



Florida Department of Environmental Protection

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

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

July 9, 2009

Mr. Michael Shrader
Lead Environmental Specialist
Progress Energy Florida, Inc.
St. Petersburg, FL 33733

RE: Crystal River Energy Complex
Modification to Conditions of Certification
DEP Case Number PA 77-09M
OGC Case Number 08-2881

FINAL ORDER MODIFYING CONDITIONS OF CERTIFICATION

Dear Mr. Shrader:

The Florida Pollution Control Board issued the Site Certification for the Progress Energy Florida's (PEF) Crystal River Units 4 and 5 on November 21, 1978. This certification authorized the construction and operation of two 640 MW coal-fire power plant units (Units 4 and 5) and ancillary facilities. Crystal River nuclear Unit 3 was certified August 28, 2008. The Department of Environmental Protection (Department) has modified the Conditions of Certification by Final Order on twelve other occasions.

The Department has reviewed PEF's petition dated November 14, 2008 for modification to the Conditions of Certification. Additionally, the Department has considered modifications pursuant to 403.516 (1) (c), Florida Statutes ("F.S.").

On or before May 19, 2009, all parties to the certification proceeding were provided with notice by certified mail of the Department's intent to modify the Conditions of Certification for this facility, along with a copy of the proposed Order Modifying Conditions of Certification.

On May 29, 2009 notice of the Department's intent to modify the Conditions of Certification for this facility was published on the Florida Administrative Weekly (FAW). Pursuant to Section 403.516, Florida Statutes ("F.S."), and Rule 62-17.211, Florida Administrative Code ("F.A.C."), all parties to the certification proceeding have 45 days from the issuance of notice by mail to such party's last address of record in which to file a written objection to the modification; that any person who is not already a party to the certification proceeding and whose substantial interests will be affected by the requested modification has 30 days from the date of publication of the public notice in the Florida Administrative Weekly to object in writing; that failure to act within the time frame constitutes a waiver of the right to become a party; and that the Department will issue an Order Modifying the Conditions of Certification for this facility if no written objections are received by the Department.

Hopping Green and Sams, on behalf of PEF, submitted draft written comments on June 19, 2009 and final written comments on July 8, 2009 addressing PEF's concerns regarding specific draft Conditions of Certification.

The submitted comments have been considered and changes have been made, as necessary, in the Conditions of Certification. The requested changes (*italics*) followed by the Department's responses are listed below.

1. *PEF has concerns about the proposed General Condition IV N. – Modifications of Conditions paragraphs 3 and 4. These two conditions related to changes to the certified boundaries of the site are beyond the scope of the proposed modification that PEF submitted to the Department on November 17, 2008, as part of its original Petition for Modification. We do not believe that these new General Conditions are relevant or pertinent to this modification request. Further, the proposed gypsum pad and truck turnaround loop are all within the existing certified site. Therefore, there is no change in the certified site boundaries for CREC Units 4 and 5 or its associated facilities. It is therefore uncertain why Conditions IV.N, 3 and 4 are being proposed as part of this modification. We do understand that the new Conditions 1, 2, 5 and 6 are virtually a rewrite of existing conditions. However, Conditions 3 and 4 impose new obligations on PEF for future unrelated activities that are not warranted as part of this Petition for Modification.*

In addition, Condition IV.N. 4 represents an interpretation of the Power Plant Siting Act addressing what constitutes a modification of the Conditions of Certification and what constitutes an amendment to the Site Certification Application. We do not believe it is necessary for the Department to address that issue in this proposed Condition. Such an interpretation of the PPSA would predetermine PEF and DEP's rights and obligations in the future as to any proposed changes to the boundaries of the certified site. To the extent the Department desires to make this a generic general condition applicable to all PPSA certifications, PEF would welcome the opportunity to confer with the Department and other certified licensees to develop appropriate and mutually agreeable language to address these subjects. However, we are concerned that these are being imposed as part of the Department's proposed Order of Modification with little opportunity for PEF to engage in any discussions with the Department over the language of this condition without further delay of the by-product improvements, need for Units 4 and 5. We would, therefore, request that the Department not issue a final order including Conditions IV. N. 3 and 4. To the extent the Department intends to include these in any Final Order, PEF would formally object to the inclusion of those two Conditions as part of any Final Order.

