

**STATE OF FLORIDA
SITING BOARD**

**IN RE: GAINESVILLE RENEWABLE)
ENERGY CENTER, LLC,)
PPSA NO. PA09-55)**

**OGC CASE NO. 09-4002
DOAH CASE NO. 09-6641EPP**

FINAL ORDER APPROVING CERTIFICATION

On November 1, 2010, an administrative law judge (“ALJ”) with the Division of Administrative Hearings (“DOAH”) submitted his Recommended Order (“RO”) in this certification proceeding. The RO indicates that copies were served upon counsel for Gainesville Renewable Energy Center, LLC (“GREC”), and the Department of Environmental Protection (“DEP” or “Department”). The RO also shows that copies were served to counsel for other designated state, regional and local agencies; and the representative for the intervenor. A copy of the RO is attached hereto as Exhibit A. On November 4, 2010, the Department filed its Exception to the RO. On November 16, 2010, Intervenor filed Exceptions to the RO, and on November 18, 2010, GREC and DEP filed a joint response to the Intervenor’s Exceptions. This matter is now before the Governor and Cabinet, sitting as the Siting Board, for final action under the Florida Electrical Power Plant Siting Act (“PPSA”), Sections 403.501 *et seq.*, Florida Statutes.

BACKGROUND

In this proceeding, GREC seeks certification of the construction and operation of an electrical power plant and associated facilities (“Project”), to be located within the existing boundaries of the previously certified Deerhaven Generating Station (“Deerhaven”). Deerhaven is operated by the City of Gainesville d/b/a Gainesville

Regional Utilities (“GRU”). The new power plant will produce 100 megawatts (“MW”), net, of electricity, and will be fueled by biomass--mostly, chipped and ground wood. GREC seeks to place the biomass-fired electrical power plant in service on or before December 31, 2013, which is the deadline for eligibility for a federal renewable-energy grant under the American Recovery and Reinvestment Act of 2009. GREC and GRU sought and obtained on June 28, 2010, from the Public Service Commission (“PSC”), a final order determining the need for the project (Final Order No. PSC-10-0409-FOF-EM).

GREC is a subsidiary of American Renewables, LLC, which develops, builds, and operates renewable-energy facilities. In 2007, the City of Gainesville decided not to pursue coal due to climate-change concerns. Governor Crist's executive order on climate change also discouraged the submittal of coal-based applications to the Siting Board. In January 2008, after having solicited and received a round of nonbinding proposals identifying various options, the City of Gainesville invited three vendors, including the predecessor of American Renewables, to submit binding proposals. At a meeting in May 2008, the City Commission unanimously voted to accept the American Renewables proposal. The City of Gainesville has identified numerous benefits from the GREC Project. These include enhancing the integrity and reliability of the generating system, reducing the average age of the generating system, producing reasonably priced electricity, diversifying fuel sources, avoiding the price fluctuations of fossil fuels, hedging the risks of anticipated carbon-constraint legislation (if biomass is treated preferentially under such legislation), reducing construction and operation risks,

reducing open burning of biomass products in forestry operations, reducing landfilling of woody biomass, and supporting the silviculture industry. Agriculture Commissioner Charles Bronson has recently concluded that biomass energy production encourages the sustainability of Florida's forests by discouraging their conversion into other uses through the creation of a market for low-value biomass materials, such as forest residues and premarket thinnings.

DOAH PROCEEDINGS

The DOAH proceeding was conducted under the PPSA to consider GREC's application for certification of the Project. On November 30, 2009, GREC filed the site certification application ("Application") with the Department. On December 7, 2009, DEP transmitted the file to DOAH and by Notice of Hearing dated December 9, 2009, the ALJ scheduled the certification hearing for August 23-27, 2010. On March 4, 2010, DEP issued its determination that the Application was complete.

The various reviewing agencies submitted reports that recommended approval and certification of the Project. Some of the agencies also proposed conditions of certification. (RO ¶¶ 73-74). On July 12, 2010, DEP issued its Project Analysis Report ("PAR"), which incorporated the comments of the reviewing agencies. (RO ¶ 75). The PAR recommended certification of the project, subject to a set of proposed Conditions of Certification ("COCs"). See GREC Ex. 7.

On July 26, 2010, Thomas Bussing ("Intervenor Bussing") filed a Motion to Intervene that was granted by the ALJ. On August 16, 2010, the parties filed a Prehearing Stipulation for Certification Hearing. Among other things, the prehearing

stipulation contains Intervenor Bussing's statement of the issues, which were: (1) Violations related to dioxin-like compounds emissions; (2) Violations related to Best Available Control Technology ("BACT") for NO_x (nitrogen oxides) and SO₂ (sulphur dioxide); (3) Violations related to Maximum Available Control Technology ("MACT") for Hazardous Air Pollutants ("HAPs"); (4) Violations related to non-stack unconfined (fugitive) emissions of particulate matter ("PM"), particulate matter not greater than ten microns (PM₁₀), particulate matter not greater than 2.5 microns (PM_{2.5}), and non-particles, aerosols, and ultra-fine particles; (5) Violations related to fires; (6) Violations related to endangered, threatened, and special-concern species; and (7) Violations related to adverse financial impacts on the public interest and whether the need for the GREC facility is outweighed by harmful environmental consequences. On August 16, 2010, GREC filed a Motion in Limine, contending that the Intervenor had raised issues that were exclusively within the jurisdiction of the PSC under Section 403.519, Florida Statutes, which vests the need determination exclusively in the PSC. The ALJ struck Issue (7), except for whether the need for the GREC facility is outweighed by harmful environmental consequences. On August 18, 2010, DEP filed a Motion in Limine, contending that the Intervenor had raised issues that are not within the jurisdiction of the Siting Board. Simultaneous with the filing of the Application for site certification, GREC filed with DEP an application for an air construction permit for the same facility. DEP transmitted the air construction permit case to DOAH on August 9, 2010, and it bears DOAH Case No. 10-7281. In its Motion in Limine, DEP conceded that air quality impacts are "an important matter" for the Siting Board to consider in effecting a balance

between the need for the power plant and its environmental impact. However, DEP observed that the air construction permit is exclusively within the jurisdiction of DEP under Sections 403.509(5)¹ and 403.511(1)², Florida Statutes. The Administrative Law Judge denied DEP's motion, but ruled that "violations" of the requirements of an air construction permit program would not necessarily result in the denial of certification. The effect of the ruling was to allow all parties to produce evidence, which may be more germane to the air construction permit case, to address the more general issue of air impacts.

All notices required by law were timely published in accordance with Section 403.5115, Florida Statutes. The certification hearing was held on August 23-26, 2010. Additionally, under Section 403.508(4)(b), Florida Statutes, public testimony and comment were also received during the hearing.

At the conclusion of the hearing, the parties were allowed to file proposed recommended orders ("PROs"). The Transcript of the final hearing was filed with the DOAH on August 30, 2010. The ALJ subsequently issued his RO on November 1, 2010.

¹ Section 403.509(5) provides that "[t]he department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program."

² Section 403.511(1) provides that "[s]ubject to the conditions set forth therein, any certification shall constitute the sole license of the state and any agency as to the approval of the location of the site and any associated facility and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program..."

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Siting Board enter a Final Order approving GREC's Application to construct and operate the Project, subject to the proposed Conditions of Certification and additional Conditions of Certification recommended by the ALJ (RO ¶ 168, pages 68-69). The ALJ found that the PSC issued its final order determining the need for the Project on August 12, 2008. (RO page 2; RO ¶ 141). The ALJ concluded that Section 403.519(1) and (3), Florida Statutes, provides that the PSC is the sole forum for the determination of need. This provision effectively limits the scope of Section 403.509(3)(d) and (g), to matters outside the scope of the PSC need determination. (RO ¶ 154).

The ALJ found that GREC carried its burden of proving entitlement to the site certificate by providing reasonable assurance that the construction and operation of the proposed facility will comply with the provisions of Section 403.509(3), Florida Statutes. (RO ¶¶ 158, 160, 168). In the RO the ALJ concluded that GREC met the criteria for certification, subject to certain additional Conditions of Certification. (RO ¶ 168). The ALJ found that reasonable assurance was based on incorporating additional Conditions of Certification relating to: (1) fire-safety changes that followed consultation with the Gainesville Fire Department (RO ¶¶ 43, 90, 91, 92, 93); (2) revisions in pollution control technology (including CEMS – continuous emission monitors) that preceded the restatement of emissions of HF, HCl and total HAPs below the regulatory thresholds (RO ¶¶ 106, 107, 110, 111, 113); (3) the BMPs (best management practices) and operational elements to control fugitive emissions (RO ¶¶ 134, 135, 136, 137, 140); and

(4) a provision conditioning GREC's right to withdraw 1.4 million gallons per day of groundwater on an enforceable revision of a GRU certificate or permit to reduce its right to withdraw an equal amount of groundwater (RO ¶¶ 14, 73, 80, 81, 98, 150, 151, 168).

The ALJ found that in accordance with Section 403.509(3)(a), Florida Statutes, GREC provided reasonable assurance that the operational safeguards for the construction, operation, and maintenance of the Project are technically sufficient for the public welfare and protection, provided that GREC complies with the Conditions of Certification, as amended by the ALJ (RO ¶¶ 54, 73, 93, 102, 113, 129, 140, 168). He found that under Section 403.509(3)(b), Florida Statutes, the location, construction, and operation of the Project will comply with applicable non-procedural requirements of agencies, provided that GREC complies with the Conditions of Certification, as amended by the ALJ. (RO ¶¶ 73, 74, 79, 80, 81, 90, 93, 162, 168). In addition, GREC provided reasonable assurance that its proposed use of groundwater from the Floridan Aquifer satisfied the substantive criteria of the Suwannee River Water Management District, provided that GREC complies with the Conditions of Certification, as amended by the ALJ. (RO ¶¶ 73, 80, 81, 98, 150, 151, 162, 168).

The ALJ found that in accordance with Section 403.509(3)(c), Florida Statutes, the location, construction, and operation of the Project will be consistent with the applicable local government comprehensive plans and land development regulations of the City of Gainesville. (RO ¶¶ 5, 6, 73, 90, 168). The ALJ found that in accordance with Section 403.509(3)(d), Florida Statutes, and the PSC need determination, the

Project will meet the electrical energy needs of the state in an orderly, reliable, and timely fashion. (RO ¶¶ 141, 154, 168).

The ALJ determined that under Section 403.509(3)(e), Florida Statutes, the Project, if constructed and operated in compliance with the Conditions of Certification, as amended by the ALJ, will effect a reasonable balance between the need for the facility and the impacts resulting from construction and operation of the facility. These include air and water quality, fish and wildlife, water resources, and other natural resources of the state. (RO ¶¶ 74, 79, 84, 85, 93, 102, 113, 129, 140, 168). The Project is expected to produce minimal adverse environmental consequences, and will provide extensive benefits, including substantial economic benefits. (RO ¶¶ 84, 85, 102, 113, 129, 140, 141-151, 168).

The ALJ found that under Section 403.509(3)(f), Florida Statutes, if constructed and operated in compliance with the Conditions of Certification, as amended by the ALJ, the Project will minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life (RO ¶¶ 54, 74, 79, 83, 84, 85, 93, 102, 113, 129, 140, 151, 168). The ALJ further found that, in accordance with Section 403.509(3)(g), Florida Statutes, if constructed and operated in compliance with the Conditions of Certification, as amended by the ALJ, the certification of the Project will serve and protect the broad interests of the public. (RO ¶¶ 141-151, 168).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, “unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence.” § 120.57(1)(l), Fla. Stat. (2010); *Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm’n*, 955 So.2d 61 (Fla. 1st DCA 2007). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, “competent substantial evidence” refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. See e.g., *Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996).

Thus the Siting Board may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See e.g., *Rogers v. Dep’t of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’tl. Prot.*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.*, 652 So.2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the “fact-finder” in these administrative proceedings. See e.g., *Tedder v. Fla. Parole Comm’n*, 842 So.2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dep’t of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Also, the ALJ’s decision to accept the testimony of one expert witness over that

of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. See e.g., *Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.*, 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep't of HRS*, 462 So.2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So.2d 383, 389 (Fla. 5th DCA 1983).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." See *Barfield v. Dep't of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward County*, 746 So.2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140 (Fla. 2d DCA 2001). However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" in order to modify or overturn what it may view as an unfavorable finding of fact. See, e.g., *Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So.2d 1224 (Fla. 1st DCA 2007).

Thus, the Siting Board's review of legal conclusions in a recommended order is restricted to those that concern matters within the agency's field of expertise or "substantive jurisdiction." See, e.g., *Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *G.E.L. Corp. v. Dep't of Env'tl. Prot.*, 875 So.2d 1257, 1264 (Fla. 5th DCA 2004). The determination of need made by the PSC is "binding on all parties to any certification proceeding" and "constitutes final agency action." See *Fla. Power Corp. v. State, Siting Bd.*, 513 So.2d 1341, 1344 (Fla. 1st DCA 1987). However,

the finality of the PSC's determination does not in any way preclude the Siting Board from effecting a reasonable balance between the need for a proposed project and the resulting impact it may have on the public, as required by Section 403.509(3)(e), Florida Statutes. *Id.* The PPSA does not permit a redetermination of the factual finding of need made by the PSC. Rather, it allows the Siting Board to determine, after consideration of the statutory criteria, whether the proposed project should be approved, approved with modifications, or denied. *Id.*

However, agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." See *Martuccio v. Dep't of Prof'l Regulation*, 622 So.2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep't of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So.2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. See *Martuccio*, 622 So.2d at 609.

RULINGS ON EXCEPTIONS

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See, e.g., *Comm'n on Ethics v. Barker*, 677 So.2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So.2d 77 (Fla. 5th DCA 2007); *Fla. Dep't of Corrs. v.*

Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party “has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.” *Env’tl. Coalition of Fla., Inc. v. Broward County*, 586 So.2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Medical Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So.2d 540, 542 (Fla. 4th DCA 2003). However, even when exceptions are not filed, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction. *See* § 120.57(1)(l), Fla. Stat. (2010); *Barfield v. Dep’t of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813, 816 (Fla. 1st DCA 1994).

Finally, in reviewing a recommended order and any written exceptions, the agency’s final order “shall include an explicit ruling on each exception.” *See* § 120.57(1)(k), Fla. Stat. (2010). However, the agency need not rule on an exception that “does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” *Id.*

DEP’S EXCEPTION

The DEP takes exception to the portion of paragraph 71 in the RO where the ALJ finds that “[t]he DEP Report approves the Application’s BACT analysis.” The DEP contends that contrary to the ALJ’s finding, the DEP Report (Project Analysis Report, GREC Ex. 6) does not approve or disapprove “the BACT analysis that was performed for the GREC facility as part of the separate PSD air permitting process” that is not final

for this facility. See DEP's Exception ¶ 5. First, the ALJ does acknowledge that the PSD air permitting process is the subject of a separate air construction permit case³ (RO ¶ 51). Second the "DEP Report," in reporting on the BACT analysis states that "[t]he following information was derived from DARM's technical evaluation report and draft PSD permit." See GREC Ex. 6, page 12. As DEP argues, the report "explains what air emissions are likely to result from the GREC facility and what emission control equipment is likely to be utilized to control those emissions according to the information available to the team working on the non-final PSD federally approved air permit." See DEP Exception ¶ 5. Thus, no competent substantial record evidence supports the ALJ's finding that the "DEP Report" approved the BACT analysis. The DEP's exception is granted.

INTERVENOR'S EXCEPTIONS

Exception No. 1

The Intervenor takes exception to fourteen paragraphs (Findings of Fact 114 through 129) in the RO where the ALJ extensively addressed the potential for dioxin emissions from the Project. In Finding of Facts 128 and 129 the ALJ ultimately concluded that:

128. Intervenor's argument for COCs to limit dioxin emissions and require a CEMS to detect their presence

³ Section 403.509(5) provides that "[t]he department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program."

misses a couple of points. The GREC boiler will result in a net reduction in dioxin emissions, and its netted dioxin emissions are not, themselves, significant.

129. GREC has provided reasonable assurance that the operation of the GREC facility will not cause adverse air impacts in the form of dioxins.

In this exception the Intervenor essentially restates his concerns about the potential impacts of dioxin. See Intervenor's Exceptions at pages 2-4. These concerns were expressly considered by the ALJ (RO ¶ 128).

The Intervenor asserts that "[t]he GREC air permit application fails to provide reasonable and adequate assurance" that dioxins "will not be emitted from the GREC facility and then deposit on and in Florida land and water bodies..." See Intervenor's Exceptions at page 3. The Intervenor's contention "does not include appropriate and specific citations to the record." See § 120.57(1)(k), Fla. Stat. (2010). Nor does the Intervenor assert that the ALJ's factual findings are not supported by competent substantial record evidence. In this type of evidentiary proceeding the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting his decision. See *e.g.*, *Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.*, 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep't of HRS*, 462 So.2d 83, 85 (Fla. 1st DCA 1985).

At the certification hearing, the testimony of GREC's expert witnesses, Tom Davis and Dr. Christopher Teaf established that the Project will control and minimize its

dioxin emissions very effectively (T. 506-07; RO ¶¶ 121); the dioxin emissions from the Project will be exceedingly small (T. 505; RO ¶¶ 121, 123, 126, 127, 128); the Project's impacts on dioxin levels in the environment will not be measurable (T. 742; RO ¶¶ 121, 122, 123, 126, 127, 128); the Project's dioxin impacts will be insignificant (T. 742; RO ¶¶ 121, 122, 123, 126, 127, 128); and the Project will cause a net reduction in regional emissions of dioxin because the Project will reduce the amount of open burning of woody biomass that occurs (T. 518-19, 725-26; RO ¶¶ 124, 128).

The Intervenor also misstates the legal standard applicable to these types of permit applications. The correct legal standard is "reasonable assurance," which means "a substantial likelihood that the project will be successfully implemented." *Metro. Dade Cty. v. Coscan Fla., Inc.*, 609 So.2d 644, 648 (Fla. 3d DCA 1992). Competent substantial evidence based on detailed site plans and engineering studies, coupled with credible expert engineering testimony, is a sufficient basis for a finding of reasonable assurance. *See Hamilton Cty. Bd. of Cty. Comm.*, 587 So.2d 1378, 1388 (Fla. 1st DCA 1991). The ALJ's ultimate determination in Finding of Fact 129 is supported by competent substantial record evidence. (T. 420, 503-510, 511-514, 518-519, 722-727, 728-729, 733-740, 741-746, 901-903, 957; Exs. 53, 55, 56, 57).

