various other agencies to prepare reports and studies regarding matters within their jurisdiction; publication of notice of the application and certification proceeding; the ability of third parties to offer alternate corridor routes for consideration; and criteria to be considered in determining whether an application should be approved in whole, approved with modification or conditions, or denied. §§ 403.526, 403.527, 403.5271, 403.529, and 403.537, Fla. Stat. Ultimately,

the Governor and Cabinet, sitting as the Siting Board, must determine, in part, whether, and the extent to which, the location of the corridor and the construction and maintenance of the transmission line will satisfy the statutory criteria.

§ 403.529(4)(a)-(e), (5)(b) & (c), Fla. Stat.

Applicability of Local Government Comprehensive Plans,
Zoning Regulations, and Other Land Development Regulations

311. FPL objected to receipt of evidence on the consistency of the proposed COR #3 Line with adopted local government comprehensive plans, zoning regulations, and other land development regulations. However, upon consideration of the parties' post-hearing memoranda of law on this issue and an independent assessment of the issue, FPL's objections are overruled.

312. Pursuant to the "Local Government Comprehensive Planning and Land Development Regulation Act (Act)," incorporated municipalities and counties have the power and responsibility "[t]o plan for their future development and growth," and "[t]o adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth." § 163.3167(1)(a) and (b), Fla. Stat. In part, each local government is required to prepare a comprehensive plan of the type and nature set out in this Act. § 163.3167(2), Fla. Stat. "After a comprehensive plan, or element or portion

thereof, has been adopted in conformity with this act, all

~~development undertaken by, and all actions taken in regard to~~

development orders by, governmental agencies in regard to land

covered by such plan or element shall be consistent with such

plan or element as adopted." § 162.3194(1)(a), Fla. Stat.

(Emphasis added.)

313. As used in the Act, Section 163.3164(6), Florida Statutes, provides that "'[d]evelopment' has the meaning given it in s. 380.04." ("Development order' means any order granting, denying, or granting with conditions an application for a development permit." § 163.3164(7), Fla. Stat.

"Development permit' includes any building permit. . . or any official action of local government having the effect of permitting the development of land." § 163.3164(8), Fla. Stat.)

314. In 2002, the Florida Legislature amended Section 380.04(3)(b), Florida Statutes, to provide that "[w]ork by any utility . . . engaged in the distribution or transmission of . . . electricity. . ." is not to be taken (for the purpose of this chapter) to involve development. See Ch. 2002-20, § 94, at 555, Laws of Fla. See also Ch. 2002-20, at 496, Laws of Fla. providing: "amending s. 380.04, F.S.; adding work on rights-of-way pertaining to electricity facilities to the list of activities not defined as 'development' for purposes of the Florida Environmental Land and Water Management Act (FELWMA)."

Work on electric transmission lines is exempt from the definition of development for purposes of the FELWMA, the State's comprehensive planning laws (the Act), and the local comprehensive plans adopted pursuant to the Act.

315. Stated otherwise, linear portions of electrical transmission lines located on "established ROWs" are excepted from the definition of "development" under Section 380.04(3)(b), Florida Statutes, and thus are not subject to the provisions of local government comprehensive plans adopted under Chapter 163, Part, II, Florida Statutes. See In Re: Petition for Declaratory Statement filed by George M. Hughes and Barbara Knowles, Case No. DCA-03-DEC-295 (DCA April 9, 2004) (concluding "that the powerline proposed for construction by Gulf Power [within the City of Parker, Florida,] is not 'development' as defined in" Section 380.04, Florida Statutes.)

316. Notwithstanding the 2002 changes to the definition of "development," the Legislature did not amend the TLSA in like manner. In particular, the Legislature continues to recognize that "the centralized and coordinated permitting process established by [the TLSA] is intended to further the legislative goal of ensuring through available and reasonable methods that the location of transmission line corridors and the construction and maintenance of transmission lines produce minimal effects on the environment and public health, safety, and welfare while not

unduly conflicting with the goals established by the applicable local comprehensive plan." § 403.521, Fla. Stat. (Emphasis added.) (This Legislative intent has not been amended since 1990. Id. at "History.")