Department Response

Pursuant to Chapter 403.516(1)(c), F.S., the Department may initiate a modification to the certification, after issuance, upon its own initiative. While paragraphs 3 and 4 of Condition IV.N (paragraphs 3 and 4) may not directly apply to the current project as proposed by PEF, the Department believes that the proposed requirements are relevant to the certification, if for no other reason than the Siting Board has a right to know (with some precision) what it has approved. In the case at hand, there are a number of ongoing projects at the site, and the new obligations are a means to clarify site boundaries including the certified areas. As indicated above, the Department has instigated this change upon its own initiative. Such modifications are

commonly initiated by the Department concurrently with applicant initiated proposals in order to maximize efficiency through less process.

However, the requirements included in paragraphs 3 and 4 are a part of a larger, more inclusive, set of General Conditions soon to be implemented by the Department and applicable to all certifications issued under the Power Plant Siting Act, Transmission Line Siting Act, and Natural Gas Pipeline Siting Act. After consideration of PEF's request, the Department has determined that the requirements of paragraphs 3 and 4 are more appropriately addressed upon implementation of the full set of standardized General Conditions, which will occur in the near future by a Department initiated modification.

Paragraphs 3 and 4 have been removed from Condition IV.N, and paragraphs 5 and 6 have been renumbered accordingly.

2. PEF is also concerned about the changes to Condition IV.Z., Public Water System to the extent that the proposed changes might require the existing potable water system serving Units 4 and 5 to be updated to conform with the current provisions of Department Rule Chapters 62-550, 62-555, and 62-560, F.A.C. PEF is concerned that the proposed changes to the rule references for the potable water supply system for Units 4 and 5 could be interpreted to require PEF to completely modernize that system serving Units 4 and 5. While PEF would prefer that the condition not be changed at all, a revision to the condition to reflect that any "future changes in the potable water system serving Units 4 and 5 shall conform" to the proposed rules may be appropriate. This would clarify that the existing system is not required to be retrofitted to comply with the current version of those rules. Further, this revised condition is not within the scope of PEF's modification request as no changes to the potable water system are proposed.

Department Response

The proposed changes to Condition IV.Z reflect the current provisions of Department Rule relevant to Public Water Systems and is consistent with Sections 403.511(5)(a), 403.531, and 403.9416, F.S. which require that subsequent to the issuance of the certification, facilities must comply with rules adopted by the Department which prescribe new or stricter criteria. Note that this proposed condition change is specifically being initiated by the Department as a direct result of a separate amendment request by PEF (received by the Department on April 20, 2009) associated with the potable water system that did not, in and of itself, require a modification beyond the rule updates. The proposed condition change initiated by the Department as a result of PEF's amendment request does not place any new requirement upon PEF beyond the existing statutory requirement listed above.

However, it is not the specific intent of the Department to require PEF to retrofit the entire existing potable water supply system at the CREC. As such, Condition IV.Z has been modified for clarification.

3. As to new Condition IV.AA, Environmental Resource Surface Water Management System, PEF is concerned that this new Condition of Certification would be interpreted or applied to require that all existing surface water management systems at CREC Units 3, 4 and 5 comply with these new requirements. This concern is specifically raised by Condition IV.AA.1 that would require the surface water management system to "conserve water in order to maintain environmental quality and resource protection; increasing efficiency of transport application, and use to decrease waste; to minimize unnatural runoff from the property and to minimize

dewatering of offsite property”. While PEF shares these goals, the existing surface water management system may not comply with those requirements, given that it was originally designed, approved, and constructed many years ago under different regulatory requirements. Therefore, these conditions should reflect that any surface water management system changes in the future shall be operated to achieve those goals. PEF believes that was the intent of this new Condition, but desires express acknowledgement of same in the language of the Condition before PEF can find them acceptable.

Department Response

The proposed addition of Condition IV.AA, is consistent with Sections 403.511(5)(a), 403.531, and 403.9416, F.S. which require that subsequent to the issuance of the certification, facilities must comply with rules adopted by the Department which prescribe new or stricter criteria. Simply stated, the proposed condition change does not place any new requirement upon PEF beyond the existing statutory requirement listed above.