The Intervenor asserts that emission limits and stack testing requirements for dioxin should be included in the Conditions of Certification. *See* Intervenor's Exceptions at pages 3-4. The Intervenor's contention "does not include appropriate and specific citations to the record." *See* § 120.57(1)(k), Fla. Stat. (2010). Nor does the Intervenor assert that the ALJ's factual findings are not supported by competent substantial record

evidence. This argument was raised by the Intervenor during the certification hearing and was explicitly rejected by the ALJ in Finding of Fact 128 of the RO. As noted above, there is competent substantial evidence of record to support the ALJ's findings of fact.

The Intervenor also asserts that dioxin emissions from the Project will violate Section 403.161, Florida Statutes.⁴ Section 403.161 provides that:

403.161 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this chapter, and it shall be prohibited for any person:

(a) To cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority.
(Emphasis added).

In Conclusion of Law 163 the ALJ addresses the Intervenor's argument. The ruling in Exception No. 3 below regarding Section 403.161, Florida Statutes, is incorporated herein.

Therefore, based on the foregoing reasons, the Intervenor's Exception No. 1 is denied.

Exception No. 2

The Intervenor takes exception to Findings of Fact 82-85, where the ALJ found

⁴ Exception No. 1 actually cites Section "430.161, F.S.," a non-existent statute. For purposes of this response, it is assumed that Intervenor intended to refer to Section 403.161, F.S.

that GREC's pre-certification assessment of potential impacts of the GREC project on wildlife was adequate. See Intervenor's Exceptions at page 4. The Intervenor's contention "does not include appropriate and specific citations to the record." See § 120.57(1)(k), Fla. Stat. (2010). Nor does the Intervenor assert that the ALJ's factual findings are not supported by competent substantial record evidence. The Siting Board may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See *e.g.*, *Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Env'tl. Prot.*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So.2d 1025, 1028 (Fla. 1st DCA 1997).

The ALJ's finding that "GREC, its consultant, and FWC have adequately identified actual and potential wildlife that may use the site and actual and potential wildlife habitat," (RO ¶ 83), and ultimate finding that GREC "has provided reasonable assurance that the construction and operation of the facility will not cause adverse impacts to any listed wildlife species or their habitat" (RO ¶ 85), are supported by competent substantial record evidence. (T. 796-800, 805-810, 812; Ex. 1 at 3-120 to 3-136; Ex. 1 at 5-20; Ex. 4 at 2-28 to 2-32; Ex. 4 - Attach. A; Ex. 7 at 32-33).

The Intervenor contends that "[t]here is nothing in the record to explain why the Florida Fish and Wildlife Commission staff who initially required the pre-certification wildlife surveys abandoned that position, if they ever did." See Intervenor's Exceptions at page 5. Contrary to the Intervenor's assertion competent substantial record evidence shows that GREC and DEP specifically addressed all of the Commission's concerns.

On June 20, 2010, the Commission issued a letter recommending certification of the Project. (Ex. 6, App. II-3; RO ¶ 74). Scott Sanderson, the Commission's Section Leader in the Division of Habitat and Species Conservation, testified at the certification hearing that the June 20, 2010, letter continues to reflect the Commission's official position concerning the Project. (T. 989-90).

Therefore, based on the foregoing reasons, the Intervenor's Exception No. 2 is denied.

Exception No. 3

The Intervenor takes exception to Conclusions of Law 162-165 and the ALJ's decision on the DEP's Motion in Limine described on pages 4-5 of the RO. The Intervenor asserts that the ALJ's ruling and conclusions regarding issues specifically directed to the separate air construction permit (the currently non-final PSD federally approved air permit) is contrary "to the plain language of the Siting statute." See Intervenor's Exceptions at page 7. The Intervenor argues that the ALJ and the Siting Board should "consider and determine actual compliance with air quality and other environmental requirements including BACT, MACT, and 403.161, F.S." See Intervenor's Exceptions at page 7. In Conclusion of Law 163 the ALJ addresses the Intervenor's argument regarding "compliance" with "403.161, F.S." The ALJ concluded that:

163. Intervenor's argument also ignores the fact that Section 403.161 is not a requirement of an agency, as are the requirements of FWC or the water management district. Section 403.161 is a basis for establishing a claim by the state for damages or criminal liability, as provided by, respectively, Section 403.161(2) and (3)-(5), Florida

Statutes. For this reason, too, the prohibition of Section 403.161 is not incorporated into this proceeding by Section 403.509(3)(b).

The Siting Board finds no fault with the ALJ's legal conclusion. See, e.g., *Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *G.E.L. Corp. v. Dep't of Env'tl. Prot.*, 875 So.2d 1257, 1264 (Fla. 5th DCA 2004). However, to the extent that this legal conclusion could be interpreted to diminish the ability of the Department to enforce an approved certification license under the authority of Section 403.161, Florida Statutes, such an interpretation is not adopted in this Final Order. See § 403.161(1)(b), Fla. Stat. (2010) ("It shall be a violation of this chapter ... to... fail to comply with any... certification adopted or issued by the department.").

In Conclusion of Law 164 the ALJ notes that "DEP's final-order authority in the air construction permit case is not determined by the action of the Siting Board in the certification case. §§ 403.509(5) and 403.511(6), Fla. Stat." and that "COC General Condition A.VI.A incorporates the air construction permit and the Title V permit." (RO ¶ 164). The ALJ further concluded "that no good reason exists to carve out of the certification case matters that arise out of these technical air programs." (RO ¶ 166). Essentially, the ALJ concluded that certain "aspects of these programs, such as the identification of important air pollutants, the netting of PSD pollutants, and the consideration of BACT for PSD pollutants and MACT for HAPs," does inform the ALJ's and Siting Board's "exercise in balancing and reasonableness" in order to determine whether "the proposed facility does not pose adverse air impacts, within the scope of the certification case." (RO ¶¶ 165, 166). This analysis is consistent with the Siting

Board's precedent and is a reasonable interpretation of Sections 403.509(5) and 403.511(6), Florida Statutes. See *In re: Fla. Power & Light Co. Riviera Beach Energy Center*, 2009 WL 5848995 (Fla. Dep't Env'tl. Prot.); *In re: Fla. Power & Light Co. West Cty. Energy Center Unit 3*, 2008 WL 5206183 (Fla. Dep't Env'tl. Prot.)("The following factual findings are presented to enable the [Siting Board] to apply the statutory criteria in Section 403.509 . . . Inclusion of such findings shall not be construed to reopen the separately issued PSD permit or any issues addressed in that separate permitting process.").

Therefore, based on the foregoing reasons, the Intervenor's Exception No. 3 is denied.

Exception No. 4

The Intervenor takes exception to the ALJ's decision on a motion in limine described on page 4 of the RO as follows:

On August 16, 2010, GREC filed a Motion in Limine, which contends that Intervenor had raised issues that were exclusively within the jurisdiction of the PSC, pursuant to Section 403.519, Florida Statutes, which vests the need determination exclusively in the PSC. The Administrative Law Judge struck Issue 7, except for whether the need for the GREC facility is outweighed by harmful environmental consequences.

The Intervenor's "Issue 7" in the prehearing stipulation's statement of issues alleged "[v]iolations related to adverse financial impacts on the public interest." At the outset of the certification hearing, GREC argued its motion in limine requesting the ALJ to exclude evidence concerning certain alleged "adverse financial impacts on the public" from the Project. More specifically, GREC asked the ALJ to exclude evidence in the

certification hearing concerning whether the Project was “cost-effective” or “financially viable” because Intervenor already had testified before the PSC concerning these issues and the PSC already had ruled on these issues pursuant to its exclusive jurisdiction under Section 403.519, Florida Statutes. See GREC’s Motion in Limine filed August 16, 2010. The ALJ granted GREC’s Motion in Limine, ruling that deciding these issues is a task reserved for the PSC. (T. 39-42). In the RO the ALJ also concluded that:

154. Section 403.519(1) and (3), Florida Statutes, provides that the PSC is the sole forum for the determination of need. This provision effectively limits the scope of Section 403.509(3)(d) and (g) to matters outside the scope of the PSC need determination.

GREC’s Motion in Limine argued that the PSC’s Final Order specifically addressed the cost-effectiveness of the Project, as well as economic risk mitigation and the uncertainties of the economics of the Project. See PSC Final Order at 6, 9-12, 16-26. The ALJ correctly decided that the issue raised by the Intervenor was within the exclusive jurisdiction of the PSC under Section 403.519, Florida Statutes. See, e.g., *Fla. Power Corp. v. State, Siting Bd.*, 513 So.2d 1341, 1344 (Fla. 1st DCA 1987).

Therefore, based on the foregoing reasons, the Intervenor’s Exception No. 4 is denied.

Exception No. 5

The Intervenor takes exception to the portion of the ALJ’s decision on GREC’s Motion in Limine on page 4 of the RO that states “pursuant to Section 403.519, Florida Statutes, which vests the need determination exclusively in the PSC.” The Intervenor

asserts that the conclusion “that the Site Certification statutory criteria do not require the ALJ and agency to consider and determine need for the GREC facility . . . is contrary to the plain language of [Section 403.509(3)].” See Intervenor’s Exceptions at page 8.

The determination of need made by the PSC is “binding on all parties to any certification proceeding” and “constitutes final agency action.” See *Fla. Power Corp. v. State, Siting Bd.*, 513 So.2d 1341, 1344 (Fla. 1st DCA 1987). However, the finality of the PSC’s determination does not in any way preclude the Siting Board from effecting a reasonable balance between the need for a proposed project and the resulting impact it may have on the public, as required by Section 403.509(3)(e), Florida Statutes. *Id.* But the PPSA does not permit a redetermination of the factual finding of need made by the PSC. (RO ¶ 141 “...the PSC has established the need for the GREC facility, and its determination is an irrebuttable fact in this case.”). Rather, it allows the Siting Board to determine, after consideration of the statutory criteria, whether the proposed project should be approved, approved with modifications, or denied. *Id.*

Therefore, based on the foregoing reasons, the Intervenor’s Exception No. 5 is denied.

Exception No. 6

The Intervenor takes exception to Findings of Fact 86-93 in the RO where the ALJ found that GREC has taken adequate precautions to prevent fires at the GREC facility. In Finding of Fact 93 the ALJ found:

Subject to the addition of COCs incorporating these fire-safety changes that followed consultation with the Gainesville Fire Department, GREC has provided reasonable assurance that the operation of the facility will

not cause adverse impacts from the risk of fire in the wood piles.

The Intervenor's assertions that "Site Certification is not supported on this record" do not include "appropriate and specific citations to the record." See § 120.57(1)(k), Fla. Stat. (2010). Nor does the Intervenor assert that the ALJ's factual findings are not supported by competent substantial record evidence. The Siting Board, as a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See *e.g.*, *Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); see also *Fla. Power and Light Co. v. State, Siting Bd.*, 693 So.2d 1025 (Fla. 1st DCA 1997). A reviewing agency thus has no authority to evaluate the quantity and quality of the evidence presented at a DOAH formal hearing, beyond making a determination that the evidence is competent and substantial. See, *e.g.*, *Brogan v. Carter*, 671 So.2d 822, 823 (Fla. 1st DCA 1996).

The ALJ's findings of fact concerning fire prevention issues are supported by competent substantial record evidence. (T. 131-132, 142-147, 158-160, 161-163, 324, 389, 394-395, 408, 410, 618-619, 811; Ex. 1 at 4-34; Ex. 50). For example, GREC's witnesses testified that given the operational plans and safeguards proposed by GREC a fire is not likely to develop in the fuel yard at the Project (T. 162, 389, 410); fire from spontaneous combustion at the Project is a "very low probability" (T. 410); GREC's plan to use a fuel handling system virtually eliminates . . . the possibility of fire" (T. 408); the City of Gainesville's Fire Department reviewed GREC's site plan for the Project and suggested revisions, all of which GREC adopted (T. 143-46, 158-59); and firefighting measures have been incorporated into the design of the fuel storage area (T. 145-47,

162-63).

Therefore, based on the foregoing reasons, the Intervenor's Exception No. 6 is denied.

CONCLUSION

The ALJ concluded that GREC met its burden of proving that the Project should be certified, subject to the Conditions of Certification, as amended by the ALJ. (RO ¶ 168). Thus the ALJ recommended that the Siting Board enter a Final Order approving the Project subject to the Conditions of Certification, as amended. (RO page 69).

Having reviewed the matters of record and being otherwise duly advised, the Siting Board adopts the ALJ's recommendation.

It is therefore ORDERED that:

A. The Recommended Order (Exhibit A) is adopted in its entirety, except as modified by the rulings in this Final Order, and is incorporated by reference herein.

B. GREC's Application for Certification to build, operate, and maintain a biomass-fired electrical power plant and associated facilities in the City of Gainesville, Alachua County, Florida, is APPROVED, subject to the Conditions of Certification, as amended, set forth in Exhibit B⁵ attached hereto.

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

⁵ Exhibit B incorporates all the proposed Conditions of Certification (GREC Ex. 7) and the additional Conditions of Certifications adopted in this Final Order.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 15th day of DECEMBER, 2010, 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 December 7, 2010.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE CHARLIE CRIST
GOVERNOR

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


CLERK

12/15/10
DATE

CERTIFICATE OF SERVICE

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

-
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by electronic filing to:

Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

this 15th day of December, 2010.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: GAINESVILLE RENEWABLE)
ENERGY CENTER, LLC) Case No. 09-6641EPP
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted a certification hearing in this case in Gainesville, Florida, on August 23-26, 2010.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether the Siting Board should grant a site certification to Gainesville Regional Energy Center, LLC (GREC) for the construction and operation of a 100-megawatt (MW) biomass-fired electrical power plant in Gainesville, Florida, pursuant to Sections 403.501 through 403.518, Florida Statutes.

PRELIMINARY STATEMENT

On November 30, 2009, GREC filed with the Department of Environmental Protection (DEP) a site certification application (Application). The Application requests certification of the construction and operation of an electrical power plant to be located at the Deerhaven Generating Station (Deerhaven) of Gainesville Regional Utilities (GRU). The Application states that the power plant, which will produce 100 megawatts (MW), net, of electricity, will be fueled by biomass--mostly, chipped and ground wood.

On September 18, 2009, GREC filed with the Public Service Commission (PSC) a Petition to Determine Need for the Project. On June 28, 2010, the PSC entered a final order determining a need for the project. The final order is on appeal.

On December 7, 2009, DEP transmitted the file to the Division of Administrative Hearings (DOAH). By Notice of

Hearing issued December 9, 2009, the Administrative Law Judge scheduled the final hearing for August 23-27, 2010.

On January 11, 2010, DEP issued a Determination that Application is Incomplete. The next day, GREC filed its response, which stated that it would supply the additional information sought by DEP. In February 2010, GREC filed its Completeness Responses and Amendment to Application. On March 4, 2010, DEP issued a Determination that Application is Complete.

On July 12, 2010, DEP issued its Project Analysis Report, which incorporates the comments of reviewing agencies. The Project Analysis Report recommends certification of the project, subject to various conditions.

On July 26, 2010, Thomas Bussing filed a Motion to Intervene. The next day, the Administrative Law Judge entered an Order Granting Intervention.

On August 4, 2010, Intervenor Thomas Bussing (Intervenor) filed his Motion for Approval of Mick G. Harrison, Esq., as His Qualified Representative and an affidavit from Mr. Harrison in support of the motion. On August 10, 2010, the Administrative Law Judge entered an Order Accepting Qualified Representative.

On August 16, 2010, the parties filed a Prehearing Stipulation for Certification Hearing. Among other things, the

prehearing stipulation contains Intervenor's statement of the issues, which are:

1. Violations related to dioxin-like compounds emissions;
2. Violations related to Best Available Control Technology for NO_x (nitrogen oxides) and SO₂ (sulphur dioxide);
3. Violations related to Maximum Available Control Technology for Hazardous Air Pollutants;
4. Violations related to non-stack unconfined (fugitive) emissions of particulate matter (PM), particulate matter not greater than ten microns (PM₁₀), particulate matter not greater than 2.5 microns (PM_{2.5}), and non-particles, aerosols, and ultra-fine particles;
5. Violations related to fires;
6. Violations related to endangered, threatened, and special-concern species; and
7. Violations related to adverse financial impacts on the public interest and whether the need for the GREC facility is outweighed by harmful environmental consequences.

On August 16, 2010, GREC filed a Motion in Limine, which contends that Intervenor had raised issues that were exclusively within the jurisdiction of the PSC, pursuant to Section 403.519, Florida Statutes, which vests the need determination exclusively in the PSC. The Administrative Law Judge struck Issue 7, except for whether the need for the GREC facility is outweighed by harmful environmental consequences.

On August 18, 2010, DEP filed a Motion in Limine, which contends that Intervenor had raised issues that are not within the jurisdiction of the Siting Board. Simultaneous with the

filing of the Application for site certification, GREC filed with DEP an application for an air construction permit for the same facility. DEP transmitted the air construction permit case to DOAH on August 9, 2010, and it bears DOAH Case No. 10-7281.

In its Motion in Limine, DEP conceded that air quality impacts are "an important matter" for the Siting Board to consider in effecting a balance between the need for the power plant and its environmental impact. However, DEP observed that the air construction permit is exclusively within the jurisdiction of DEP, pursuant to Sections 403.509(5) and 403.511(1), Florida Statutes. The Administrative Law Judge denied DEP's motion, but ruled that "violations" of the requirements of an air construction permit program would not necessarily result in the denial of certification. The effect of the ruling was to allow all parties to produce evidence, which may be more germane to the air construction permit case, to address the more general issue of air impacts.

At the hearing, GREC called six witnesses and introduced into evidence GREC Exhibits 1-7, 17-18, 20-21, 23-25, 27-28, 30, 33-34, 35C, 35G, 35H, 35U, 35V, 35X, 42, 50-51, 53, 55-57, and 61. DEP called no witnesses and introduced no exhibits into evidence. Intervenor called five witnesses and introduced into evidence Intervenor Exhibits 15-17, 28, 33, and 35-36.

Additionally, pursuant to Section 403.508(4)(b), Florida Statutes, 28 members of the public presented oral communications, in addition to the written communications that are part of this record. Pursuant to this statute, prior to receiving the comments, the Administrative Law Judge advised the parties that he would consider such communications, so all parties would have an opportunity to cross-examine, challenge, or rebut such communications. However, the Administrative Law Judge allowed members of the public not wishing to be subjected to cross-examination to state this desire at the start of their statement, and the Administrative Law Judge would not allow cross-examination of such persons. No person elected this option.

The court reporter filed the transcript on August 30, 2010. DEP and GREC filed proposed recommended orders on September 10, 2010.