317. Section 403.529(4)(d), Florida Statutes, expressly requires consideration of consistency "with applicable local government comprehensive plans" regarding the location of the transmission line corridor and the construction and maintenance of the transmission line. (Section 403.529, Florida Statutes, has not been amended since 1996. Id. at "History.") By definition, a "corridor" "may be the width of the transmission line right-of-way, or a wider boundary, not to exceed a width of 1 mile." § 403.522(10), Fla. Stat.

318. Further, certification under the TLSA shall be in lieu of any permit, certificate, or similar document required by any agency, see Section 403.522(2), Florida Statutes, pursuant to, e.g., Chapters 163 and 380, Florida Statutes. § 403.531(3), Fla. Stat.

319. The Legislature did not remove Section 403.529(4)(d) from consideration by the Siting Board notwithstanding the 2002 amendments. See Paragon Health Services, Inc. v. Central Palm Beach Community Mental Health Center, Inc., 859 So. 2d 1233, 1235 (Fla. 4th DCA 2003) (Citations omitted.) It is reasonable to conclude that pending further clarification from the Siting

Board, the Legislature, or the courts, consistency with applicable local government comprehensive plans is at issue in this case within the limits of the issues framed by the parties.

Procedural Requirements

320. The evidence in the record of this proceeding demonstrates compliance with the procedural requirements of the TLSA, including the notice requirements for the certification and public hearings.

Criteria for Final Disposition of FPL's Application

321. In order to make a determination whether FPL's Application for Corridor Certification should be approved, approved with conditions, or denied, the Siting Board must determine whether, and the extent to which, the location of the corridor and the construction and maintenance of the transmission line in the corridor will:

- (a) Ensure electric power system reliability and integrity;
- (b) Meet the electrical energy needs of the state in an orderly and timely fashion;
- (c) Comply with nonprocedural requirements of agencies;
- (d) Be consistent with applicable local government comprehensive plans; and
- (e) Effect a reasonable balance between the need for the transmission line as a means of providing abundant low-cost electrical energy and the impact upon the public and the environment resulting from the location

of the transmission line corridor and the maintenance of the transmission lines.

§ 403.529(4) (a)-(e), Fla. Stat.

Criteria to Evaluate the FPL Corridor Versus the Alternate Corridor

322. In order to make a determination as to whether the FPL Corridor should be certified, the Siting Board must compare its compliance with the criteria in Section 403.529(4) to that of the Alternate Corridor. Specifically, Section 403.529(5) (b), Florida Statutes, provides:

If the board finds that an alternate corridor rejected pursuant to s. 403.5271 meets the criteria of subsection (4) and has the least adverse impact regarding the criteria in subsection (4), including cost, of all corridors that meet the criteria of subsection (4), then the board shall deny certification or shall allow the applicant to submit an amended application to include such corridor.

Section 403.529(5) (c), then provides:

If the board finds that two or more of the corridors that comply with the provisions of subsection (4) have the least adverse impacts regarding the criteria in subsection (4) including costs, and that such corridors are substantially equal in adverse impacts regarding the criteria in subsection (4), including costs, then the board shall certify the corridor preferred by the applicant if the corridor is one proper for certification pursuant to s. 403.522(10).

323. The PSC determined the "need" for a new 230-kV transmission line between the Orange River and Collier substations in Order No. PSC-03-0551-FOF-EI, issued on April 28, 2003. The PSC found that construction of the proposed line in either a new geographically-separate ROW (such as FPL's Corridor) or within the existing Common ROW (which is followed for approximately 32 of its 37 mile length by BCC and CE's Alternate Corridor) would satisfy the single-contingency planning criterion.

324. However, with regard to the relative reliability of the two corridors that would be afforded the Project Service Area for multiple contingencies, the PSC found that:

[C]onstruction of the new line within the existing corridor would leave the Naples load center vulnerable to a multiple contingency event affecting the existing corridor. FPL's proposal to build the Collier-Orange River #3 transmission line in a new corridor would mitigate the impacts of such an event, enhancing electric system reliability, integrity, and restoration of service.

325. Even though the PSC recognized that the estimated net present value cost of placing the new line in a geographically separate corridor would be between \$32 and \$57 million compared to \$25 million for placing the line in the existing Common ROW, the PSC found that use of the Common ROW "is not optimal due to

concerns with serving an electrical peninsula via a single corridor and the inability for future expansion of FPL's transmission system to the east of the existing corridor."