However, it is the Department’s intent that Condition IV.AA. applies to new stormwater management systems or changes to existing stormwater management systems. Condition IV.AA.1 has been modified for clarification of this intent.

4. Finally, as to Condition VI.E. 6, PEF requests that the required “comprehensive non-contact Surface Water Management System Operation & Maintenance Plan” be specifically tied to the system that will support the gypsum handling pad and the truck turnaround loop that are being approved by this modification Order. Otherwise, this new condition would seem to require such a plan for the entire existing stormwater management system for Units 4 and 5. PEF objects to any requirement that such a plan be implemented now for the entire system, although it is willing to have such a plan for the areas impacted by the proposed new activities.

Department Response

Condition VI.E.6 has been modified to clarify that the requirement of the Surface Water Management System Operation & Maintenance Plan is limited to the stormwater management system/s associated with the gypsum storage pad and associated truck turn around loop.

No other comments or written objections to the modification have been received by the Department.

The Conditions of Certification for the Crystal River Units 3, 4 and 5 are hereby modified as follows:

I. through III. No Change

IV. General Conditions

A. Through M. No Change

N. Modification of Conditions

~~The conditions of this certification may be modified in the following manner:~~

~~1. Pursuant to Subsection 403.516(1), Florida Statutes, the Siting Board hereby delegates to the Secretary of the Department of Environmental Protection the authority to modify, after notice and opportunity for hearing, any conditions herein which would not otherwise require approval from the Siting Board.~~

~~2.— This certification shall be automatically modified to conform to any subsequent amendments, modifications, or renewals made by the Department under a federally delegated or approved program to any separately issued Prevention of Significant Deterioration (PSD) permit, Title V air permit, or National Pollutant Discharge Elimination System (NPDES) permit for the certified facility. The Permittee shall send each party to the original certification proceedings (at the party's last known address as shown in the record of such proceeding) notice of requests for modifications or renewals of the above listed permits if the request involves a new or modified relief mechanism (e.g., mixing zone, variance, etc.) from standards, a relaxation of conditions included in the permit due to state permitting requirements, or the inclusion of less restrictive air emission limitations in the air permits. The Department shall notify all parties to the certification proceeding of any intent to modify conditions under this section prior to taking final agency action.~~

~~3.— All other modifications to these conditions shall be made in accordance with Section 403.516, Florida Statutes.~~

~~4.— Any modification to these conditions shall only affect the units or other facilities that are the subject of the modification request or the Department's proposed order of modification.~~

Pursuant to Section 403.516(1)(a), F.S., Section 120.569(2)(n), F.S., and Rule 62-17.211, F.A.C., the Siting Board hereby delegates the authority to the Department of Environmental Protection to modify, after notice and receipt of no objection by a party or other substantially affected person, any conditions which would not otherwise require approval by the Siting Board. In addition, the Department is delegated the authority to modify conditions as follows:

1. The certification shall be modified to conform to subsequent DEP-issued amendments, modifications, or renewals of any separately issued federal permits such as Prevention of Significant Deterioration (PSD) permit, Title V Air Operation permit, Underground Injection Control (UIC) permit, or National Pollutant Discharge Elimination System (NPDES) permit for the project. In the event of a conflict, the more stringent of the conditions of such permits or of these Conditions of Certification shall be controlling.

2. Any anticipated facility expansions, production increases, or process modifications which may result in new, different or increased discharge or emission of pollutants, change in fuel, or expansion in generating capacity must be reported by submission of an appropriate application for amendment, modification, or certification

3. The Licensee may file a petition for modification with the Department, or the Department may initiate the modification upon its own initiative.

4. DEP shall make a good faith effort to give written notice to the parties to the original certification, at their last address of record, of any proposed modification of certification.

[Sections 120.569(2)(n), 403.511(5)(a) and 403.516, F.S.; Rules 62-17.211, 62-343, F.A.C.]