FINDINGS OF FACT

I. Introduction

1. On November 30, 2009, GREC filed with DEP an Application for the construction and operation of a net 100 MW (gross 116 MW), biomass-fired electrical power plant at GRU's Deerhaven power plant complex. GREC seeks to place the biomass plant in service on or before December 31, 2013, which is the

deadline for eligibility for a federal renewable-energy grant under the American Recovery and Reinvestment Act of 2009.

2. GREC is a subsidiary of American Renewables, LLC, which develops, builds, and operates renewable-energy facilities. American Renewables, LLC, is jointly owned by affiliates of three corporations that develop, operate, invest, and manage various types of energy projects. American Renewables, LLC, recently obtained permits for a similar biomass plant, also of 100 MW net, in Nacogdoches, Texas. This plant, which is expected to begin commercial operation in late 2012, has a power purchasing agreement with Austin Energy, a municipal utility owned by the City of Austin. American Renewables, LLC, recently sold the Nacogdoches plant to a subsidiary of Southern Company.

3. GRU is a municipal utility of the City of Gainesville. GRU owns and operates a power generation, transmission, and distribution system to serve its 93,000 customers and its wholesale customers, which include the City of Alachua and Clay Electrical Cooperative, Inc. In addition to owning a 1.4-percent share of the Progress Energy Florida Crystal River Unit Three, GRU owns three power supply facilities, which generate a summer net capacity of 608 MW. Of these, the largest is Deerhaven, which generates 440 MW net.

4. A former mayor of the City of Gainesville, Intervenor served on the utility committee of the City Commission and

participated in utility planning for GRU. Intervenor lives less than 10 miles from the Deerhaven site and regularly walks outdoors, works in his yard, and bicycles in the area. He enjoys canoeing on local waterways and observing wildlife, such as eagles, hawks, and owls. Identifying himself as a "locavore," Intervenor favors locally grown food.

II. Application

5. According to the Application, the GREC site consists of 131 acres within the Deerhaven site in northwest Gainesville and north central Alachua County--eight miles from downtown Gainesville to the southeast and seven miles from downtown Alachua to the northwest. The Deerhaven site is within a 1146-acre parcel owned by the City of Gainesville.

6. The Deerhaven site includes several units. Unit 1 generates 88 MW by way of a natural gas or oil-fired steam unit. Unit 2, which was certified in 1978, generates 235 MW (sometimes described as 250 MW) by way of a pulverized coal-fired unit. Unit 3 generates 76 MW by way of a natural gas or oil-fired, simple-cycle combustion turbine unit. Deerhaven also includes two 19-MW, simple-cycle combustion turbine units. If the Siting Board issues a certificate for the GREC site, GRU would not be required to decertify any part of its site; instead, GRU's certificate would be modified to reflect the certification issued to GREC.

7. The GREC site abuts the northwest boundary of the GRU's existing generating facilities at Deerhaven. The GRU facilities immediately east of the GREC site are an ash landfill, brine landfill, and large stormwater management pond. Abutting these facilities to the east are ash settling ponds and a wastewater treatment sludge disposal cell, and, abutting these facilities farther to the east, is a large coal pile. A spur of the CSX rail line, which is used for coal deliveries to Deerhaven Unit 2, terminates just south of the GREC site. Except for secondary access roads and unpaved trails, no Deerhaven facilities occupy the GREC site.

8. Immediately west of the GREC site is a site used by the Alachua County Public Works Department for an office and other facilities. Also west of the GREC site is a radio tower and undeveloped land. The southernmost extent of the GREC site fronts on U.S. Route 441, which is lined by intermittent commercial and retail uses in this area. Across U.S. Route 441, over one-half mile from the GREC site, is the nearest residential subdivision, which is called Turkey Creek.

9. The Application reports that, in the early 2000s, the City of Gainesville purchased an additional 2328 acres of timberland north and east of the Deerhaven site for buffer and potential expansion. The entire area, including the GREC site, was historically devoted to agriculture and pine silviculture,

but the GREC site is now occupied by ditches, swales, some forested communities, and the roads and trails previously mentioned.

10. According to the Application, the GREC facility will feature a bubbling fluidized bed boiler (BFBB) and conventional steam turbine generator. Except during startup, when the boiler will consume natural gas until it reaches operating temperatures, the BFBB will burn a wide range of clean, woody biomass fuels in a dense, fluidized sand bed at the bottom of the furnace and also in the area above the bed. The biomass fuel will be derived from logging residue, mill residue, and urban wood waste derived from tree trimming.

11. The BFBB will combust one million tons per year (tpy) of biomass. To obtain the fuel, GREC will enter into contracts with suppliers within 75 miles of the site. GREC will incorporate in supplier contracts requirements of sustainability and incentives for good stewardship in silvicultural practices.

12. Suppliers will chip or grind the wood at offsite locations and then truck the woody materials to the GREC site. Each truck arriving at the site will be weighed and unloaded, so that the woody biomass can be placed in a fuel storage area until it is needed.

13. The high combustion temperatures reached by the BFBB and the implementation of the requirement for clean woody fuel

will, the Application reports, limit the generation of pollutants. As described in the Application, GREC will employ three additional pollution-control measures: 1) a selective catalytic reduction (SCR) system to reduce emissions of nitrogen dioxide (NO₂); 2) a fabric filter baghouse to reduce emissions of particulate matter (PM); and 3) dry sorbent injection (DSI) to reduce emissions of sulfuric acid mist (SAM), hydrogen chloride (HCl), and hydrogen fluoride (HF).

14. The Application states that GREC will not emit any industrial wastewater from the site. By recycling and reusing water, GREC expects that its water use, primarily to replace water lost to evaporation in its mechanical cooling tower, will be 1.4 million gallons per day, which will be taken from the Upper Floridan Aquifer. GRU has agreed to reduce its water withdrawals by the same amount prior to commencement of operations by GREC.

15. The GREC site will also include an administration building, a warehouse, several stormwater detention ponds, water and wastewater treatment facilities, storage facilities for the fly ash and sand from the BFBB, two emergency diesel engines, and a switchyard. Linear facilities, several of which extend slightly off of the GREC property, include roads, sanitary sewer and natural gas pipelines, and a 138-kV transmission line and switchyard.

16. The Application describes various alternatives considered by GRU to the GREC biomass plant. The no-action alternative is implicitly considered and dismissed in a discussion of the age of GRU's other power-generation equipment--25 years; prevailing power demand during the summer peak season--441 MW; and the year of projected capacity shortfall--2023. Among other alternatives, GRU considered renewable sources--geothermal, solar, biogas from landfills, waste-to-energy, wind, and biomass--and conventional sources--natural gas, coal, coal combusted in a fluidized bed, coal gasification, and nuclear.

17. In 2007, the City of Gainesville decided not to pursue coal due to climate-change concerns. Governor Crist's executive order on climate change also discouraged the submittal of coal-based applications to the Siting Board. In January 2008, after having solicited and received a round of nonbinding proposals identifying various options, the City of Gainesville invited three vendors, including the predecessor of American Renewables, to submit binding proposals. The resulting proposals discussed eight options--all of which used biomass as the exclusive fuel source. At a meeting in May 2008, the City Commission unanimously voted to accept the American Renewables proposal.

18. The City of Gainesville has identified numerous benefits from the GREC project. These include enhancing the integrity and reliability of the generating system, reducing the

average age of the generating system, producing reasonably priced electricity, diversifying fuel sources, avoiding the price fluctuations of fossil fuels, hedging the risks of anticipated carbon-constraint legislation (if biomass is treated preferentially under such legislation), reducing construction and operation risks, reducing open burning of biomass products in forestry operations, reducing landfilling of woody biomass, and supporting the silviculture industry.

19. The site plan depicts the location of all of the components of the GREC facility. By groupings from west to east, the GREC components are the fuel-storage area, which consists of separate wood piles that are described in detail below; parking, offices, a warehouse, a control room, fire pumps, a water treatment facility, and water tanks; a 50-foot wide band of unoccupied land; a switchyard with transmission line running to a new GRU switchyard at U.S. Route 441, the switchyard control room, the steam turbine, fuel day bins connected to the storage area by a conveyor, the boiler, a baghouse, and an aqueous ammonia storage area; and a cooling tower.

20. These components are concentrated on the north side of the site, farthest from U.S. Route 441, and toward the east side of the site, nearest GRU's Deerhaven operations. The boiler, steam turbine, emissions-control equipment, boiler stack, and

cooling tower are 3200 feet northwest of U.S. Route 441 and 2200 feet east of the public works department.

21. The GREC switchyard will transform the power to 138-kV. The transmission lines run along the access road to the new GRU switchyard, which is on U.S. 441 in a small outparcel from the GRU parcel. The GRU switchyard will transmit the power to the existing GRU 138-kV transmission lines along U.S. Route 441. GREC will construct the new GRU switchyard and the 300 feet of new 138-kV transmission to the existing transmission lines.

22. The Application depicts two areas of 100-year floodplain. The northern of these areas is at the northmost part of the GREC parcel. The east end of this floodplain will be converted to three stormwater ponds, and the west end will remain an undisturbed wetland. The southern of the two floodplains is in the area of the new GRU switchyard. The only encroachments on this floodplain will be the access road and transmission line; otherwise, the southern floodplain is left undeveloped.

23. The Application states that the nearest fire station is 3.4 miles to the south, and the nearest hospitals are 6.3 and 8.3 miles to the south. Solid waste will be transferred ultimately to the New River regional landfill in Raiford, which

has a projected life of more than 50 years at current filling rates.

24. The City of Gainesville lies at a peninsular divide. To the east, water drains to the Atlantic Ocean by way of the Ocklawaha River and St. Johns River. At the site, water drains into the Gulf of Mexico by way of Turkey Creek, the Santa Fe River, and the Suwannee River. Drainage from a small part of the northern end of the site reaches the Santa Fe River by way of the Rocky Creek drainage basin. The surface waters around the GREC site are Class III waters.

25. About 72 percent of the GREC site is vegetated by hardwood-conifer mixed and coniferous plantation. The former classification reflects selective thinning of timber, and the latter category reflects a human-altered community. Another ten percent of the onsite vegetation is wetland forested mixed.

26. No naturally occurring aquatic communities occupy the GREC site. The swales are seasonally wet, but not hydrologically connected to other surface waters, at least up to the design storm. Silviculture has heavily influenced the terrestrial flora communities.

27. Two biologists, one of whom specializes in wildlife, conducted a wildlife survey on the mornings of May 27 and 28, 2009. Among listed animal species, the biologists saw, heard, or found evidence of no listed species on the site, which is

presently and will continue to be fenced for security reasons. As to listed species, the biologists found only an abandoned burrow that had probably been used by a gopher tortoise and offsite use by alligators and listed bird species.

28. The biologists found no listed plant species at the GREC site. Five important plant species occur within five miles of the GREC site, but these are found in the San Felasco Hammock Preserve State Park, which is 1.5 miles west of the site, immediately west of the Turkey Creek residential subdivision.

29. As for the potential use of the GREC site by listed wildlife species, the wildlife biologist found moderate potential for only the Eastern Indigo snake, snowy egret, tricolored heron, Southeastern American kestrel, and Florida sandhill crane. The nearby presence of the American alligator, little blue heron, white ibis, and wood stork (roosting only) would also suggest moderately likely use of the GREC site by these listed species.

30. Longstanding onsite silvicultural practices, including drainage, clearing, and road-building, have disrupted the upland natural plant communities and facilitated their displacement by such nuisance exotics as cogongrass, torpedo grass, and Chinese tallow. The wetlands communities have also been stressed, as evidenced by the presence of dead cypress trees, gaps in natural wetlands vegetation, and opportunistic wetlands vegetation, such

as duckweed and various vines. Suggestive of the post-developed state of the GREC site, the Deerhaven operations also stress the fauna, but the stormwater ponds attract a large number of wetland- and water-dependent species.

31. The Application states that the predominant winds are from the northeast and west-southwest. The average wind speed is 2.6 meters per second. Calm winds occur 26 percent of the time, primarily in the summer. Situated 55 miles from the Gulf of Mexico and 70 miles from the Atlantic Ocean, the GREC site is shielded by enough land mass to reduce or eliminate the destructive effects of most tropical storms.

32. The Application states that ambient air quality is a product of meteorology, atmospheric chemistry, and pollution emissions. Meteorology controls the distribution, dilution, and removal of pollutants. Atmospheric chemistry controls the transformation of primary pollutants into secondary pollutants. Primary pollutants are discharged directly from the source and, for GREC, will include nitrogen oxides (NO_x), sulfur dioxide (SO_2), carbon monoxide (CO), and particulate matter (PM), or, traditionally, soot, although, as a fugitive emission, PM is better considered as dust from the biomass fuel, except when the source is ash residue. For GREC, the most important secondary pollutant is ozone, which forms from the combination of NO_x and volatile organic compounds (VOCs) in sunlight.

33. The Application states that the U.S. Environmental Protection Agency (EPA) has established national ambient air quality standards (AAQS) for six pollutants: SO₂, NO₂, CO, lead, ozone, and PM, which comprises PM₁₀ and PM_{2.5}. Title I, Part A, Clean Air Act. The latter two pollutants are, respectively, PM not greater than 10 microns and PM not greater than 2.5 microns. Primary air quality standards for these criteria protect human health, and secondary air quality standards for these criteria protect the environment and physical property.

34. For all six AAQS criteria, the EPA has not designated the relevant area a nonattainment area. The record does not suggest that the EPA has designated any part of Florida a nonattainment area for any of the AAQS pollutants. For the AAQS pollutants, then, the relevant area has acceptable air quality in terms of air impacts on human health. Unlike the Clean Air Act programs involved in this case, the AAQS program focuses exclusively on human health and does not balance impacts to human health or the environment against issues of economic productivity.

35. EPA has developed an air quality index that describes air quality in relative terms. Good is the highest rating and means that air pollution poses little or no risk. Moderate means that air pollution may be a moderate health concern to a very small number of persons. Unhealthy for sensitive groups

means just that, and healthy groups are unlikely to be affected. Unhealthy means that air pollution may cause everyone to begin to experience health effects, and sensitive groups may experience more serious health effects. The two remaining classifications are very unhealthy and hazardous.

36. For 2007, the EPA classified the air quality in Alachua County as 315 days of good, 44 days of moderate, and 6 days of unhealthy for sensitive groups. For 2008, the EPA classified the number of good days as only 258. In general, the EPA classifies the air quality of Alachua County as good with the main pollutant adversely affecting air quality as ozone. For Alachua County, stationary fuel combustion generates about 91 percent of the SO₂, about 28 percent of the NO_x, about 14 percent of the PM_{2.5}, about six percent of the PM₁₀, and nearly none of the CO and VOCs.

37. Another Clean Air Act program of interest in this case is the National Emission Standards for Hazardous Air Pollutants (NESHAP), which is Title I, Part A, § 112, of the Clean Air Act. The NESHAP regulatory scheme focuses on enumerated hazardous air pollutants (HAPs). For Alachua County, HAPS are not attributable primarily to stationary fuel combustion. The Application states that 86 percent of these pollutants were emitted from mobile and area small sources, such as dry cleaners and gas stations.

38. The main feature of the GREC facility is, of course, the boiler. Emitting 95 percent of the total emissions of the GREC facility, the BFBB consists of sieved natural sand, which is maintained in suspension by a fluidizing air system. The fluidization yields an expanded combustion zone within the boiler with high turbulence, intimate solids-to-gas contact, and a high heat transfer rate. While combusting biomass fuels, the bed temperatures range from 1350 to 1700 degrees. (All temperatures are Fahrenheit.) Overfire air, usually 200 degrees hotter, is introduced to complete the combustion of volatile gases, such as CO.

39. Flue gas leaving the 179-foot-high boiler passes through emission control equipment before discharging through a single 230-foot-high stack. The fabric filter baghouse will capture PM. As described in the Application, the baghouse comprises 12 filter compartments, each containing 250-350 bags that are six inches in diameter and 14- to 26-feet long. At the bottom of the baghouse is a hopper to collect ash. As PM forms on the bags, it forms a filter cake that increases the filtration efficiency of the bags. But once the air pressure drops to specified limits, high-pressure air pulses are directed, automatically, into each bag, loosening the caked fly ash and depositing it in the hopper below.

40. Downstream of the baghouse, the SCR will reduce NO_x from the flue gas stream by using a catalyst and a reactant (ammonia gas) to dissociate NO_x into nitrogen gas and water vapor. The BFBB technology--especially the DSI--combined with low sulfur biomass fuel and the naturally occurring calcium in the wood ash, will control SO₂, SAM, HCl, and HF emissions.

41. Each business day, 130-150 trucks with wood chips will arrive at the GREC facility. They will proceed to a drive-through structure, which contains three truck dumpers and three receiving hoppers. From the hoppers, the fuel will be conveyed to a fuel processing system, where a metal detector and magnetic separator will remove metals, a disc screen will remove oversized chips, and a hammer hog will reduce the oversized chips to the design size of three inches or less. This equipment is located in an enclosed building with a dust-collection system.

42. The processed fuel is conveyed outside to the fuel storage area. One wood pile will have an automatic stacker/reclaimer that will be able to deposit, churn, mix, and remove nearly the entire pile. Another wood pile, conical in shape, has a fixed stacker, and the material will be moved by bulldozers and front-end loaders. This rolling stock will transfer some of the wood chips to a smaller, manual-reclaim pile that will also be contoured by bulldozers and front-end

loaders. A fourth, much smaller pile will be maintained for the delivery of presized material, mainly sawdust. As originally sized, the wood piles are intended to store sufficient fuel for 15-20 days of operations.

43. In the Application, the automatic stacker/reclaimer pile is specified to be 85 feet high, but, after consultation with the Gainesville Fire Department, as detailed below, GREC agreed to reduce the height of this pile to 60 feet. The fixed stacker pile is 60 feet high, and the manual-reclaim pile is 35 feet high. The automatic stacker/reclaimer pile is 400 feet by 400 feet, and the manual-reclaim pile is 400 feet by 465 feet.

44. GREC will manage the separate wood piles to maintain the design moisture content in the fuel, which is about 50 percent, but also to ensure that no portion of the stored wood remains in the pile for too long. In general, GREC intends to use fuel on the basis of first-fuel-in, first-fuel-out, to avoid problems of odor and spontaneous combustion, the latter of which is discussed in detail below.

45. Fly ash from the boiler and baghouse filter will be collected dry and transported pneumatically to an onsite storage silo. From there--if needed, after stabilization with water--the ash will be transported--enclosed, if still in dry form--for use as a soil supplement or, if such use is unavailable, to an approved offsite landfill.