326. Thus, the PSC found that the benefit of the enhanced reliability from a geographically-separate corridor outweighed an incremental cost of placing it there of up to \$32 million. Within the parameters set forth in Section 403.537(1)(b), Florida Statutes, this finding of the PSC addresses the extent to which the reliability, integrity, and service restoration of the electric system will be enhanced. To utilize the geographically separate corridor identified by FPL in this certification proceeding, the estimated incremental cost is approximately \$4.5-\$12 million; see Findings of Fact 291-293, which is within the range of incremental costs recognized by the PSC.

327. The PSC concluded that:

FPL's proposed Collier-Orange River #3 transmission line is needed taking into account the need for electric system reliability and integrity in Southwest Florida and the need to provide abundant, low-cost electrical energy to assure the economic well-being of the citizens of the State, particularly in Southwest Florida.

328. The PSC's determination of "need" for the COR #3 Line is binding upon all parties to the certification proceeding.

§ 403.537(1)(c), Fla. Stat. See also Florida Power Corporation v. State of Florida, Siting Board, 513 So. 2d 1341, 1344 (Fla. 1st DCA 1987). However, this finding of "need" for the COR #3 Line does not foreclose the Siting Board from making its independent assessment of whether the FPL Corridor satisfies the requirements of Section 403.529(4)(a), Florida Statutes, apart from the "need" for the transmission line (COR #3 line). See Order, January 26, 2004.¹⁹ See also Endnote 18.

329. Nevertheless, the PSC Order Determining Need is evidence that a corridor that is geographically separate from the Common ROW would enhance electric system reliability, integrity, and restoration of service.

330. FPL provided credible and credited evidence that:

Guide G6 in the NERC planning standards applicable nationwide indicates that it is not a good planning practice to carry excessive amounts of power on any one transmission circuit, structure, substation, or transmission ROW;

Guide G6 in the NERC planning standards is a reasonable basis for a Florida electric utility to seek a ROW that is geographically separate from a common ROW that already contains multiple transmission lines;

loss of all transmission lines in a common ROW is one of the probable events that should be evaluated when planning a transmission system in Florida;

the NERC planning standards require a utility to exercise its judgment in evaluating whether and how to mitigate a

Category D event (although a utility is not required to evaluate all such events), such as loss of all transmission lines on a common ROW;

the president and Chief Executive Officer of the Florida Reliability Coordinating Council, Mr. Wiley, prefers the FPL Corridor over the Alternate Corridor due to its geographic separation and the reliability enhancements that flow from such separation, and believes it is very prudent for FPL to establish a new ROW in this peninsular Project Service Area before future development makes it more difficult to do so; and

the electrical peninsula nature of the Project Service Area is unique and potentially (even though it is unlikely) vulnerable to a corridor outage.

331. CE and BCC failed to show, by credible and credited evidence of the same weight, that FPL exercised its judgment in an unreasonable or unjustified manner when it determined that it would be appropriate to identify a corridor for the COR #3 Line that is geographically separate from the existing Common ROW to the extent possible.

332. Accordingly, the FPL Corridor meets the criterion of Section 403.529(4)(a) better than the Alternate Corridor.

Compliance with Section 403.529(4)(b), Florida Statutes

333. The PSC acknowledged in its order determining need for the COR #3 transmission line that FPL's planning studies indicate the proposed transmission line needs to be in service by December 2005 to alleviate potential overloads and low

voltage conditions from a single contingency event. Evidence regarding the design of the transmission line, the construction phases for the transmission line, including the projected 13-month construction schedule, and the proposed location of the COR #3 Line demonstrates that the COR #3 Line will meet the electrical needs of the state in an orderly and timely fashion within the time frames established by the PSC. There is no substantial difference between the ability of the FPL Corridor or the Alternate Corridor to meet this criterion.

Compliance with Section 403.529(4)(c), Florida Statutes

334. The location of the COR #3 Line in the FPL Corridor and the construction and maintenance of that COR #3 Line in conformance with the recommended Conditions of Certification, as amended, will comply appropriately with the nonprocedural requirements of all agencies. There is no substantial difference between the ability of the FPL Corridor or the Alternate Corridor to meet this criterion.