O. Through Y. No Change

Z. Potable Water Supply Public Water System

Any new or modified component of tThe potable water supply system shall be designed and operated in conformance with applicable Chapters of 17-22-62-550, 62-555, and 62-560, FAC. Information as required in 17-22-05 62-555 shall be submitted to the Department prior to construction and operation of any new or modified components of the system. The operator of

the potable water supply system shall be certified in accordance with Chapter 17-2362-699, FAC. Potable water for Unit 3 shall continue to be provided by the separate potable water treatment system operated by Units 1 and 2.

[Rules 62-550, 555, 560, and 699, F.A.C.]

AA. Environmental Resource Surface Water Management

1. All new surface water management systems, or alterations of existing stormwater management systems, shall be operated to conserve water in order to maintain environmental quality and resource protection; to increase the efficiency of transport, application and use; to decrease waste; to minimize unnatural runoff from the property and to minimize dewatering of offsite property.

2. At least 48 hours prior to commencement of any surface water management activity authorized by the Department, the licensee shall submit to the Department's Southwest District Office and to the Siting Coordination Office a written notification of commencement using an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), F.A.C.) indicating the actual start date and the expected completion date of the activity.

3. Each phase or independent portion of any surface water management system must be completed in accordance with the approved plans and Conditions prior to the occupation of the site or operation of site infrastructure located within the area served by that portion or phase of the system.

4. Within 30 days after completion of construction of the approved activity, the Licensee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, to the DEP Southwest District Office and to the Siting Coordination Office utilizing the required "Environmental Resource Permit As-Built Certification by a Registered Professional" (Form No. 62-343.900(5), F.A.C.), and "Request for Transfer of Environmental Resource Permit Construction Phase to Operation Phase" (Form 62-343-900(7), F.A.C.). Additionally, if deviations from the approved drawings are discovered during the certification process the certification must be accompanied by a copy of the approved drawings with

5. Each Department approval is valid only for the specific processes, operations and designs indicated on the approved drawings or exhibits submitted in support of the application specific to the associated project. Any substantial deviation from the approved drawings, exhibits, specifications or conditions, including construction within the total land area but outside the approved project area(s), may constitute grounds for revocation or enforcement action by the Department, unless a modification has been applied for and approved. Examples of substantial deviations include excavation of ponds, ditches or sump areas deeper than shown on the approved plans.

6. The operation phase of any system approval shall not become effective until the Licensee has complied with the requirements of the conditions herein, and the Department determines the system to be in compliance with the permitted plans.

[Rule 40D-4.381]

V. No Change

VI. Unit 4 & 5 Specific Conditions

A. Through D. No Change

E. FGD Scrubber Blowdown and By-Products Handling

1. FGD scrubber blowdown wastewater shall be discharged to approved treatment systems outside of the Unit 4 & 5 Certified area. Any such receiving treatment system shall be permitted/licensed in accordance with all applicable requirements.

2. No gypsum shall be stored or handled on the gypsum handling and temporary storage pad prior to final Departmental approval of the lined Flue Gas Desulfurization (FGD) blowdown settling pond treatment system including contact stormwater from the gypsum handling and temporary storage pad.

3. No contact stormwater from the gypsum handling and temporary storage pad shall be generated prior to appropriate Department approvals.

4. All gypsum or other industrial by-products generated from the FGD process shall be removed from the site for appropriate reuse or disposal. Gypsum or other industrial by-products resulting from the FGD process shall be stored and managed such that runoff from the materials does not adversely affect ground or surface waters.

5. Within 60 days following commencement of operation of the FGD process, including the lined pond system, the Site Coal Combustion Products and Solid Waste Management Plan shall be revised to include the characterization, and management of FGD settling pond solids, gypsum, and other industrial by-products and solid wastes generated by the FGD process. The plan shall be processed in accordance with the Procedures for Post-Certification Submittals included in these Conditions of Certification.

6. Within 90 days of commencement of construction of the gypsum handling and temporary storage pad or any future changes or additions thereto, the Licensee shall develop and submit to the DEP Southwest District Office and the Siting Office for review and approval, a comprehensive non-contact Surface Water Management System Operation & Maintenance Plan (Plan) for all stormwater system components associated with the gypsum handling pad and associated truck turnaround loop. The Plan must be suitably consistent with the SWFWMD *How To Operate & Maintain Your Stormwater Management System*.