46. Another means of controlling emissions is ensuring that the biomass is suitably clean. The design biomass is forest residue, mill residue, precommercial tree thinnings, used pallets, and urban wood waste, which is predominantly the trimmings of landscape contractors. Supplementary fuels may include herbaceous matter and agricultural residues (such as rice hulls and straw, but not animal matter or manure). The GREC facility will not accept painted, treated, or coated wood, construction and demolition debris, or municipal solid waste.

47. Relying on four investigations of the adequacy of the supply of available biomass resources, GRU determined that ample supplies exist within a 75-mile radius of the GREC site. Within 75 miles of the GREC site lie 6.44 million acres of timberland, of which 81 percent is privately owned.

48. To discourage practices among its biomass suppliers that would reduce ecosystem biodiversity, GREC will impose upon them sustainability requirements that will mandate that they comply with the Division of Forestry's best management practices (BMPs) for timber operations and will prohibit the delivery of stumps (to avoid erosion in the source area) and biomass generated from the conversion of natural forests to plantation forests or from nonnative species, unless the nonnative-species biomass is generated from a forest restoration project.

49. To enforce these sustainability requirements, the power purchase agreement between GRU and GREC requires GREC to obtain annual audits by an independent forestry consultant to assess supplier compliance, incorporate the sustainability requirements into its supplier contracts, require that suppliers identify each load with information sufficient to disclose the source of the fuel and the crew that obtained it, inspect at least 10 percent of all incoming fuels to ensure compliance with the sustainability requirements, require that suppliers maintain documentation for each load for three years, conduct semiannual inspections of all suppliers to investigate operations and recordkeeping, require suppliers to attend annual training seminars conducted by GREC, and suspend deliveries for at least one year from any supplier found to be noncompliant three times in a single year.

50. To encourage practices among its supplies that will maintain or increase ecosystem biodiversity, GREC will pay premiums of \$0.50 or \$1.00 per delivered ton of biomass to suppliers that adhere to an approved forest certification program that is more demanding than the Division of Forestry's best management practices.

51. The Application analyzes boiler and facility emissions in terms of New Source Review (NSR) for Prevention of Significant Deterioration (PSD), which is Title I, Part C, of

the U.S. Clean Air Act, 42 U.S.C. §§ 7401, et seq. (Clean Air Act). Although this regulatory program is the subject of the air construction permit case, PSD analysis provides a useful framework for addressing the air impacts from the GREC facility. Among other things, NSR requires, for pollutants subject to PSD review, that the facility control emissions by the best available control technology (BACT), which is the maximum degree of reduction for each PSD-regulated pollutant, using available and feasible technology and taking into account energy, environmental, and economic impacts and other costs.

52. The Application states that the BFBB will emit NO_x, SO₂, lead, mercury, CO, VOCs, PM/PM₁₀, and SAM. Except for the lead, mercury, and SAM, the emissions exceed the PSD emissions rate and trigger PSD review. The annual emissions for the BFBB are: NO_x--416.4 tpy; SO₂--243.9 tpy; CO--713.8 tpy; VOCs--77.3 tpy; total PM--249.8 tpy; and SAM--5.9 tpy. The diesel emergency generator and firewater pump add small increments to these emissions. The other sources of pollution at the facility emit PM of various sizes.

53. Four sources of material handling present the opportunity for fugitive emissions of PM. Fugitive emissions are nonpoint-source emissions that, although inadvertent, may be projected and modeled. These four sources are transfer points, material processing areas, wood piles, and fuel bins. To the

extent practicable, all transfer points will be enclosed. The vents in storage silos will be equipped with appropriately sized air filters. Water will be used to control dust on the wood piles. The primary roads will be paved, and GREC will sweep and water them to control dust. GREC will water any unpaved trails. After applying all practicable controls, the Application projects material-handling annual fugitive PM emissions to be 11.6 tpy of PM, 2.3 tpy of PM₁₀, and 0.34 tpy of PM_{2.5}. These PM fugitive emissions compare to annual point-source PM emissions--all assumed to be PM_{2.5}--of 28 tpy.

54. For the pollutants subject to PSD review--NO_x, SO₂, CO, VOCs, PM, and PM₁₀--the Application states that GREC's employment of BACT will be directed primarily toward the BFBB. The Application assures: "The proposed configuration of the BFB combustor, DSI, baghouse, and SCR is considered the most stringent emission control technology train available for biomass-fired boilers and to represent BACT for the GREC BFB boiler." Application, Chapter 4, p. 4-49. (GREC's later agreement, as detailed below, to provide even more stringent pollution control technology does not necessarily undermine the force of this assurance in the Application; it would appear instead that the newer technology represents the most most stringent emission control technology train available for biomass-fired boilers.)

55. NO_x emissions will be limited by staging the combustion in the bed and lower furnace area. Combustion staging and flue gas recirculation reduce the flame temperatures, so as to reduce the formation of thermally generated NO_x. By providing more than three seconds residence time at temperatures above 1500 degrees, the BFBB will minimize VOC and CO emissions.

56. SO₂ emissions will be limited by several means, starting with the bubbling bed furnace where sufficient amounts of calcium, sodium, and potassium will be available from the biomass ash to capture SO₂ in the boiler. The DSI will further control SO₂ emissions.

57. PM/PM₁₀ emissions will be limited by the baghouse's fabric filters, which, after exposure to the alkaline sorbent added by the DSI, will also remove SAM, HCl, and HF. CO and VOCs, which are formed by incomplete combustion of organic compounds contained in the biomass fuel, will be controlled by the duration of residence time, furnace temperatures, and good air mixing in the furnace.

58. Through dispersion modeling of air impacts, GREC determined that the facility would not violate any PSD increment, although the GREC facility will emit, under the PSD program, significant emission rates of NO_x, SO₂, CO, PM, PM₁₀, and ozone/VOCs. These matters are discussed in detail below.

59. The Application states that wood contains trace amounts of mercury. Combustion at 1500 degrees vaporizes the mercury into gaseous elemental mercury. Subsequent cooling may produce elemental mercury, particle-bound mercury, and oxidized mercury compounds, which is also known as reactive gaseous divalent mercury (RGM). The baghouse filters might capture some of these mercury emissions, although GREC's analysis conservatively assumed that they would not.

60. Of the 16.7 pounds per year of all forms of mercury projected to be emitted by the GREC biomass plant, about 70 percent of it, according to GREC's conservative assumptions, will be elemental mercury and 30 percent of it will be RGM. The former has long residence time in the atmosphere and travels long distances, and the latter deposits locally and regionally.

61. By comparison, annual anthropogenic emissions of mercury in the United States were 145 tons in 2005, including 48 tons from power plant emissions. In 1999, mercury emissions from Florida coal-fired plants were 1923 pounds. Worldwide, anthropogenic emissions of mercury account for two-thirds of total mercury emissions, the remainder being from natural causes, such as volcanic eruptions and oceans.

62. The Application considered wet and dry deposition rates of mercury in the Santa Fe River basin. After calculating an average areal wet deposition rate from the GREC facility, the

Application concludes that it is 6000 times less than the average areal wet deposition at the nearest location for which such data are available. The Application also concludes that the wet plus dry deposition rate of mercury from the GREC facility will be 400 times less than the wet-only rate at the comparison location.

63. Among the socio-economic benefits of the GREC facility, construction will generate \$48 million of payroll, largely for local and regional labor, and \$160 million in nonengineered construction equipment purchases. Operation will result in the employment at the facility of 44 fulltime employees, initially earning \$4 million annually. NonGREC employment will include truck drivers and operators of wood-processing equipment.

III. Incompleteness Determination and GREC Response

64. On January 11, 2010, after consulting with affected agencies, DEP determined that the Application was incomplete. Among the issues in DEP's determination were several raised by the Florida Fish and Wildlife Conservation Commission (FWC):

- 1) GREC relied inappropriately on the Florida Land Use and Cover Forms Classification System (FLUCFCS) for identification of plant communities that provide wildlife habitat; 2) GREC failed to identify the survey methodology (e.g., time of year and types of observed activities) and to perform a desktop review prior to

"appropriate surveys," which "should be conducted during the [reproductive] season particular to each species"; 3) for the three isolated wetlands to be impacted by construction, GREC failed to conduct an amphibian breeding season survey targeting at least the gopher frog and consider the flatwoods salamander, due to the dominance of flatwoods soils on the site, when designing the survey; and 4) GREC failed to detail the maintenance conditions for wetland buffers to address wildlife functions, not merely stormwater functions. FWC concluded that it could not determine potential impacts to wildlife from the Application or conditions that should attach to certification.

65. By Completeness Responses and Amendment to [Application] dated February 2010, GREC responded to the incompleteness determination. Responding to the issues raised by the FWC, GREC stated: 1) DEP forms and rules approved the use of the FLUCFCS system; 2) GREC had already performed the requested desktop review and detailed the survey methodology, but GREC agreed to a preclearing survey using FWC-approved methodologies and at times likely to maximize the observation of the subject species and further agreed to coordinate with FWC any mitigation methodologies for listed species impacted by construction; 3) the three isolated wetlands, which did not contain standing water, even during the wet season, were of no significant breeding or foraging habitat value and GREC declined

to include methods for the flatwoods salamander because of extensive alteration of the land and the absence of such salamanders within five miles of the site, but GREC agreed to include in the preclearing survey methods for the gopher frog; and 4) GREC agreed to maintain wetland buffers in their current vegetative state.

66. By letter dated March 4, 2010, DEP determined that the Application was complete.

IV. DEP Report

67. By Electrical Power Plant Site Certification Project Analysis Report dated July 12, 2010 (DEP Report), DEP analyzed the proposed GREC facility in light of the Application and the applicable requirements of law.

68. In terms of wetlands impacts, the DEP Report notes that GREC had proposed to mitigate for the destruction of 0.44 acres of low-functioning wetlands by placing in a conservation easement 10.25 acres of higher-functioning onsite wetlands and 12.33 acres of uplands buffer. The DEP Report stated that DEP's Wetlands Section did not object to this proposal.

69. The DEP Report states that the studies that GREC had commissioned supported a finding that, annually, the supply of biomass exceeded GREC's need by at least five times. The DEP Report reports that Agriculture Commissioner Charles Bronson had recently concluded that biomass energy production encourages the

sustainability of Florida's forests by discouraging their conversion into other uses through the creation of a market for low-value biomass materials, such as forest residues and premarket thinnings.

70. The DEP Report states that fluidized bed combustion technology has been used since the 1970s and burns a wide variety of fuels "cleaner and more efficiently" than do other forms of combustion. According to the DEP Report, the Jacksonville Electric Authority uses two circulating fluidized bed boilers at its Northside Generating Station for burning coal, and this technology has reduced emissions by ten percent. According to the DEP Report, the BFBB is better at burning fuel with higher moisture content and lower heating values, so it is more suitable for burning biomass.

71. The DEP Report approves the Application's BACT analysis. The DEP Report notes that GREC will increase the emissions of three (or four if the PMs are counted separately) PSD-regulated pollutants above significant emission rates: PM, PM₁₀, CO, and VOCs.

72. Among the more important determinations in the DEP Report is that GREC's NO_x and SO₂ emissions will be offset with emissions reductions achieved by new air pollution control technology installed by GRU at Deerhaven in 2009. The DEP Report notes that the DEP Division of Air Resource Management

had determined that the Application complies with all applicable federal and state air pollution regulations, and the final air construction permit will be incorporated into the conditions of certification (COC).

73. The DEP Report reviews the comments of the various reviewing agencies. The agencies approving the Application without condition were the PSC, North Central Florida Regional Planning Council, Department of Community Affairs, Division of Historical Resources of the Department of State, City of Gainesville, and Division of Forestry. The agencies approving the Application with conditions were the Suwannee River Water Management District, which required a condition that the GREC facility's groundwater withdrawals of 1.4 million gallons per day be offset by a reduction of 1.4 million gallons per day of groundwater withdrawals by GRU at Deerhaven before GREC operation may commence; the FWC; and the Department of Transportation, whose conditions are irrelevant to this case.

74. In a letter dated June 10, 2010, FWC recommended five COCs. First, if the site plan is modified to impact listed species, GREC must coordinate with FWC and the U.S. Fish and Wildlife Service to identify necessary conservation measures. Second, GREC must evaluate impacted wetlands on a case-by-case basis and establish compatible-use buffer zones and wetland protection buffers around all wetlands, appropriate to the

site's wildlife inventory, in accordance with the U.S. Fish and Wildlife Service's guidelines for wetlands buffers. Third, for gopher tortoises, GREC must investigate the need to obtain from FWC a conservation permit or temporary exclusion permit, if the project will impact gopher tortoises, their burrows, or their habitat. Fourth, GREC must avoid impacts to bald eagle nests, where possible. Where impacts are unavoidable, GREC must obtain from FWC the information necessary for an FWC eagle-nest-removal permit and must implement the minimization and conservation measures identified in the FWC Bald Eagle Management Plan. If nests occur prior to or during construction, GREC must make efforts to avoid construction activities during nesting season or when eagles are present at other times. Fifth, whenever practical, GREC must avoid land-clearing and construction during the active breeding season for the wading and crane-like birds protected by Florida Administrative Code Rules 68A-27.003, 68A-27.004, and 68A-27.005, and, if nesting activities are detected, GREC must monitor the nesting activities during clearing and construction, except, for sandhill cranes, GREC must cease clearing and construction until the nestlings have fledged.

75. Based on the Application, the approvals by reviewing agencies, and all other relevant material, the DEP Report recommends that the Siting Board certify the GREC facility, subject to the attached COCs.

V. Conditions of Certification

76. Dated July 12, 2010, the COCs are general and specific conditions for the construction and operation of the GREC facility. COC General Condition A.VII. provides that certification is "predicated upon preliminary designs, concepts, and performance criteria described in the [Application] or in support of certification." This provision effectively incorporates the Application into the COCs.

77. COC General Condition A.VI.A. incorporates the air permits that GREC must obtain under Title I, Part C, and Title V of the Clean Air Act. This condition provides that a violation of either of these permits, the former of which is a construction permit and the latter of which is an operation permit, is a violation of the site certificate. COC General Condition A.XXIV.A. provides that modifications, amendments, or renewals of the air construction permit or Title V operating permit modify the site certificate, and, in case of conflict, the more stringent provisions control.

78. COC Specific Condition B.I.D. provides that fly ash may be used as a soil supplement, after initial testing and DEP approval, or transported offsite and disposed of in a permitted landfill. COC Specific Condition B.I.D.6. requires reasonable precautions when loading, unloading, and transporting fly ash to control fugitive emissions.

79. COC Specific Condition B.III incorporates the five items addressed by the FWC in June 10, 2010, letter, which is detailed above. COC Specific Condition B.III.C. requires:

Prior to clearing and construction, the licensee shall conduct species-specific surveys for all listed species that may occur within the certified area The results of those detailed surveys shall be provided to the FWC and coordination shall occur with the FWC and appropriate permitting agency on proposed impact mitigation methodologies.

80. COC Specific Condition B.IV. incorporates all but one of the items addressed by the Suwannee River Water Management District. COC Specific Condition B.IV.A. allows GREC to withdraw 1.4 million gallons per day when the plant is fully operational, but there is no provision conditioning this withdrawal on an equal reduction in withdrawals by GRU.

81. The materiality of this omission is revealed by the water management district's staff report, which is attached to the COCs. The staff report anticipates that a COC that "will reduce allocated quantities for Deerhaven . . . by 1.4 [million gallons per day]." If the GREC site certificate is not conditioned upon an offsetting reduction in groundwater withdrawals by GRU, the water management district's approval cannot be assumed.

VI. Other Findings

A. Wildlife

82. Phillip W. Simpson, wildlife ecologist and chief scientist of Environmental Consulting and Technology, Inc., performed wildlife surveys on the GREC site in Spring 2009 and late Summer/early Fall 2009, using standard FWC methodology, including a desktop review of the literature in advance of a survey. Mr. Simpson found one abandoned burrow, formerly occupied by a gopher tortoise. He found five listed, wetlands-dependent species elsewhere on the GRU site: alligator, little blue heron, snowy egret, white ibis, and wood stork.

83. The GREC site is largely unavailable for wildlife use and has little potential for future wildlife use. Anthropogenic alterations to onsite natural systems have been extensive and persistent, as long-term silviculture was replaced by the uses associated with the construction and operation of a large power-plant complex featuring a coal-powered generator. At this stage, GREC, its consultant, and FWC have adequately identified actual and potential wildlife that may use the site and actual and potential wildlife habitat.

84. Intervenor's major objection is to the post-certification, preclearing wildlife survey required by FWC and the COCs. This objection is misplaced. The post-certification

survey is not taking the place of pre-certification surveys of a scope reasonable to the conditions prevailing at the site. A post-certification, preclearing survey for this fenced site adjacent to the intense uses associated with a power plant complex is a sensible precaution for the gone-today, here-tomorrow quality of wildlife utilization, primarily by birds. Other FWC-derived COCs amply address the unlikely contingency of a late discovery of probable impacts to wildlife by requiring coordination with FWC and adding specific provisions for gopher tortoises, eagles, wading birds, and crane-like birds.

85. GREC has provided reasonable assurance that the construction or operation of the facility will not cause adverse impacts to any listed wildlife species or their habitat.

B. Fire

86. The wood piles present a risk of fire from spontaneous combustion. Microbial metabolic action within the pile can generate sufficient heat to cause the wood pile to combust.

87. The primary safeguard against this risk is proper fuel management to minimize the heat buildup within the pile. One way to manage the fuel for fire safety is to mix the wood piles to aerate the piles and prevent hot spots.

88. Another way to manage the fuel is to ensure that the fuel is not allowed to remain in the pile too long. GREC's first-fuel-in, first-fuel-out policy limits the age of any part

of the wood pile. The implementation of this policy is further assured by the fact that the fuel loses heat value over time, so GREC will gain more burn for the dollar by combusting the fuel sooner, rather than later. The ratio of stored fuel to combustion rates suggests that all fuel will be turned over within 20 days--probably sooner, after the late revision lowering the automatic stacker/reclaimer pile by 25 feet, which is described immediately below. Anecdotal evidence suggests that 20 days' residence in the wood pile is well short of the age of fuel that has spontaneously combusted in piles in the past.

89. The stormwater management system will also enhance fire safety by draining rainwater and runoff from the piles and discouraging the ongoing saturation of the fuel piles. Excessive, intermittent saturation of the pile may encourage the microbial activity that can lead to combustion.