Compliance with Section 403.529(4)(d), Florida Statutes

335. The location of the FPL Corridor, and the construction and maintenance of the COR #3 Line in that corridor will be consistent with applicable local government comprehensive plans. There is no substantial difference between the ability of the FPL Corridor or the Alternate Corridor to meet this criterion.

336. The location of the FPL Corridor and the construction and maintenance of the COR #3 Line in that corridor provide a reasonable balance between the need for the transmission line and the impact of the transmission line upon the public and the environment. This balance is better met by the FPL Corridor than the Alternate Corridor because the geographic separation afforded by the FPL Corridor will enhance electric system reliability, integrity, and restoration of service while simultaneously having comparably minimal impacts to the environment. Both proposed corridors have some potential impacts upon the public, although there are significant design and construction constraints along the Immokalee Road portion of the Alternate Corridor that may cause greater impacts upon the public than the FPL Corridor.

337. The PSC concluded that the addition of the COR #3 Line, even if on a geographically separate corridor that cost in excess of the Alternate Corridor, is needed "to provide abundant, low-cost electrical energy and to assure the economic well-being of the citizens of the State, particularly in Southwest Florida." CE and BCC did not show that the incremental cost of constructing and operating the COR #3 Line on the FPL Corridor rather than the Alternate Corridor would exceed the value to the Project Service Area community of having

enhanced electric system reliability that will minimize or avoid the multiple adverse consequences that may occur during Category D electrical outages.

338. The impact upon the public and the environment will be minimized by the COR #3 Line's collocation with existing linear facilities for 95 percent of its length. Furthermore, the impact from clearing activities, and any other activities associated with the COR #3 Line, will be insignificant, particularly when balanced with the electrical energy requirements that will be satisfied by the construction and operation of the COR #3 transmission line in the FPL Corridor.

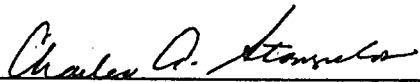
339. Based upon a preponderance of the evidence presented at the certification hearing, FPL has met its burden of proving that the COR #3 Line and related facilities should be certified as proposed and subject to conditions. Credible evidence presented at the hearing demonstrates that construction and maintenance of the COR #3 Line in the FPL Corridor will meet the statutory criteria and will have the least adverse impacts relative to the statutory criteria of the TLISA, including costs.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Siting Board enter a Final Order approving FPL's Collier-Orange River #3 230-kV Transmission Line Application for Certification subject to the Conditions of Certification set forth in Joint Exhibit 5A as may be amended.

DONE AND ENTERED this 3rd day of May, 2004, in Tallahassee, Leon County, Florida.


CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of May, 2004.

ENDNOTES

¹/ In the PSC's Order Determining Need for Electrical Transmission Line, the Project Service Area is referred to as the "Naples Load Center."

²/ A single contingency event involves loss of a single element within the electrical system, such as a transmission line or generating unit.

- 3/ If the COR #3 Line were added to the existing Common ROW, up to 80 percent of the electricity brought into the Project Service Area would flow on that single ROW.
- 4/ The MCR is the nominal value that could be expected to cause the conductor to reach its design temperature limit of 100 degrees Celsius.
- 5/ Alternatively, the insulators and hardware assemblies can be attached to the pole on the ground before the pole is erected.
- 6/ Fla. Admin. Code Ch. 62-814.
- 7/ Dr. Glover, BCC's expert in transmission system planning, engineering, reliability and design, agreed that even an electrical outage of 24 hours duration, if it affected in excess of 300,000 customers, would be a significant outage.
- 8/ The Orange River and Collier substations bound the study area on the north and south, respectively. The west boundary coincided with I-75, and the east boundary generally followed the boundary between Lee and Hendry Counties.
- 9/ The "line swap" requires the conductors of an existing line to be connected to the conductors of the new line where the new line first intersects the Common ROW from the west. Then about 2000 feet to the north, the conductors of the existing line will be connected to the conductors of the new line that go away from the Common ROW to the east. Within the Common ROW, the conductor segment of the existing line between the two new connections will be de-energized, as no power will flow through that 2000-foot segment. Using a line swap, no additional 230-kV transmission line will be added to the existing Common ROW at any location.
- 10/ A radial line is one that has a source of power only at one end.
- 11/ CE's land use planners admitted that community preferences is one of the factors that must be considered when planning a project.
- 12/ Looping of substations is standard practice. By incorporating the existing 230-kV transmission line between the Common ROW and the Orangetree substation into the COR #3 line between the Orange River and Collier substations, FPL will

eliminate the need to build a second line of as much as 13 or 14 miles in length back to the west to complete the loop.