7. The Licensee shall submit inspection reports for the stormwater system associated with the gypsum handling and temporary storage pad in the form required by the Department, FDEP Form # 62-343.900(6), *Inspection Certification*, in accordance with the following schedule:

(X) For systems utilizing retention and wet detention, the inspections shall be performed 24 months after operation is authorized and every 24 months thereafter.

(X) For systems utilizing effluent filtration or exfiltration the inspections shall be performed 18 months after operation is authorized and every 18 months thereafter.

(X) For systems utilizing swales or retention-and-percolation, the inspections shall be performed 24 months after operation is authorized and every 18 months thereafter.

[Chapter 2.6.3 SWFWMD BOR]

VII-IX. No Change

A complete set of the Conditions of Certification (including attachments) can be viewed and downloaded from the following website: <http://www.dep.state.fl.us/siting/certification.htm> . Copies of the Conditions of Certification and/or attachments may also be obtained by contacting the Department of Environmental Protection, Siting Coordination Office, 3900 Commonwealth Blvd., M.S. 48, Tallahassee, Florida 32399-3000, (850) 245-2002.

Any party to the this Order has a right to seek judicial review of it pursuant to Section 120.68, Florida Statutes by filing a Notice of Appeal, pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department of Environmental Protection 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 thirty days from the date this Order is filed with the Clerk of the Department of Environmental Protection.

Executed in Tallahassee, Florida.



Michael P. Halpin, P.E.
Administrator,
Siting Coordination Office

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52
Florida Statutes, with the designated
Department Clerk, receipt of which is
hereby acknowledged.

Clerk



7. 9. 09

Date

Service List: CC by email (return receipt requested):

Emily Norton, Esquire
Fish and Wildlife Conservation Commission
6230 South Meridian Street
Tallahassee, FL 32399-1600
emily.norton@myfwc.com

Menchion, Kimberly, Assistant General
Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street
Mail Station 58
Tallahassee, FL 32399-0450
Kimberly.Menchion@dot.state.fl.us

Jennifer Brubaker, Attorney Supervisor
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Blvd.
jbrubake@psc.state.fl.us

Doug Roberts, Esquire
Hopping Green & Sams, P.A.
P.O Box 6526
Tallahassee, Florida 32317
droberts@hgslaw.com

Robert Battista, Esq.
Office of the Citrus County Attorney
110 N. Apopka Avenue
Inverness, FL 34450
Cheryl.clamer@bocc.citrus.fl.us

Laura Kammerer
Bureau of Historic Preservation
R.A. Gray Building
500 South Bronough
Tallahassee, FL 32399
lkammerer@dos.state.fl.us

Matt Davis
Assistant General Counsel
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399
matthew.davis@dca.state.fl.us

Toni Sturtevant, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000
toni.sturtevant@dep.state.fl.us

Martha A. Moore, Esquire
Southwest FL Water Management District
2379 Broad Street
Brooksville, FL 34604-6899
martha.moore@swfwmd.state.fl.us

Fred Landt, Esq.
Withlacoochee Regional Planning Council
Post Office Box 2045
Ocala, FL 34478
fl3swim47@aol.com

Michael R. Moehlman
Withlacoochee Regional Planning Council
1241 Southwest 10th Street
Ocala, Florida 34471
moehlman@wrpc.cc

Patricia Anderson, Chief
Bureau of Water
Department of Health
4042 Bald Cypress Way
Tallahassee, Florida 32399-1742
patti_anderson@doh.state.fl.us

Kevin A. Smith, Director
Sue Farnsworth, Environmental Planner
Citrus County Development Department
3600 W. Sovereign Path, Suite 140
Lecanto, FL 34461
Kevin.smith@bocc.citrus.fl.us
Susan.Farnsworth@bocc.citrus.fl.us

Forrest Watson
Department of Agriculture & Consumer
Services
Division of Forestry
3125 Conner Boulevard
Tallahassee, FL 32399-1650
watsonf@doacs.state.fl.us

Also CC:

Barbara Lenczewski
State Planning Initiatives Administrator
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399
barbara.lenczewski@dca.state.fl.us