90. As part of the local review that took place for the GREC facility, Gainesville Fire Department representatives met three times with GREC representatives to address fire safety, as the Development Review Board of the City of Gainesville reviewed the GREC proposal. As a result of these meetings, GREC agreed to a number of changes to assure substantial compliance with the National Fire Protection Association (NFPA) standards for the management of wood storage areas.

91. As noted above, one change after consultations with the fire department was to reduce the automatic stacker/reclaimer pile from 85 feet to 60 feet. This reduces the risk of fire by making it easier to mix the entire pile and reduces the volume of fuel stored onsite and, thus, the time that that the fuel may remain unused in the wood pile. Secondly, this change also reduces the volume of fuel available to burn in an unintended fire.

92. To conform to NFPA standards, GREC also agreed to place low barrier walls between the fuel piles; to drive stakes around the perimeter of the piles, so inspectors could more easily check that the piles are not migrating or expanding; and to insert temperature probes into the piles to allow timely detection and elimination of hot spots that might otherwise develop into fires. A revised site plan, as reflected in Exhibits 50A, 50B, and 50C, incorporates the barrier walls and perimeter stakes identified above, as well as the layout of the fire main and fire hydrants that loop the fuel storage area and some access issues for firefighting equipment, which may weigh as much as 30 tons.

93. Subject to the addition of COCs incorporating these fire-safety changes that followed consultation with the Gainesville Fire Department, GREC has provided reasonable

assurance that the operation of the facility will not cause adverse impacts from the risk of fire in the wood piles.

C. Air Impacts

1. NO_x and SO₂

94. NO_x and SO₂ emissions are regulated for a number of reasons. NO_x combines with VOCs to form ozone, so regulatory efforts to limit ozone focus on NO_x, and SO₂, itself a threat to human health, is regulated as a precursor to PM_{2.5}. NO_x and SO₂ also combine to form acid rain.

95. The BFBB is responsible for all of the SO₂ produced at the GREC facility, which is 171 tpy. The BFBB is responsible for nearly all of the NO_x produced at the GREC facility--416 tpy. An emergency generator and fire pump engine add another 1.72 tpy of NO_x, for a total of 418 tpy of NO_x.

96. On July 12, 2010, DEP issued a permit to GRU imposing enforceable and permanent reductions on Deerhaven Unit 2's emissions of NO_x and SO₂--418 tpy of the former and 171 tpy of the latter. These reductions were achieved by GRU's installation of more effective pollution control technology.

97. Under NSR/PSD, GREC may net out its emissions of NO_x and SO₂ by taking into account these offsetting GRU reductions because GREC and GRU constitute one major stationary source, under NSR/PSD permitting. Offsetting the increased emissions of GREC with the decreased emissions of GRU is authorized by the

proximity of the two operations and their common operational control.

98. Specifically, GRU controls GREC's operations through their power purchasing agreement, which gives GRU the authority to dispatch the power generated by the GREC facility, to determine when the biomass plant will start up and shut down, to control the amount of electricity that the GREC biomass plant will produce while operating, and the voltage of such electricity. GRU will also supply the switchyard and transmission lines by which GREC-produced power will enter the power grid and will distribute GREC-produced power among GRU customers. GRU will also supply the natural gas that GREC requires for start up and the electricity that GREC requires for start-up and stand-by operations. GRU even agreed to reduce its groundwater withdrawals by 1.4 million gallons per day, so GREC could withdraw an equal amount of groundwater for its operations.

99. Contrary to Intervenor's contention, this aggregate treatment of GRU and GREC is not a legal fiction designed to circumvent BACT under the NSR/PSD program. On these facts, it would be much easier to prove that the independence of GREC is a legal fiction and that GREC serves as GRU's contractor, ushering the biomass plant through certification, permitting, the acquisition of supplier contracts, and start up, perhaps then to

sell it to GRU at the same late stage that GREC sold the Nacogdoches plant. But whatever the precise relationship between the two entities is, or proves to be, at this stage, without doubt, GRU controls GREC.

100. Contrary to Intervenor's contention, the emissions reduction achieved by GRU at Deerhaven cannot somehow be disregarded in this case and "banked" as a gain in achieving cleaner air. From all appearances, GRU pursued this emissions reduction--and certainly the permit modification enforcing the emissions reduction against GRU permanently--for the same reason that it agreed to reduce its groundwater withdrawals. The reason is not an abundance of good will among corporate partners working shoulder to shoulder in providing America's power needs or a gestalt moment of environmental awareness. GRU effected this emissions reduction as a strategic decision to enable GREC to come online sooner and provide GRU with a reliable source of power from a plant much newer than any that it has in place at Deerhaven. This is the economic reality of the closer-than-armslength relationship that exists between GRU and GREC.

101. The netting of NO_x and SO₂ emissions means that GREC effectively emits no such pollutants. But to put GREC's offset emissions into context, Deerhaven Unit 2 produces roughly 2.5 times the power that the GREC plant will produce. Even after the July 2010 emission reductions, Deerhaven Unit 2 is permitted

to emit 3381 tpy of NO_x emissions and 8005 tpy of SO₂ emissions. If the GREC plant were scaled up to Deerhaven Unit 2's capacity, the GREC biomass plant would produce about one-third as much NO_x and one-twentieth as much SO₂. Nothing in the record suggests that GREC's relatively low emissions of NO_x and SO₂--even without regarding to netting--presents a significant risk to human health or the environment.

102. GREC has provided reasonable assurance that the operation of the GREC facility will not cause adverse air impacts in the form of NO_x and SO₂ emissions.

2. Hazardous Air Pollutants

103. Hazardous air pollutants (HAPs) are identified and regulated under NESHAP. The EPA has designed numerous compounds as hazardous air pollutants, including HCl, HF, certain metals, and various organic compounds, including dioxins, which Intervenor has elected to treat separately and are considered in the next subsection.

104. Based on the information contained in the Application, the potential emissions by the GREC facility's emissions of HCl and HF, as well as total HAPs, were sufficiently high to trigger MACT case-by-case review. In Appendix A of the Application, the HCl and HF emissions were projected to be 36 tpy and 71 tpy, respectively, and total HAPs were 114 tpy.

105. However, after DEP representatives advised GREC representatives that their HCl and HF projections seemed very high, based on their experience with comparable facilities, GREC representatives met with representatives of the boiler manufacturer, Metso, to determine if they could implement more stringent emission control technology to reduce HAPs emissions sufficiently to avoid triggering MACT case-by-case review, which would have added several months to the review process.

106. On February 2010, GREC presented to DEP a revised set of projections of HAPs emissions that were just beneath the thresholds calling for MACT case-by-case review, which are 10 tpy for any single HAP and 25 tpy of all HAPS. The revised projections called for 9.72 tpy of HCl and HF, each, and 24.7 tpy of all HAPs.

107. GREC justified these revised projections by several means. First, Metso reconsidered the chlorine and fluorine concentrations in the clean woody biomass to be received by the GREC facility, reevaluated the chemical reactions, and reduced its earlier assumptions. Second, Metso and GREC selected a more effective sorbent, trona, which reduces the emissions of HF and HCl. Third, Metso and GREC increased the amount of sorbent to be injected into the flue gas system, which will further reduce emissions of HF, HCl, and SO₂. Fourth, Metso and GREC changed the catalyst in the SCR, which will remove HAPs more

effectively. Fifth, Metso and GREC increased the size and optimized the design of the fabric filter baghouse, which will further reduce stack emissions of PM, but also HAPs to a lesser degree.

108. These are not paper adjustments, but are actual investments in technology that will cost GREC millions of dollars. Intervenor is skeptical, partly due to the proximity of the revised projections to the regulatory thresholds.

109. Interestingly, the actual projection for HF is much less than 9.72 tpy. Metso and GREC selected 9.72 tpy for HF to allow them some margin of error in the projections. GREC's motivation was obviously to avoid a sub-threshold breach of a projected emissions limit and the resulting regulatory intervention of DEP. Metso's motivation probably arises from the fact that, to induce GREC to purchase its boiler, Metso provided GREC a guarantee that, at least initially, the boiler will meet these revised HAPs emissions limitations. So, the proximity to regulatory thresholds, at least for HF, is not a ground for suspicion, as Intervenor implies.

110. As revised, the pollution control systems controlled HAPs, and other pollutants, as follows: 1) good combustion practices in the BFBB control PM, CO, VOCs, and HAPs generally; 2) the fabric filter baghouse controls emissions of PM₁₀, PM_{2.5}, and HAPs; 3) clean biomass fuel, reaction with alkaline fly ash,

and the DSI control SO₂ and SAM; 4) the ammonia-based SCR controls NO_x, VOCs, and HAPs generally; and 5) high-efficiency drift eliminators in the cooling tower control PM.

111. The last factor supporting the revised HAPs projections is that the GREC facility will monitor a wide range of HAPs, as well as PSD pollutants, in accordance with the following program: 24-hour, 30-day, and 12-month continuous emission monitors (CEMS) for SO₂ and NO_x; an initial and annual stack test for SAM; a 30-day CEMS for CO; an initial stack test and 12-month CEMS for HCl and HF; an initial and annual stack test and 12-month CEMS for the HAPs projected to total 24.7 tpy; an initial and annual stack test for PM/PM₁₀; and an initial and annual stack test for visible emissions and VOCs.

112. Finally, the GREC facility's HAPs emissions are offset by decreases in emissions of HCl and HF, as well as SAM and mercury, as a result of the enhanced pollution control technology adopted by GRU at Deerhaven. Although these reductions, which are all greater than the emissions of these pollutants by the GREC facility, are not enforceable, for the certification case, they are relevant in assessing the air impacts from the GREC facility.

113. Subject to the addition of COCs incorporating these revisions in pollution control technology, including the above-described CEMS, GREC has provided reasonable assurance that the

operation of the GREC facility will not cause adverse air impacts in the form of HAPs, including HF, HCl, and total HAPs.

3. Dioxins

114. Dioxins are compounds that result from the combustion of chlorine-containing materials, including wood. The family of "dioxins" includes furans and polychlorinated biphenyls (more commonly known as PCBs), which all are within the family of persistent organic pollutants. Common sources of dioxins include boilers, electrical power plants, municipal and medical waste incinerators, crematoriums, cement kilns, forest fires, household fireplaces, cigarette smoking, pulp production, and open burning.

115. Dioxins have been associated with cancer and disorders of the immune, skin, digestive, and reproductive systems, where dioxins may act as endocrine disruptors. Work with rats suggests that a major effect of excessive dioxin exposure in utero is upon the reproductive system of the fetus.

116. Dioxins are persistent. Their half lives in the environment range from 30 to 40 years. Because they are hydrophobic and accumulate in fatty tissue, dioxins enjoy half lives of 7-12 years in humans. Humans acquire dioxins by breathing, skin contact, consuming water, consuming food, breastfeeding, and transplacental movement while in utero. The last three means are the principal routes of human exposure.

117. The virtually safe dose, or reference dose, for dioxins is low: one picogram per kilogram per day. One picogram is one-trillionth of one gram, although an EPA work in progress may lower this reference dose to 0.7 picograms per kilogram per day. For the late 1990s, the EPA estimated that the average American acquired 6-10 picograms per kilogram per day, later reducing this estimate to 6-8 picograms per kilogram per day. The EPA estimate for children, including breast-fed infants, is five to seven times higher, around 40 picograms per kilogram per day. This is about 60 times higher than the virtually safe dose.

118. The trends for dioxin levels are good. In its 2006 reassessment of dioxin, the EPA reported that dioxin levels in the environment had decreased by over 90 percent since the late 1980s. Over roughly the same period, the Centers for Disease Control reported that dioxin concentrations in human blood had decreased 80 percent, although decreases in dioxin concentrations in human fatty tissue over the same period of time are likely less.

119. To some extent, the pollution control equipment will limit dioxin emissions, especially the redesigned fabric baghouse and SCR catalyst. Also, the temperature of the air leaving the stack will be about 310 degrees--90 degrees below the temperature at which dioxins form.

120. But dioxin emissions are not explicitly addressed in the certificate and air construction permit. Although the 24.7 tpy limit on HAPs applies to dioxins, which are HAPs, this limit would provide little in the way of assurance as to most dioxins.

121. The reason for the failure to address dioxins for the GREC facility is that it will not emit them in significant amounts. ECT principal engineer, Thomas Davis, who has considerable experience in air pollution control technology, analyzed the potential for dioxin emissions from the GREC boiler. Mr. Davis found five fluidized bed boilers for which relevant data were available on the rate of dioxin emissions. He then applied the emissions rate to the GREC boiler. Mr. Davis determined that the GREC boiler will likely emit .11 grams per year of all dioxins and about .012 grams per year of 2,3,7,8 TCDD, the most potent dioxin.

122. Expressed in another way, the .11 grams per year of total dioxins emitted by the GREC boiler is 110,000,000,000 picograms per year or 301,369,860 picograms per day. If the average person--young and old--weighs 50 kilograms, this emission rate translates to about 6 million picograms per kilogram per day. If the population of Alachua County were 250,000 persons, then the daily exposure, without regard to dispersion patterns, would be 24 picograms per day.

123. For many reasons, 24 picograms of dioxins per kilogram per day of exposure represents only a starting point in the calculations necessary to grasp the limited extent of the dioxin exposure posed by the GREC boiler. An adjustment of one order of magnitude is suggested by the fact that Mr. Davis calculated the emissions rate of most toxic 2,3,7,8 TCDD at one-tenth the rate of the dioxins family. This means that the most toxic dioxin is produced at the rate of only 2.4 picograms per kilogram per day.

124. An even larger adjustment is required because the GREC biomass plant will displace substantial open burning that presently takes place in North Florida. The result will be a large net reduction in dioxin emissions. How much and over what area is hard to say, partly due to the replacement of dispersed burning with point-source combustion. The record supports an estimate that about half of the biomass to be combusted by GREC would have been open burned. Using this estimate, the open burning of this biomass would have produced dioxin emissions of 3-8 grams per year. GREC has effectively replaced these dioxin emissions with .11 gram per year.

125. The record does not support another adjustment for dioxin exposures based on dispersed emissions of 3-8 grams per year and a point-source emission of .11 grams per year. However, if the dispersed emissions are closer to agricultural

areas, due to food consumption as the primary means of consumption, as opposed to inhalation, this adjustment would probably inure to the benefit of GREC.

126. Calculations by two witnesses confirm the insubstantial impact posed by the GREC boiler in terms of dioxins. Mr. Davis also calculated dioxin dispersal patterns for air and deposition and found that the average annual maximum concentration was .000000000149 micrograms per liter of air per and the average annual wet and dry deposition rate was .0000000000206 grams per square meter. These are reassuringly low numbers.

127. Making more elaborate dioxin calculations, Dr. Christopher Teaf, an expert in environmental chemistry, toxicology, and human health risk assessment, performed a large number of calculations in the most conservative manner possible, such as by assuming that all dioxins were 2,3,7,8 TCDD and treating the emissions from the GREC boiler as new emissions (i.e., disregarding the fact that GREC's dioxin emissions displace far greater dioxin emissions from open burning). Dr. Teaf showed that air concentrations and wet and dry deposition rates were well below--usually, by one or more orders of magnitude--recently published EPA regional screening levels for air, water, and soil.

128. Intervenor's argument for COCs to limit dioxin emissions and require a CEMS to detect their presence misses a couple of points. The GREC boiler will result in a net reduction in dioxin emissions, and its netted dioxin emissions are not, themselves, significant.

129. GREC has provided reasonable assurance that the operation of the GREC facility will not cause adverse air impacts in the form of dioxins.

4. Fugitive Emissions

130. Fugitive, non-stack emissions of PM refer to emissions that escape the GREC facility, not emissions that are discharged through the stack. Fugitive PM emissions may escape the facility from the roads, the wood piles, and anywhere that sufficiently fine particles are capable of suspension into the air column and transport offsite. Most of the fugitive PM emissions may be regarded as wood dust, although the fugitive emissions from ash may be regarded as soot.

131. But the risks from fugitive emissions of PM appear to be associated more with their size, than their composition. Inhaled, PM causes respiratory and cardiovascular events, including stroke and heart attack. In the relatively large segment of the population with respiratory distress or asthma-like conditions, inhaled PM exacerbates these background

conditions. Recent research is investigating whether PM can cause oxidative stress to human DNA.

132. Not all PM has the same effect on human health. The finer the particle, the greater the risk to human health. Or, as Dr. Teaf prefers to characterize it, the larger the particle, the less the risk to human health. There is no reference dose for PM_{2.5}, and EPA will be requiring Florida to add NSR/PSD review for PM_{2.5} by May 2011, but this will impose limits on stack emissions, not fugitive emissions.

133. According to Appendix A of the Application and DEP's technical evaluation for the air construction permit, the GREC facility is expected to emit 130.4 tpy of filterable PM and 281.2 tpy of PM₁₀. According to Appendix A, the GREC facility is expected to emit 278.3 tpy of PM_{2.5}. According to Appendix A, these totals include PM fugitive emissions--all from material handling--of 11.6 tpy, 2.3 tpy, and 0.34 tpy. As noted above, material handling encompasses the four means by which fugitive emissions will escape the GREC facility.

134. In contrast to stack PM emissions, fugitive PM emissions do not appear especially responsive to attempts to control them through advanced pollution control technology. For the most part, then, GREC must deal with fugitive PM emissions with operational elements, usually in the form of best management practices (BMPs).

135. The air construction permit section 2, specific condition 11 prohibits any person from allowing the emissions of unconfined PM from any activity "without taking reasonable precautions to prevent such emissions." The air construction permit technical evaluation includes Tables 16 and 17, which are BMPs adopted by GREC for wood pile management and fugitive dust emissions, respectively. GREC must update these BMPs prior to start up and include them in the Title V operating permit that it must later obtain.

136. Table 16 requires GREC to manage the wood piles to avoid excessive wind erosion, such as by wetting the pile as necessary and avoiding contouring the pile on windy days. Table 17 requires the covering or partial enclosing of fuel conveyor systems and drop points, as well as the enclosure of the hoppers where trucks dump their loads. All enclosed areas will have local ventilation and fabric filter dust collectors. All major roads at the facility must be paved and swept and wetted, as necessary to minimize fugitive dust emissions.

137. GREC also controls fugitive PM emissions by ensuring that the fly ash and bottom ash are handled in a way that minimizes the release of dust. If trucks dump extra fine woody material, screens will separate such fines because they have a higher value as potting medium. Given the projected moisture

content of 50 percent and the size of the chips, the potential for fugitive dust from the wood piles may not be great.