^{13/} Hurricanes and tornadoes are very rare events. Hurricanes tend to come in cycles. The frequency with which tornadoes and hurricanes have occurred in the past 26 years or less within Lee County and Collier County is not a reasonable basis to determine how likely they will occur in the future. Lee and Collier County have had only one hurricane in the 40-year period from 1961-2000. During the 20-year period 1941-1960, Collier County had eight hurricanes of all categories and two were major hurricanes (winds greater than 115 mph). During the past 94 years, major hurricanes have struck Collier County and Lee County eight and six times, respectively. Since 1950, Lee and Collier County have experienced 121 and 119 tornadoes, respectively. Of those, 11 in Lee County had winds between 113 and 157 mph, and three in Collier County were of that magnitude.

^{14/} The high priority rebuilding project of restoring electricity to the Turkey Point nuclear power plant following Hurricane Andrew required over four days to get one line back in service.

^{15/} Prior to 1988, FPL does not have comprehensive data on common ROW outages.

^{16/} No determination was made by CE or BCC on the feasibility of locating a generating plant in the Naples area based on fuel supply, water, availability of suitable sites, or likelihood of obtaining necessary permits in proximity to the dense population in that area. However, it was considered as an option.

^{17/} On this record, it is not possible to give a reasonably precise estimate of the capital cost differential between the FPL Corridor and the Alternate Corridor, in part, because BCC and CE did not offer persuasive evidence regarding the specific configuration, as opposed to offering options or alternatives, along Immokalee Road they would propose for the COR #3 Line to address the challenges presented in that segment, nor the cost of construction for such a configuration.

^{18/} FPL objected to the admission of evidence on the issue of electric system reliability. FPL asserts this is an issue for determination by the PSC in its separate need determination order. FPL's initial Motion in Limine on this issue was denied without prejudice. FPL requests reconsideration of this issue

of law through submission of its Memorandum of Law. The prior ruling on this issue is re-affirmed.

19/ "In the determination of need, the [PSC] shall take into account the need for electric system reliability and integrity, the need for abundant, low-cost electrical energy to assure the economic well-being of the citizens of this state, the appropriate starting and ending point of the line, and other matters within its jurisdiction deemed relevant to the determination of need." § 403.537(1)(b), Fla. Stat.

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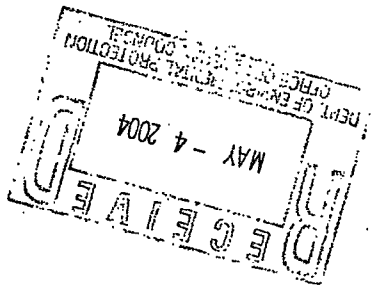
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.



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 south of the northern right-of-way line of Buckingham Road in Lee County. 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

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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.

XXA. 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 sections 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.
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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 40B-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 impacted 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

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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.

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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

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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;
 - (c) opening of SFWMD rights of way to unauthorized vehicular access; or
 - (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.

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

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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.

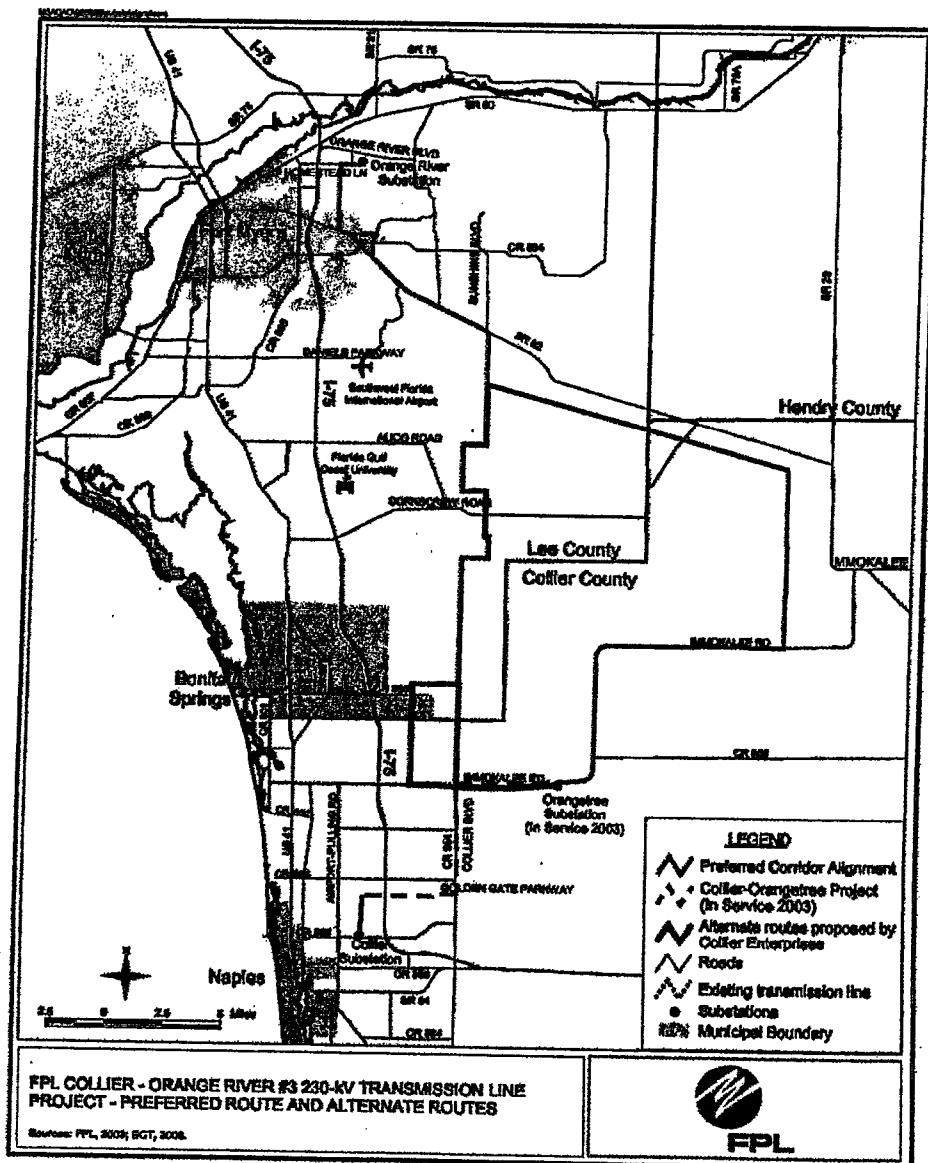
E. Overweight or Overdimensional Loads: If the Licensee uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, the applicant should ensure that its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 316, Florida Statutes, and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