138. Much of the fugitive emissions from the GREC facility will be captured by existing vegetation, on the south, west, and north of the GREC site. To the east is the GRU Deerhaven plant complex. Most of the dust will fall on the surrounding GRU site, especially along the south fenceline, according to dispersal modeling done by Mr. Davis. Some will fall on the county public works site to the west. Relatively little of the dust will make it south to U.S. 441 or further south to the nearest residential area.

139. By way of comparison, Mr. Davis estimated that forest wildfires produced one order of magnitude more PM and PM_{2.5} than GREC will emit.

140. Subject to the addition of COCs incorporating these BMPs and operational elements for the control of fugitive PM emissions, GREC has provided reasonable assurance that the operation of the GREC facility will not cause adverse air impacts in the form of fugitive PM emissions.

D. Need for Facility Balanced Against
Environmental Consequences

141. As explained in the Conclusions of Law, the PSC has established the need for the GREC facility, and its determination is an irrebuttable fact in this case. As noted in

the Conclusions of Law, the only need analysis in this case is provided by the PSC, pursuant to Section 403.519, but the statutory certification criterion of the broad interests of the public covers the considerations immediately below. Because the certification statute requires balancing and reasonableness, these considerations of broad interests of the public are framed as needs to be balanced against environmental consequences.

142. The construction and operation of this relatively large project will serve regional needs for new employment and business opportunities and thus stimulate the regional and local economies. Biomass suppliers and their vendors and contractors will hire new employees to produce the trimmings and thinnings, process them into wood chips, and transport the chips to the GREC facility. The ripple effect of this economic activity will be felt throughout north Florida as these suppliers purchase new equipment for the production, processing, and transporting of the massive amounts of biomass that the GREC facility will require.

143. The GREC facility will support the large and important pulp industry in north Florida. Leading the world in the production of pulp, the United States produces 30 percent of the world's pulp products. If a country, the southern United States would be the world leader in the production of pulp products. The addition of an important new biomass market will

strengthen the alliance of industry, landowners, and markets that helps to secure America's preeminent position in the production of pulp.

144. At the same time, the pricing of biomass material, as compared to traditional timber products, ensures that the newly developed market for biomass will not distort sound silvicultural practices. The highest value timber resources are for poles and veneer, and, in north Florida, suitable timber prices out at about \$70-90 per ton. Pulpwood brings about \$50 per ton. As boiler fuel, woody resources yield only about \$20 per ton. The relative value of timber as biomass fuel is thus sufficiently low to deter the conversion of standing timber for this purpose.

145. Instead of undermining sound silvicultural practices, the new market for biomass materials will enhance the viability of forestry resources and thus serve regional environmental needs. By requiring sustainable silviculture and rewarding good stewardship among its biomass suppliers, GREC promotes the health of north Florida's vast timber resources and increases the natural functions served by these resources, when compared to silvicultural practices that do not conform to these standards.

146. The creation of a large biomass market will serve the broad public interest by slowing or reversing recent losses of

timberland. Less than half of the timber plantation harvested in the past ten years has been replanted. The conversion of even short-rotation timberland to urban uses is a serious problem, even in north Florida, in terms of impacts to natural resources, such as groundwater and wildlife habitat. The GREC facility provides new incentives for replanting.

147. On a smaller scale, the GREC facility will provide incentives to landowners who selflessly replant more valuable timber products, in terms of natural functions, such as longleaf pine, that may offer less economic return than other products that provide the opportunity for quicker harvest. One such person, Virgil Allison of Crescent City, testified that he recognized that he would not live to see the economic benefit of his recent replanting of longleaf and loblolly pine, but he would have benefitted, if the GREC facility were already in operation, from the creation of a market for the nearly 100 acres of underbrush that he recently cleared in order to create better growing conditions for his forest.

148. Not only does the clearing of underbrush produce better growing conditions, it also removes the fuel for catastrophic, unnaturally intense forest fires. Together with thinning, clearing of underbrush reduces the risk of, and damage from, invasive pests.

149. Also among the broad public interest served by the GREC facility is reduced consumption of valuable landfill space that will result from burning biomass, rather than landfilling it. Other needs, such as the diversification of fuel supplies are within the matters addressed by the PSC.

150. The sole environmental consequence that requires a revision of the COCs arises from an apparent oversight by DEP. In the attached COCs derived from the Suwannee River Water Management District, DEP has incorporated the water management district's permission for GREC to withdraw 1.4 million gallons per day of groundwater, but has neglected to incorporate the water management district's requirement, discussed above, that GRU reduce its groundwater withdrawals by an equal amount. This omission converts the one-stop permitting of site certification to no-stop permitting, as least as to groundwater withdrawals, and, uncorrected, would allow GREC to withdraw a large volume of groundwater, essentially over the objection of the water management district and without analysis by DEP or the Siting Board.

151. Subject to the addition of a COC conditioning GREC's right to withdraw 1.4 million gallons per day of groundwater on an enforceable revision of a GRU certificate or permit to reduce its right to withdraw an equal amount of groundwater, GREC has provided reasonable assurance that the need for the GREC

facility, considering the broad public interests that will be served by the facility, outweighs any adverse environmental consequences of the facility.

CONCLUSIONS OF LAW

152. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569, 120.57(1), 403.5065, and 403.508(2)(a), Fla. Stat.

153. Section 403.509(3), Florida Statutes, provides:

In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location, construction, and operation of the electrical power plant will:

- (a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.
- (b) Comply with applicable nonprocedural requirements of agencies.
- (c) Be consistent with applicable local government comprehensive plans and land development regulations.
- (d) Meet the electrical energy needs of the state in an orderly, reliable, and timely fashion.
- (e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519 and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.
- (f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the

ecology of state waters and their aquatic life.

(g) Serve and protect the broad interests of the public.

154. Section 403.519(1) and (3), Florida Statutes, provides that the PSC is the sole forum for the determination of need. This provision effectively limits the scope of Section 403.509(3)(d) and (g) to matters outside the scope of the PSC need determination.

155. Section 403.508(3)(e), Florida Statutes, provides for intervention by persons "whose substantial interests are affected and being determined by the proceeding." In their proposed recommended orders, GREC and DEP concede that Intervenor has satisfied this statutory requirement, which they characterize as standing. If Section 403.508(3)(e) imposes merely a standing requirement, this concession would end the matter, as standing must be raised at the trial level or it is waived. Cowart v. West Palm Beach, 255 So. 2d 673 (Fla. 1971).

156. However, this substantial-interest statute is probably jurisdictional. Under Section 403.508(6)(a), Florida Statutes, the Administrative Law Judge must relinquish jurisdiction if the parties agree that there are no disputed, material issues of fact or law, as they would have, if Intervenor had not intervened. Thus, the statutory basis for the Administrative Law Judge to conduct the hearing and issue

the recommended order is the ability of Intervenor to satisfy this substantial-interest statute. See, e.g., Abbott Laboratories v. Mylan Pharmaceuticals, Inc., 15 So. 3d 642, 651 (Fla. 1st DCA) (dictum), rev. denied, 26 So. 3d 582 (Fla. 2009); Grand Dunes, Ltd. v. Walton County, 714 So. 2d 473, 474-75 (Fla. 1st DCA 1998) (challenge to a development order under Section 370.07(2), Florida Statutes). But see South Broward Citizens for a Better Environment, Inc. v. South Broward County Resource Recovery Project, 502 So. 2d 9 (Fla. 1st DCA 1986) (site certification case under former statute).

157. Intervenor satisfies the requirement of a substantial interest. He resides less than 10 miles from a major addition to the Deerhaven power complex that will emit air pollutants at the rate of tons per year. Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co., 18 So. 3d 1079 (Fla. 2d DCA 2009).

158. GREC has the burden of proving its entitlement to the certificate. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); § 403.509(3)(a), Fla. Stat. Specifically, GREC must provide reasonable assurance that the proposed project will meet the applicable certification criteria. "Reasonable assurance" means a "substantial likelihood that the project will be successfully implemented."

Metropolitan Dade County v. Coscan Florida, Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992).

159. The proceeding is de novo, which means, among other things, that GREC and DEP may introduce evidence in support of the certificate that was not presented to DEP prior to its proposed agency action, and, consistent with due process, the COCs may be modified as a result of the evidence produced at the hearing. Hopwood v. Department of Environmental Regulation, 402 So. 2d 1296 (Fla. 1st DCA 1981); Charlotte County v. IMC Phosphates Co., 18 So. 3d 1089 (Fla. 2d DCA 2009).

160. In its proposed recommended order, GREC contends for a de minimis exception to discharges, but such an exception is unnecessary in a certification case because of the nature of the statutory scheme. Section 403.509(3) directs the Siting Board to consider "whether, and the extent to which," the location, construction, and operation of the power plant will conform to the statutory criteria. The criterion of Section 403.509(3) (a) speaks in terms of "reasonable assurance" that operational safeguards are sufficient for public welfare and protection. The criterion of Section 403.509(3) (e) requires a "reasonable balance" between the need for the facility and construction- and operation-related "impacts upon air and water quality, fish and wildlife, water resources, and other natural resources." The criterion of Section 403.509(3) (f) is to "minimize"--through

"reasonable and available methods"--the "adverse effects on human health, the environment, and the ecology" The criterion of Section 403.509(3)(g) is to "serve and protect the broad interests of the public."

161. This statutory scheme is one of balancing and reasonableness. The statutory scheme does not support zero-discharge, anti-degradation, or free-from analysis, in which de minimis impacts could potentially play a greater role. Under the certification statute, trivial impacts will receive the attention that they deserve, as they are subsumed by larger considerations during the exercise of balancing and reasonableness that the statute requires.

162. Intervenor attempts to engraft onto this proceeding a statutory scheme of zero-discharge, anti-degradation, or free-from analysis when he argues that Section 403.509(3)(b) incorporates the broad protections of Section 403.161(1)(a), Florida Statutes, which prohibits any person from causing pollution, except as otherwise provided by Chapter 403, so as to harm or injure human health or welfare. As DEP and GREC contend, this broad prohibition is inapplicable to the present case because Sections 403.501-403.518--otherwise known as the Florida Electrical Power Plant Siting Act--govern this case and are part of Chapter 403. The proper reading of Section 403.509(3)(b) is that DEP is to apply the substantive

requirements of, say, FWC or the Suwannee River Water Management District to this case, as DEP coordinates the permitting and certification processes in a manner consistent with the legislative intent set forth in Section 403.502, Florida Statutes.

163. Intervenor's argument also ignores the fact that Section 403.161 is not a requirement of an agency, as are the requirements of FWC or the water management district. Section 403.161 is a basis for establishing a claim by the state for damages or criminal liability, as provided by, respectively, Section 403.161(2) and (3)-(5), Florida Statutes. For this reason, too, the prohibition of Section 403.161 is not incorporated into this proceeding by Section 403.509(3)(b).

164. In its proposed recommended order, GREC touches on a far more lively issue when it discusses the "interplay" between this certification case and the air permit construction case. Two points are clear, and GREC makes them quickly. First, DEP's final-order authority in the air construction permit case is not determined by the action of the Siting Board in the certification case. §§ 403.509(5) and 403.511(6), Fla. Stat. Second, as noted above, COC General Condition A.VI.A incorporates the air construction permit and the Title V permit.

165. In its proposed recommended order, GREC presents another aspect of the interplay issue by offering two arguments

in the alternative. Consistent with its objections and argument during the certification hearing, GREC's preferred argument is that the Siting Board should weigh any air impacts from the GREC facility without reference to the technical air programs of the Clean Air Act--specifically, NSR/PSD and NESHAP. In the alternative, GREC incorporates aspects of these programs, such as the identification of important air pollutants, the netting of PSD pollutants, and the consideration of BACT for PSD pollutants and MACT for HAPs, in order to illustrate how the proposed facility does not pose adverse air impacts, within the scope of the certification case.

166. Consistent with the rulings at the hearing, the Administrative Law Judge concludes that no good reason exists to carve out of the certification case matters that arise out of these technical air programs, as long as the parties remember that, contrary to Intervenor's allegations, the certification statute ultimately requires an exercise in balancing and reasonableness, not the detection of "violations."

167. Both NSR/PSD and NESHAP offer useful tools and structures for the consideration of air impacts in a certification case. Reference to these two air programs is facilitated by the fact that they, unlike AAQS, are not exclusively concerned with impacts to human health or the environment; they weigh these impacts against issues involving

productivity. The intent of Title I of the Clean Air Act, which encompasses both NSR/PSD and NESHAP, is to promote public health and welfare and "the productive capacity of [the Nation's] population." § 101(b)(a), Clean Air Act, 42 U.S.C.

§ 4701(b)(1). And one of the stated purposes of the PSD program is to ensure economic growth consistent with preserving existing clean air resources. § 160(3), Clean Air Act, 42 U.S.C.

§ 7470(3). As has already been discussed, the certification statute requires the same exercise in balancing and reasonableness in weighing the broad public interest served by a proposed facility, in addition to the PSC-determined need, against any environmental impacts.

168. Subject to the addition of COCs incorporating the above-described fire-safety changes that followed consultation with the Gainesville Fire Department, the above-described revisions in pollution control technology (including CEMS) that preceded the restatement of emissions of HF, HCl and total HAPs below the regulatory thresholds, the above-described BMPs and operational elements to control fugitive emissions, and the above-described provision conditioning GREC's right to withdraw 1.4 million gallons per day of groundwater on an enforceable revision of a GRU certificate or permit to reduce its right to withdraw an equal amount of groundwater, GREC has provided

reasonable assurance that the construction and operation of the proposed facility will comply with the certification statute.

RECOMMENDATION

It is

RECOMMENDED that, subject to the conditions set forth in the preceding paragraph, the Siting Board enter a final order granting the site certificate for the construction and operation of the GREC facility.

DONE AND ENTERED this 1st day of November, 2010, in Tallahassee, Leon County, Florida.



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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.

**STATE OF FLORIDA
DEPARTMENT
OF
ENVIRONMENTAL PROTECTION**



**Proposed
Conditions of Certification**

**Gainesville Renewable Energy Center, LLC
Gainesville Renewable Energy Center**

PA 09-55

November 19, 2010

Exhibit B

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ATTACHMENTS & APPENDICES

Attachment A	Maps/Surveys/Leases
A1	Aerial Photo of Site Boundary
A2	Lease Memorandum/Survey of Certified Site
Attachment B	Wetland Conservation Easement
Appendix I	PSD Permit
Appendix II	Title V Permit

SECTION A: GENERAL CONDITIONS

SECTION A: GENERAL CONDITIONS

I. SCOPE

A. Pursuant to the Florida Electrical Power Plant Siting Act (PPSA), Sections 403.501-518, Florida Statutes (F.S.), and Chapter 62-17, Florida Administrative Code (F.A.C.), this certification is issued to Gainesville Renewable Energy Center, LLC (GREC LLC) as owner/operator and licensee of the Gainesville Renewable Energy Center (GREC). Subject to the requirements contained in these conditions of certification (COC), GREC LLC is authorized to construct and operate a nominal net 100 megawatt (MW) woody biomass-fired electrical power plant consisting of a bubbling fluidized bed (BFB) boiler, conventional steam turbine generator, boiler stack, mechanical draft cooling tower, and other associated facilities, as described in the Site Certification Application (SCA). These facilities will be located on a 131-acre leased area (Site) within the boundaries of Gainesville Regional Utilities' (GRU) certified Deerhaven Generating Station site in Gainesville, Alachua County, Florida. The UTM coordinates are: Zone 17, 365.010 km East, 3,293.825 km North, and the latitude/longitude is: 29°46'03" North/82°23'47" West (at the stack). The Department does not intend, solely by the incorporation of the general conditions contained herein, to require the retrofitting of existing certified facilities.

B. These COC, unless specifically amended or modified, are binding upon the licensee and shall apply to the construction, operation and maintenance of the certified facility. If a conflict should occur between the design criteria of the certified facility and the COC, the COC shall prevail unless amended or modified. If there is a conflict between any of these COC, the more specific condition shall govern.

C. Within 60 days after completion of construction of the certified facility/ies, the licensee shall provide to the Department: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as an official legal description, delineating the boundaries of the site as defined by Section 403.503(28), F.S., and an aerial photograph delineating the boundaries of the site. The survey and aerial photograph shall be incorporated herein as part of Attachment A. The licensee shall notify the Department of any change to the site boundary. The notification shall be accompanied by an updated land survey (or legal description) and aerial photograph delineating the new boundaries of the site for review by the Department. Absent the above description/delineation of the site, the Department will consider the perimeter fence line of the property on which the plant is located to be the boundaries of the site.

D. If the boundaries of the certified area are different than the boundaries of the site, the licensee shall comply with the requirements of this paragraph. Within 60 days after completion of construction of the certified facility/ies, including but not limited to transmission lines and natural gas pipelines, the licensee shall provide to the Department: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as an official legal description, delineating the boundaries of the certified area; and an aerial photograph delineating the boundaries of the certified area. For electrical generation plants, the boundaries of the certified area shall include both the certified "electrical power plant" as defined by Section 403.503(14), F.S. and its "associated facilities" as defined by Section 403.503(7), F.S. The survey and the aerial photograph shall be incorporated herein as part of Attachment A. Any

SECTION A: GENERAL CONDITIONS

proposed project requiring a change to the boundaries of the certified area shall be accompanied by an updated survey map or legal description and aerial photograph.

E. Upon finalization of ROWs and/or easements (including all linear facilities), the licensee shall submit to the Department aerial photographs depicting the final ROWs/easements for incorporation herein as part of Attachment A. At the Department's request, a copy of any legal instrument used to acquire such property rights shall be provided to the Department, subject to any exemptions granted by the Department under Section 119.071, F.S.

F. The certified facility includes but is not limited to the following major associated facilities: baghouse, administrative building, warehouse, water (process and potable) and wastewater treatment systems, handling and storage facilities for BFB boiler bottom and fly ash, two emergency diesel engines, a switchyard, biomass fuel handling and storage facilities, scale house, parking areas, stormwater management basins, and linear facilities including roads, sanitary sewer and natural gas pipelines, and a 138 kV transmission line.