Agency: DOT

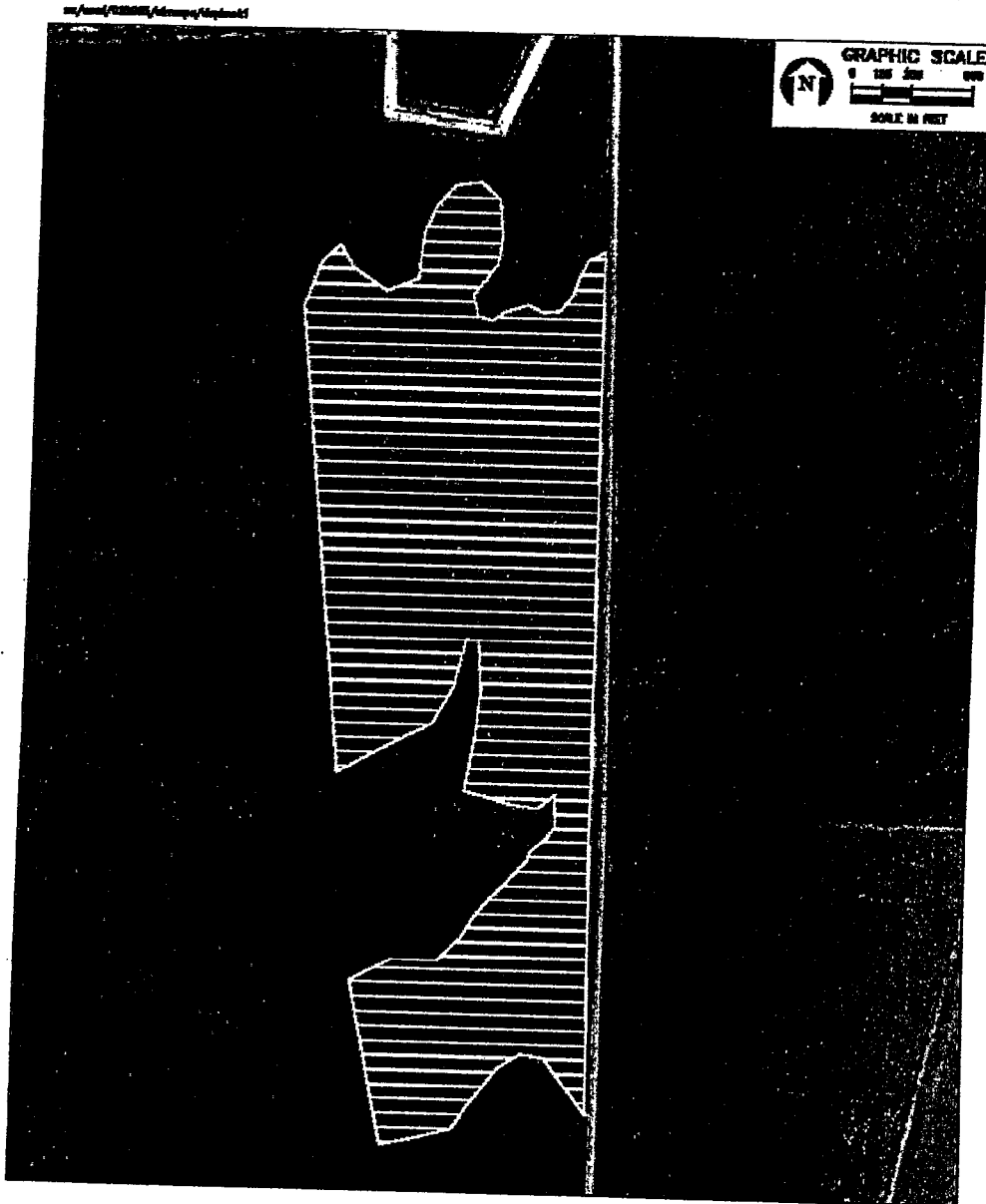
XXXI. BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

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.