II. APPLICABLE RULES AND STATUTES

The construction and operation of the certified facility shall be in accordance with all applicable non-procedural provisions of Florida Statutes and Florida Administrative Codes, including, but not limited to, the non-procedural portions of the following regulations, except to the extent a variance, exception, exemption or other relief is granted in the final order of certification or in a subsequent modification to the COC or as otherwise provided under the Act:

Florida Statutes:

- Chapter 120 (Administrative Procedure Act)
- Chapter 163 (Intergovernmental Programs)
- Chapter 252 (Emergency Management)
- Chapter 253 (State Lands)
- Chapter 258 (State Parks & Preserves)
- Chapter 267 (Historical Resources)
- Chapter 373 (Water Resources)
- Chapter 376 (Pollutant Discharge Prevention and Removal)
- Chapter 379 (Fish and Wildlife Conservation)
- Chapter 380 (Land & Water Management)
- Chapter 403 (Environmental Control)
- Chapter 487 (Pesticide Regulation and Safety)
- Chapter 556 (Underground Facility Damage Prevention and Safety)

Florida Administrative Codes:

- 5I-2 (Open Burning)
- 18-2 (Management of Uplands Vested in the Board of Trustees)
- 18-14 (Administrative Fines for Damaging State Lands)
- 18-20 (Aquatic Preserves)
- 18-21 (Sovereign Submerged Lands Management)
- 62-4 (Permits)
- 62-17 (Electrical Power Plant Siting)
- 62-25 (Regulation of Stormwater Discharge)
- 62-40 (Water Resource Implementation Rule)

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62-150 (Hazardous Substance Release Notification)
62-160 (Quality Assurance)
62-204 (Air Pollution Control-General Provisions)
62-210 (Stationary Sources-General Requirements)
62-212 (Stationary Sources-Preconstruction Review)
62-213 (Operation Permits for Major Sources of Air Pollution)
62-214 (Requirements for Sources Subject to the Federal Acid Rain Program)
62-256 (Open Burning)
62-296 (Stationary Sources-Emission Standards)
62-297 (Stationary Sources-Emission Monitoring)
62-301 (Surface Waters of the State)
62-302 (Surface Water Quality Standards)
62-303 (Identification of Impaired Surface Waters)
62-304 (Total Maximum Daily Loads)
62-312 (Dredge and Fill Activities)
62-330 (Environmental Resource Permitting)
62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters)
62-343 (Environmental Resource Permit Procedures)
62-345 (Uniform Mitigation Assessment Method)
62-346 (Environmental Resource Permitting in Northwest Florida)
62-520 (Groundwater Classes and Standards)
62-528 (Underground Injection Control)
62-531 (Water Well Contractor Licensing Requirements)
62-532 (Water Well Permitting and Construction Requirements)
62-550 (Drinking Water Standards, Monitoring and Reporting)
62-555 (Permitting, Construction, Operation, and Maintenance of Public Water Systems)
62-560 (Requirements for Public Water Systems That Are Out of Compliance)
62-600 (Domestic Wastewater Facilities)
62-601 (Domestic Wastewater Treatment Plant Monitoring)
62-604 (Collection Systems and Transmission Facilities)
62-610 (Reuse of Reclaimed Water and Land Application)
62-620 (Wastewater Facility and Activities Permitting)
62-621 (Generic Permits)
62-650 (Water Quality Based Effluent Limitations)
62-660 (Industrial Wastewater Facilities)
62-699 (Treatment Plant Classification and Staffing)
62-701 (Solid Waste Management Facilities)
62-702 (Solid Waste Combustor Ash Management)
62-730 (Hazardous Waste)
62-761 (Underground Storage Tank Systems)
62-762 (Aboveground Storage Tank Systems)
62-769 (Florida Petroleum Liability and Restoration Insurance Program)
62-770 (Petroleum Contamination Site Clean-Up Criteria)
62-780 (Contaminated Site Clean-Up Criteria)
62-807 (Natural Gas Transmission Pipeline)

SECTION A: GENERAL CONDITIONS

62-814 (Electric and Magnetic Fields)

64E-6 (Standards for Onsite Sewage Treatment and Disposal Systems)

For Facilities in the Suwannee River Water Management District:

40B-4 (Regulations)

40B-400 (Environmental Resource Permits)

ERP Applicant's Handbook

III. REVISIONS TO DEPARTMENT STATUTES AND RULES

A. The licensee shall comply with rules adopted by the Department subsequent to the issuance of this certification under the PPSA which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted Department rules which prescribe new or stricter criteria shall operate as automatic modifications to this certification.

B. Upon written notification to the Department, any holder of a certification issued pursuant to the PPSA may choose to operate the certified facility in compliance with any rule subsequently adopted by the Department which prescribes criteria more lenient than the criteria required by the terms and conditions in this certification which are not site-specific.

[Section 403.511(5)(a), F.S.; subsection 62-4.160(10), F.A.C.]

IV. DEFINITIONS

Unless otherwise indicated herein, the meaning of terms used herein shall be governed by the applicable definitions contained in Chapters 373 and 403, F.S., and any regulation adopted pursuant thereto. In the event of any dispute over the meaning of a term used in these COC 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. As used herein, the following shall apply:

A. “Application” means the documents required by the Department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the Department for additional data and information. For purposes of this license, application shall also include any subsequent material changes to submitted information.

B. “Associated facilities” is defined by Section 403.503(7), F.S.

C. “Certified area” means the area within the site in which the certified facilities are located. For linear facilities this term shall mean the area encompassed by the boundaries of the certified easements and/or ROWs.

D. “Certified facility” or “certified facilities” means the certified electrical power generation facilities and all on- or off-site associated structures including but not limited to: steam generating units, transformers, substations, fuel and water storage tanks, air and water pollution control equipment, storm water control ponds and facilities, cooling towers, and related structures. This term shall also mean linear and associated facilities, including but not limited to: transmission lines, natural gas pipelines, and compressor stations.

SECTION A: GENERAL CONDITIONS

- E. “DCA” means the Florida Department of Community Affairs.
- F. “DEP” or “Department” means the Florida Department of Environmental Protection.
- G. “DHR” means the Florida Department of State, Division of Historical Resources.
- H. “DOT” means the Florida Department of Transportation.
- I. “Emergency conditions” or “emergency reporting” means urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity.
- J. “Feasible” means reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs.
- K. “FWC” means the Florida Fish and Wildlife Conservation Commission.
- L. “Licensee” means an applicant that has obtained a certification order for the subject project.
- M. “NPDES permit” means a federal National Pollutant Discharge Permit System permit issued in accordance with the federal Clean Water Act.
- N. “PSD permit” means a federal Prevention of Significant Deterioration air emissions permit issued by DEP in accordance with the federal Clean Air Act.
- O. “NCFRPC” means the North Central Florida Regional Planning Council.
- P. “ROW” means right-of-way.
- Q. “Site” means any proposed location within which will be located an electrical power plant's generating facility and onsite support facilities, or an alteration or addition of electrical generating facilities and onsite support facilities resulting in an increase in generating capacity, including offshore sites within state jurisdiction.
- R. “Surface water management system” means a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, or any combination thereof. The terms “surface water management system” includes areas of dredging or filling, as those terms are defined in Sections 373.403(13) and (14), F.S.
- S. “SRWMD” means the Suwannee River Water Management District.
- T. “Title V permit” means a federal permit issued by DEP in accordance with Title V provisions of the federal Clean Air Act.

V. TRANSFERABILITY OF DEFINITIONS

Definitions in other chapters of the Department's rules may be used to clarify the meaning of terms used in these COC unless transfer of such definition would defeat the purpose or alter the intended effect of the provisions of these COC.

[Rule 62-4.021, F.A.C.]

SECTION A: GENERAL CONDITIONS

VI. FEDERAL PERMITS

The following permits have been or will be issued pursuant to federal programs and they are or will be applicable to the certified facility. The Department may consider a violation of any of these federal permits as a violation of this license.

A. Air

The provisions of the following paragraphs shall be conditions of this certification. The licensee shall comply with the substantive provisions and limitations set forth in both the Air Construction Permit(s) and the Title V Air Operation Permit, when they are issued, and any future modification, amendment, or renewal thereto. Such provisions shall be fully enforceable as conditions of this certification. Any violation of such provisions shall be a violation of these COC.

1. Air Construction Permit(s)

Air Construction Permit [xxxxxxx-xxx-AC (PSD-FL-xxx)] will be incorporated by reference herein as part of these COC and attached as Appendix I.

[Chapter 62-212, F.A.C.]

2. Title V Permit

The Title V Air Operation Permit (xxxxxxxx-xxx-AV) for the certified facility will be incorporated by reference herein as part of this certification and will be attached as Appendix II.

[Chapters 62-204, 62-210, 62-213, 62-214, 62-296, and 62-297, F.A.C.]

B. Water

1. The certified facility will be a Zero Liquid Discharge system and, therefore, no industrial wastewater discharges from the site are proposed or authorized.

2. Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP)

Any stormwater discharges associated with construction activities on the site shall be in accordance with all applicable provisions of Chapter 62-621, F.A.C. Prior to commencing construction activities on the site that:

- contribute to stormwater discharges to surface waters of the State or into a municipal separate storm sewer system (MS4); and
- disturb one or more acres of land (less than one acre if the activity is part of a larger common plan of development);

a Generic Permit for Stormwater Discharge from Large and Small Construction Activities (CGP) must be obtained as applicable.

[Section 403.0885, F.S.; Rule 62-621.300, F.A.C.]

3. Multi-Sector Generic Permits (MSGP)

Any stormwater discharges associated with industrial activity shall be in accordance with all applicable provisions of Chapter 62-621, F.A.C. For industrial activities at

SECTION A: GENERAL CONDITIONS

the site that result in a discharge of stormwater to surface waters of the State or into a municipal separate storm sewer system (MS4), and fall under any one of the 11 categories of industrial activities identified in 40 CFR 122.26(b)(14), a MSGP for Stormwater Discharge Associated with Industrial Activity shall be obtained as applicable.

[Section 403.0885, F.S.; Rule 62-621.300, F.A.C.].C.

4. Discharge of Produced Ground Water

Prior to discharge of produced ground water from any non-contaminated site activity which discharges by a point source to surface waters of the State, as defined in Chapter 62-620, F.A.C., the Licensee must first obtain coverage under the Generic Permit for Discharge of Produced Ground Water From any Non-Contaminated Site Activity. Similarly, if the activity involves a point source discharge of ground water from a petroleum contaminated site, the Licensee must obtain coverage under the Generic Permit for discharge from petroleum contaminated sites. Before discharge of ground water can occur from such sites, analytical tests on samples of the proposed untreated discharge water shall be performed as required by Rule 62-621.300, F.A.C to determine if the activity can be covered by either permit.

If the activity cannot be covered by either generic permit, the Licensee shall apply for an individual wastewater permit at least ninety (90) days prior to the date discharge to surface waters of the State is expected. No discharge to surface water is permissible without an effective permit.

[Section 403.0885, F.S.; Rule 62-621.300, F.A.C.]

C. Other

For informational purposes, it should be noted that other federal permits may be required for the certified facility. The licensee shall be responsible for obtaining any necessary federal permits separately pursuant to applicable federal regulations.

VII. DESIGN AND PERFORMANCE CRITERIA

Certification, including these COC, is predicated upon preliminary designs, concepts, and performance criteria described in the SCA or in support of certification. Final engineering design will be consistent and in substantial compliance with the preliminary information described in the SCA and explained at the certification hearing (if any). Conformance to those criteria, unless specifically modified in accordance with Sections 403.516, 403.5315, 403.9418, F.S., and Rule 62-17.211, F.A.C., is binding upon the licensee in the design, construction, operation and maintenance of the certified facility. In any instance where a conflict occurs between the SCA's design criteria and the COC, the COC shall prevail.

[Sections 403.516, 403.5315, and 403.9418, F.S.; Rules 62-17.211, 62-17.680, and 62-807.610, F.A.C.]

VIII. NOTIFICATION

A. If, for any reason, the licensee does not comply with or will be unable to comply with any condition or limitation specified in this license, the licensee shall immediately provide the Department with the following information:

1. A description of and cause of noncompliance; and

SECTION A: GENERAL CONDITIONS

2. The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance. The Licensee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this certification.

[subsection 62-4.160(8), F.A.C.]

B. The licensee shall immediately notify the Department in writing of any previously submitted information concerning the certified facility that is later discovered to be inaccurate.

[subsection 62-4.160(15), F.A.C.]

IX. REPLACEMENT FOR RESTORATION OF SYSTEM INTEGRITY

A. Replacement of all or a portion of a transmission line(s) or natural gas pipeline certified under the TLSA or the NGPSA that is necessary to restore system integrity following an emergency as defined by Sections 252.34(6), (7) or (9), F.S., and requiring deviation from any condition of certification shall not be considered a modification pursuant to Section 403.5315, F.S. A verbal report of the emergency replacement for restoration of system integrity shall be made to the Department as soon as possible. Within 30 days after correction of the emergency condition requiring a replacement for system integrity, a report to the Department shall be made outlining the details of the emergency condition requiring the replacement and the steps taken for its 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.

B. The Department will use its enforcement discretion when evaluating violations that result from operating the certified facility under emergency conditions. During and after the emergency conditions, the licensee must use due diligence to bring the facility back into compliance as soon as possible. In addition, the licensee must use its best efforts and best management practices to minimize adverse environmental impacts. The licensee shall notify the Siting Coordination Office (SCO) and the appropriate DEP District Office when the emergency condition has ended. Furthermore, the licensee must include all monitoring data, which would otherwise be required under normal operating circumstances, recorded during emergency conditions when submitting reports as required by these COC. Any exceedances and/or violations recorded during emergency conditions shall be reported as such, but the Department acknowledges that it intends to use its enforcement discretion during this timeframe. This acknowledgement by the Department does not constitute a waiver or variance from any requirements of any federal permit. Relief from any federal agency must be separately sought.

[Sections 252.34, 403.5315, and 403.9416, F.S.]

X. CONSTRUCTION PRACTICES

A. Local Building Codes

For licenses issued under the PPSA any local government has the right to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

SECTION A: GENERAL CONDITIONS

[Section 403.531(4), F.S.]

B. Particulate Matter

The licensee shall take reasonable precautions to control emissions of unconfined particulate matter in accordance with subparagraph 62-296.320(4)(c)1., F.A.C. The licensee shall take appropriate measures to stabilize those portions of the certified area that are disturbed by construction or operation of the certified facility that may cause release of particulate matter.

[Rule 62-296.320, F.A.C.]

C. Open Burning

Any open burning in connection with initial land clearing shall be in accordance with the non-procedural requirements of Chapters 62-256 and 5I-2, F.A.C. Prior to any burning of construction-generated material, such as initial land clearing debris that is allowed to be burned in accordance with Chapter 62-256, F.A.C., the licensee shall seek approval from the applicable DEP District Office, whose approval may be granted in conjunction with the approval of the Division of Forestry. Burning shall not occur if not approved by the Department or if the Division of Forestry has issued a ban on burning due to fire safety conditions or due to air pollution conditions. A copy of any submittals by licensee relating to open burning shall be submitted to the affected county in which open burning will take place as requested or required by that county, for informational purposes.

[Chapters 5I-2 and 62-256, F.A.C.]

D. Solid Wastes

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

[Chapter 62-701, F.A.C.]

E. Flood Control Protection

The certified facilities shall be constructed in a manner that complies with any applicable non-procedural county flood protection requirements.

F. Vegetation

For any new construction, the licensee, in compliance with Section 163.3209, F.S., and to the extent feasible, will retain existing native (non-exotic) vegetation within the certified area and practice "best management practices." For areas located in any Florida Department of Transportation (DOT) ROW, Chapter 7 of the Florida DOT *Utility Accommodation Manual*, which can be accessed from the website address below, shall serve as guidelines for best management practices.

<http://www2.dot.state.fl.us/proceduraldocuments/procedures/bin/710020001/Chapter-7.pdf>

[Section 163.3209, F.S.]

G. Underground Utilities

During design and prior to construction of any linear facility, the licensee shall contact Sunshine One Call and obtain a listing (design and construction tickets) of all the known existing underground utilities within the ROW or easement. The licensee shall provide the

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affected county and the SCO with a copy of the information received from Sunshine One Call. Licensee must follow all applicable portions of the Underground Facility Damage Prevention and Safety Act, Chapter 556, F.S.

[Chapter 556, F.S.]

H. Electric and Magnetic Fields

Any transmission lines that are associated facilities shall comply with the applicable requirements of Chapter 62-814, F.A.C.

[Chapter 62-814, F.A.C.]

I. Wells

Any existing wells in the path of construction that will no longer be used shall be abandoned by a licensed well contractor. All abandoned wells shall be filled and sealed in accordance with subsection 62-532.500(4), F.A.C., or with the rules of the authorizing agency.

[Rule 62-532.440 and subsection 62-532.500(4), F.A.C.]

J. Abandonment of Existing Septic or Storage Tanks

Any existing septic tanks that will no longer be used shall be abandoned in accordance with Rule 64E-6.011, F.A.C., unless these COC provide otherwise.

[Chapter 64E-6, F.A.C.]

Storage Tank systems shall be taken out-of-service and/or closed as necessary in accordance with Rules 62-761.800 and 62-762.801, F.A.C., as applicable.

[Chapters 62-761 and 62-762, F.A.C.]

XI. RIGHT OF ENTRY

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

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

2. During business hours, to enter the licensee'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 the Department, on its own behalf or on behalf of another agency with regulatory jurisdiction, the licensee shall within 10 working days, or such longer period as may be mutually agreed upon by the Department and the licensee, furnish any information required by law, which is needed to determine compliance with this certification. If the licensee becomes aware that relevant facts were not submitted or were incorrect in the SCA or in any report to submitted to the Department or other agencies, such facts or information shall be promptly corrected and resubmitted.

[paragraph 62-4.160(7)(a) and subsection 62-4.160(15), F.A.C.]

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XII. DISPUTE RESOLUTION

If a situation arises in which mutual agreement cannot be reached between the licensee, Department and another agency receiving a post-certification submittal or between the Department and the licensee regarding compliance with these COC, 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. The licensee or Department may request DOAH to establish an expedited schedule for the processing of such a dispute.

[Sections 403.527, 403.531, and 120.57, F.S.]

XIII. 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 of such provision to other circumstances shall not be affected thereby.

XIV. ENFORCEMENT

A. The terms, conditions, requirements, limitations and restrictions set forth in these COC are binding and enforceable pursuant to Sections 403.141, 403.161, 403.514, 403.727, and 403.859 through 403.861, F.S., as applicable. Any noncompliance by the licensee with these COC constitutes a violation of Chapter 403, F.S., and is grounds for enforcement action, license termination, license revocation, or license revision. The licensee is placed on notice that the Department may review this certification periodically and may initiate enforcement action for any violation of the COC. Abandonment of the certified facility will be considered grounds for enforcement action.

B. Consistent with the Florida Rules of Evidence and of Civil Procedure, all records, notes, monitoring data and other information relating to the construction or operation of the certified facility which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the certified facility and arising under the Florida Statutes or Department Rules.

[Sections 403.121, 403.131, 403.141, 403.151, 403.161, 403.514, 403.533, and 403.9419, F.S.; subsections 62-4.160(1) and 62-4.160(9), F.A.C.]