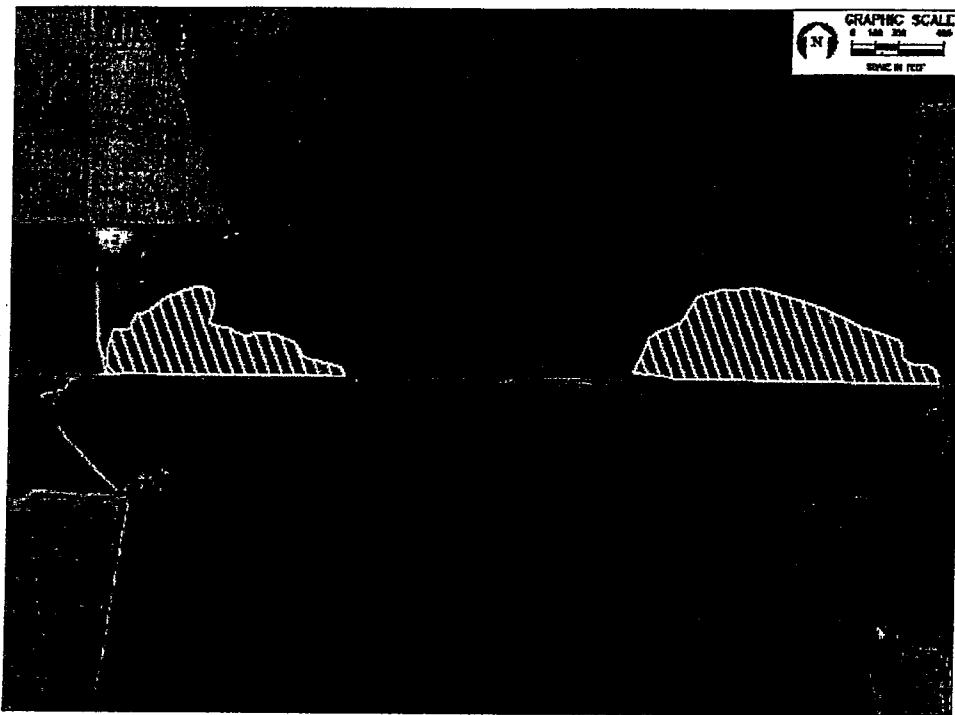


Attachment 1

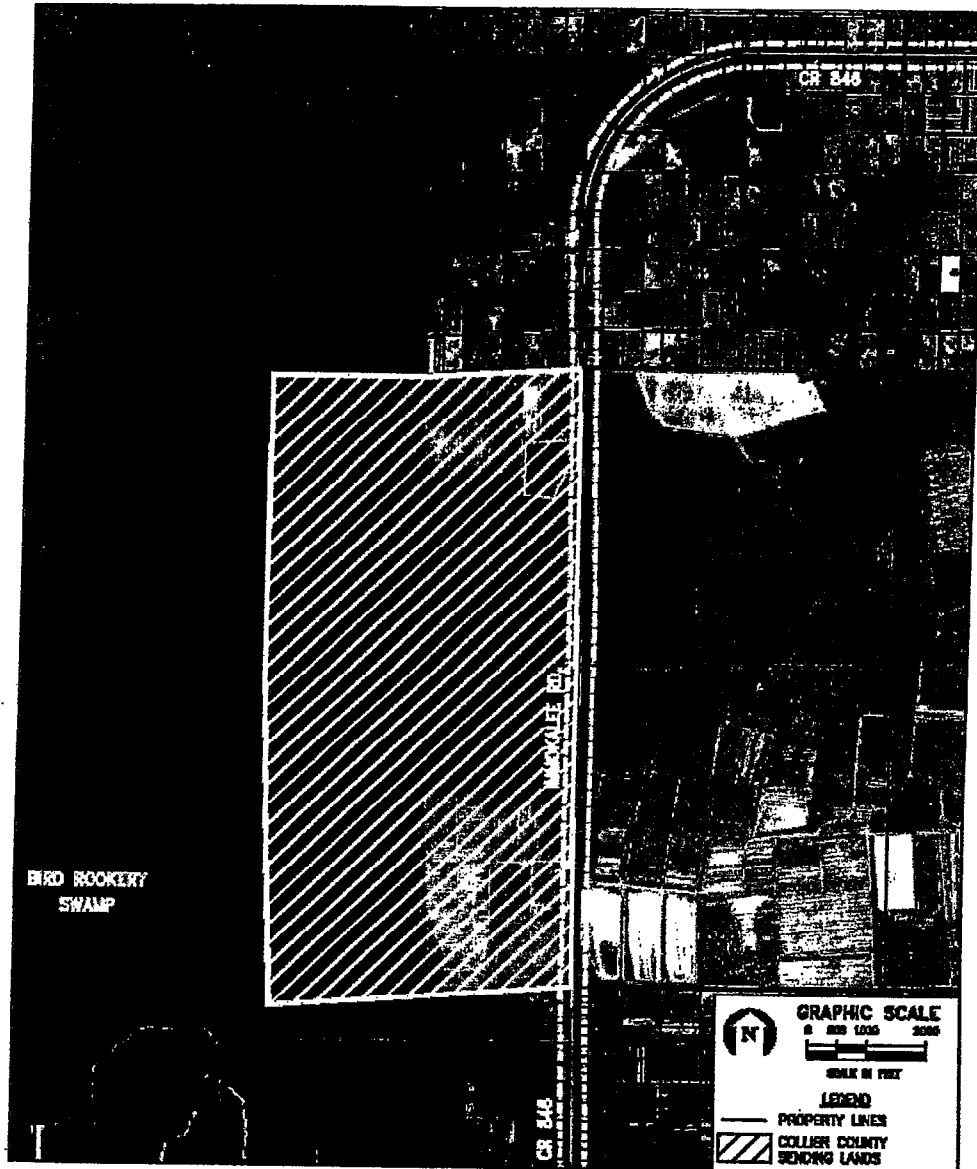


Attachment 2

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Attachment 3



Attachment 4

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