XV. REVOCATION OR SUSPENSION

The certification shall be final unless revised, revoked or suspended pursuant to law. This certification may be suspended or revoked pursuant to Sections 403.512, 403.532, and 403.9425, F.S., or for violations of any of these COC. This license is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this certification may constitute grounds for revocation and enforcement action by the Department. Any enforcement action, including suspension and revocation, shall only affect the portion(s) of the certified facility that are the cause of such action, and other portions of the certified facility shall remain unaffected by such action.

[Sections 403.512, 403.532, and 403.9425, F.S.; subsection 62-4.160(2), F.A.C.]

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XVI. SAFETY

As provided in Sections 403.087(7) and 403.722(5), F.S., the issuance of this license does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This license is not a waiver of or approval of any other Department license/permit that may be required for other aspects of the certified facility which are not addressed in this license. This license does not relieve the licensee from liability for harm or injury to human health or welfare, animal, or plant life, or public or private property caused by the construction or operation of this certified facility, or from penalties therefore.

[subsections 62-4.160(3) and 62-4.160(5), F.A.C.]

XVII. HERBICIDES

For licenses issued under the TLSPA and/or NGSPA herbicides applied at the site or in any 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, in compliance with all federal, state and local regulations. Herbicide applications shall be selectively applied to targeted vegetation. Broadcast application of herbicide shall not be used unless effects on non-targeted vegetation are minimized.

[Sections 403.061, 403.088, 487.031, and 487.041, F.S.]

XVIII. CIVIL AND CRIMINAL LIABILITY

A. This certification does not relieve the licensee from civil or criminal penalties for noncompliance with any COC, applicable rules or regulations of the Department, or any other state statutes or regulations which may apply.

B. This license is not a waiver of any other Department approval that may be required for other aspects of the certified facility under federally delegated or approved programs.

[Sections 403.141, 403.161, 403.511, 403.531, and 403.9416, F.S.]

XIX. PROPERTY RIGHTS

A. The issuance of this certification conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

B. If any portion of the certified facility is located on sovereign submerged lands, state-owned uplands, or within an aquatic preserve, then the certified facility must comply with the applicable portions of Chapters 18-2, 18-20, and 18-21, F.A.C., and Chapters 253 and 258, F.S. If any portion of the certified facility is located on sovereign submerged lands, the licensee must submit section G of the Joint Application for Environmental Resource Permits to the Department prior to construction. If any portion of the certified facility is located on state-owned uplands, the licensee must submit an Upland Easement Application to the Department prior to construction.

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C. If a portion of the certified facility is located on sovereign submerged lands or state-owned uplands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, then the proposed activity on such lands requires a proprietary authorization. Under such circumstances, the proposed activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take action on requests for proprietary authorization in accordance with Rules 18-2.018 or 18-21.0051, F.A.C.

D. The licensee is hereby advised that Florida law states: “No person shall commence any excavation, construction, or other activity involving the use of sovereign or other state lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department under Chapter 253, F.S., until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use.” Pursuant to Chapter 18-14, F.A.C., if such work is done without consent, or if a person otherwise damages state land or products of state land, the Board of Trustees may levy administrative fines of up to \$10,000 per offense.

E. The terms, conditions, and provisions of any required lease or easement issued by the State shall be met. Any construction activity associated with the certified facility shall not commence on sovereign submerged lands or state owned uplands, title to which is held by the Board of Trustees of the Internal Improvement Trust Fund, until all required lease or easement documents have been executed to the satisfaction of the Department.

[Chapters 253 and 258, and Sections 403.511, 403.531, and 403.9416, F.S.; Chapter 3.1.1. of the B.O.R.; Chapters 18-2, 18-14, 18-21, 62-340, and subsections 62-343.900(1) and 62-4.160(4), F.A.C.; Upland Easement Application and Section G of the Environmental Resource Permit Application Form.]

XX. PROCEDURAL RIGHTS

No term or condition of this certification shall be interpreted to preclude the post-certification exercise by any party of whatever procedural rights it may have under Chapter 120, F.S., including those related to rule-making proceedings.

[Chapter 120, and Sections 403.511(5)(c), 403.531(5), and 403.9416(4), F.S.]

XXI. AGENCY ADDRESSES FOR POST-CERTIFICATION SUBMITTALS AND NOTICES

Where a condition requires post-certification submittals and/or notices to be sent to a specific agency, the following agency addresses shall be used unless the COC specify otherwise or unless the licensee and Department 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
3900 Commonwealth Blvd.
Tallahassee, FL 32399-3900

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Florida Department of Environmental Protection
Northeast District Office
7825 Baymeadows Way, Suite B200
Jacksonville, FL 32256-7577

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

Florida Fish & Wildlife Conservation Commission
Office of Policy and Stakeholder Coordination
620 South Meridian Street
Tallahassee, FL 32399-1600

Florida Department of Transportation
District Administration
605 Suwannee Street
Tallahassee, Florida 32399-0450

Florida Department of Agriculture and Consumer Services
Division of Forestry
3125 Conner Boulevard
Tallahassee, Florida 32399-1650

North Central Florida Regional Planning Council
Office of the Executive Director
2009 NW 67 Place, Suite A
Gainesville, FL 32653-1603

Suwannee River Water Management District
Office of General Counsel
9225 County Road 49
Live Oak, FL 32060

Florida Department of State
Division of Historical Resources
500 S. Bronough Street
Tallahassee, FL 32399-0250

City of Gainesville
Office of General Counsel
Post Office Box 490, Sta. 46
Gainesville, FL 32601

[Section 403.511, 403.531, and 403.9416, F.S.]

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XXII. PROCEDURES FOR POST-CERTIFICATION SUBMITTALS

A. Purpose of Submittals

COC which provide for the post-certification submittal of information to the Department or other agencies by the licensee are for the purpose of facilitating the agencies' monitoring of the effects arising from the location of the certified facility and the construction and maintenance of the certified facility. This monitoring is for the Department to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with these COC, without further agency action.

B. Filings

All post-certification submittals by the licensee are to be filed with the SCO, the DEP District Office, and any other agency that is entitled to receive a submittal pursuant to these COC. Each submittal shall clearly identify the certified facility name, PA#, and the condition number/s (i.e. Section X, Condition XX.y.(z)) requiring the submittal. As required by Section 403.5113(2), F.S., each post-certification submittal will be reviewed by each agency with regulatory authority over the matters addressed in the submittal on an expedited and priority basis.

Within 90 days after certification, and within 90 days after any subsequent modification or certification, the licensee shall provide the Department a complete summary of those post-certification submittals that are identified in the COC where due-dates for the information required of the licensee are identified. A summary shall be provided as a separate document for each transmission line, if any. Such submittals shall include, but are not limited to, monitoring reports, management plans, wildlife surveys, etc. The summary shall be provided to the SCO and any affected agency or agency subunit to which the submittal is required to be provided, in a sortable spreadsheet, via CD and hard copy, in the format identified below or equivalent.

Condition Number	Requirement and Timeframe	Due Date	Name of Agency or Agency Subunit to whom the submittal is required to be provided

[subsection 62-17.191(3), F.A.C.]

C. Completeness

The Department shall review each post-certification submittal for completeness. This review may include consultation with any other agency/ies receiving the post-certification submittal with regulatory jurisdiction over the matter addressed in the submittal. The Department's finding of completeness shall specify the area of the certified facility affected, and shall not delay further processing of the post-certification submittal for non-affected areas. If

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any portion of a post-certification submittal is found to be incomplete, the licensee 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.

[subparagraph 62-17.191(1)(c) 2, F.A.C.]

D. Interagency Meetings

The Department may conduct an interagency meeting with other agencies that received a post-certification 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 compliance with the COC has been provided. Failure of the Department to conduct an interagency meeting or failure of any agency to attend an interagency meeting shall not be grounds for the Department to withhold a determination of compliance with these COC nor to delay the timeframes for review established by these COC. At the Departments's request, the licensee shall conduct a field inspection with the agency representative in conjunction with the interagency meeting.

E. Determination of Compliance

The Department shall give written notification within 90 days, to the licensee and the other agency/ies to which the post-certification information was submitted of the Department's determination whether there is demonstration of compliance with the COC. If it is determined that compliance with these COC has not been provided, the licensee shall be notified with particularity of the deficiencies and possible corrective measures suggested. Failure to notify the licensee in writing within 90 days of receipt of a complete post-certification submittal shall constitute a determination of compliance.

F. Commencement of Construction

If the Department does not object within the time period specified in paragraph E. above, the licensee may begin construction pursuant to the terms of these COC and the subsequently submitted construction details.

G. Revisions to Design Previously Reviewed for Compliance

The licensee shall submit to Department, and/or applicable agencies, proposed revisions to post-certification submittals for review. Such submittals shall include the same type of information required for the original submittal and shall be submitted prior to construction/implementation.

H. Variation to Submittal Requirements

The Department, in consultation with the appropriate agencies that have regulatory authority over a matter to be addressed in a post-certification submittal, and the licensee 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 COC.

I. Disputes

Any agency that receives a post-certification submittal pursuant to these COC may dispute a determination that a submittal provides reasonable assurances of compliance with

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the COC made by the Department on matters within that agency's jurisdiction by following the procedures set forth in Chapter 120, F.S. The agency's statement disputing the Department's determination shall state with particularity the location to which the agency's dispute relates. Work in areas other than the location to which the agency's dispute relates will not be affected by the agency's dispute.

[Sections 120.569, 373.413, 373.416, 403.511, 403.531, and 403.9416, F.S.; Rules 62-17.191 and 62-17.205, F.A.C.]

XXIII. POST CERTIFICATION AMENDMENTS

If, subsequent to certification, the licensee proposes any material change to the SCA and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the SCA to the Department. Within 30 days after the receipt of a complete request for an amendment, the Department shall determine whether the proposed change to the application requires a modification to the COC.

A. If the Department concludes that the change would not require a modification to the COC, the Department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

B. If the Department concludes that the change would require a modification to the COC, the Department shall provide written notification to the licensee that the proposed change to the SCA requires a request for modification pursuant to Sections 403.516 and 403.5317, F.S.

[Section 403.5113, F.S.]

XXIV. MODIFICATION OF CERTIFICATION

A. Pursuant to Sections 403.516(1)(a), 403.5315(1), 403.9418(1)(a), 120.569(2)(n), F.S., and Rule 62-17.211, F.A.C., the Siting Board hereby delegates the authority to the Department to modify, after notice and receipt of no objection by a party or other substantially affected person, any COC which would not otherwise require approval by the Siting Board. In addition, the Department is delegated the authority to modify COC as follows:

The certification shall be modified to conform to subsequent DEP-issued amendments, modifications, or renewals of any separately issued 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 certified facility. In the event of a conflict, the more stringent of the conditions of such permits or of these COC shall be controlling.

B. 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 request for an amendment, modification, or certification.

C. Any anticipated facility change that results in a change to the boundaries of the certified area must be accompanied by a map or aerial photo showing the proposed new boundaries of the certified area. The Department may consider any such change to be a modification of the COC. Within 60 days after completion of construction of the new project the licensee shall provide: a survey map signed by a professional land surveyor, or acceptable equivalent documentation such as a legal description, delineating the boundaries of the certified

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area; and an aerial photograph delineating the new boundaries of the certified area. The survey and aerial photograph shall be incorporated herein as part of Attachment A.

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

[Sections 120.569(2)(n), 403.511(5)(a), 403.516, 403.5315, and 403.9418, F.S.; Rule 62-17.211 and Chapter 62-343, F.A.C.]

XXV. INCORPORATION OF EXISTING STATE AND LOCAL PERMITS/LICENSES

The operation of the certified facility shall be in accordance with all applicable provisions of any state or local government regulation. All state and locally issued permits/approvals are intended to be incorporated herein, such that the licensee shall comply with the substantive provisions and limitations set forth in those permits/approvals. The inadvertent omission of any state or locally issued permit/approval from these COC can be remedied by a modification of the COC to include provisions from the state or locally issued permit/approval.

At any time following certification, should the licensee become aware of any state or locally issued permit/approval not included herein, the licensee shall promptly notify the SCO for incorporation into these COC. Likewise, when the Department is made aware of any separately issued permits/approval that were inadvertently not included in the COC, the COC will be modified to incorporate the substantive provisions and limitations of any such permit/approval.

XXVI. COASTAL ZONE CONSISTENCY

Pursuant to Sections 373.428 and 403.511, F.S., certification of the facility constitutes the state's concurrence that the authorized activity or use is consistent with the federally approved program under the Florida Coastal Management Act.

[Sections 373.428, 380.23 and 403.511(7), F.S.]

XXVII. FINANCIAL RESPONSIBILITY

The Department may require the licensee to submit proof of financial responsibility and may require the licensee to post an appropriate bond in those instances where the Department is authorized to require proof of financial responsibility or a bond pursuant to a law or Department rule that is applicable to the certified facility.

[Rule 62-4.110, F.A.C.]

XXVIII. TRANSFER OF CERTIFICATION

This certification is transferable in whole or in part, upon Department approval, to an entity determined to be competent to construct, operate and maintain the certified facility in accordance with these COC. The Department will consider whether the entity is a proper applicant as defined by the PPSA in making its approval. A transfer of certification of all or part of the certified facility may be initiated by the licensee's filing of a Notice of Intent to Transfer Certification with the Department. A copy of the necessary form may be obtained by contacting the SCO. Upon approval, the Department will initiate a modification to the COC to reflect the change in ownership in accordance with Rule 62-17.211, F.A.C. In the event of the dissolution

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of a certified licensee, the Department may transfer certification to successor entities which are determined to be competent to construct, operate and maintain the certified facility in accordance with the COC and which are proper applicants as defined by the PPSA. Upon determination that such a successor entity complies with the above, the Department will initiate a modification to the COC to reflect the change in ownership in accordance with Rule 62-17.211, F.A.C.

[Chapter 120, F.S.; Rule 62-17.211, F.A.C.]

XXIX. LABORATORIES AND QUALITY ASSURANCE

Chemical, physical, biological, microbiological and toxicological data collected as a requirement of these COC must be reliable, and collected and analyzed by scientifically sound procedures. Unless otherwise specified in these COC, the licensee shall adhere to the minimum field and laboratory quality assurance, methodological and reporting requirements of the Department as set forth in Chapter 62-160, F.A.C. Standard Operating Procedures can be downloaded from the following website: <http://www.dep.state.fl.us/labs/qa/sops.htm>.

[Rule 62-160, F.A.C.]

XXX. ENVIRONMENTAL RESOURCES

A. General

1. Submittals for Construction Activities

a. Prior to the commencement of construction of new facilities and/or associated facilities the licensee shall provide to the appropriate DEP District's Environmental Resource Permitting Section(s) for review, all information necessary for a complete *Joint Application for Environmental Resource Permit (ERP)*, DEP Form 62-343.900(1). These forms may be submitted; a) concurrently with a SCA, an amendment request, or a petition for modification; or b) as a post-certification submittal following approval of a project through certification, an amendment, or a modification. Such ERP applications, once received, shall be reviewed in accordance with the standards and criteria for issuance of an ERP, including all the provisions related to reduction and elimination of impacts, conditions for issuance, additional conditions for issuance, and mitigation contained in Chapters 62-330, 62-341, 62-343, and 62-346, F.A.C., as applicable unless otherwise stated in these COC.

Those forms submitted as part of a certification, an amendment, or modification, shall be processed concurrently with, and under the respective certification, amendment, or modification procedures. Those forms submitted as a post-certification submittal (after project certification and prior to construction) shall be processed in accordance with Section A. Condition XXII. Procedures for Post-Certification Submittals.

No construction shall commence until the appropriate notification from the Department has been received.

b. The licensee shall submit a survey of wetland and surface water areas as delineated in accordance with Chapter 62-340, F.A.C., and verified by appropriate agency staff for Department approval.

[Chapter 62-340, F.A.C.]

[Section 373.416, F.S.; subsections 62-312, 62-343.070(2) and 62-346.070(2), paragraph 62-343.090(2)(b), and Forms 62-343.900(1) and 62-346.900(1), F.A.C.]

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2. Construction, operation and maintenance of the proposed project (including any access roads and structures constructed within wetlands and other surface waters, and/or associated facilities) shall satisfy any applicable non-procedural requirements in the Department rules.

[Section 373.414, F.S.; paragraph 62-17.665(7)(d), F.A.C.]

3. Any delineation of the extent of a wetland or other surface water submitted as part of the DEP ERP application form required by Condition A.1.a. above, including plans or other supporting documentation, shall not be considered binding on the Department unless a specific condition of this license or a formal wetlands jurisdictional determination under Section 373.421(2), F.S., provides otherwise.

[Sections 373.421, 403.504, 403.523, and 403.9404, F.S.]

B. Surface Water Management

1. Surface water management systems will be evaluated under Part IV of Chapter 373, F.S. following submittal of Form 62-343.900(1) or 62-346.900(1), as applicable, to the appropriate office of the Department.

2. All construction, operation, and maintenance shall be as set forth in the plans, specifications and performance criteria contained in the Department's files and approved by this license. Any alteration or modification to the surface water management system as licensed requires prior approval from the Department.

3. Immediately prior to, during construction, and for the period of time after construction to allow for stabilization of all disturbed areas, the licensee shall implement and maintain erosion and sediment control best management practices, such as silt fences, erosion control blankets, mulch, sediment traps, polyacrylamide (PAM), temporary grass seed, permanent sod, and floating turbidity screens to retain sediment on-site and to prevent violations of state water quality standards. These devices shall be installed, used, and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the licensed work, and shall remain in place at all locations until construction is completed and soils are permanently stabilized. All best management practices shall be in accordance with the guidelines and specifications described in *the State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida DOT and DEP, 2007) unless a project-specific erosion and sediment control plan is approved as part of this license. If project-specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediments beyond those specified in the approved erosion and sediment control plan, the licensee shall implement additional best management practices as necessary, in accordance with the guidelines and specifications in *the State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida DOT and DEP). The licensee shall correct any erosion or shoaling that causes adverse impacts to the water resources as soon as practicable. Once project construction has been deemed complete, including the re-stabilization of all side slopes, embankments and other disturbed areas, and before conversion from the operation and maintenance phase, all silt screens and fences, temporary baffles, and other materials that are no longer required for erosion and sediment control shall be removed.

4. The licensee shall complete construction of all aspects of the surface water management system described in the DEP ERP application form, as part of the Application, a

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post-certification submittal, amendment, or modification, including water quality treatment features, and discharge control facilities prior to use of the portion of the certified facility being served by the surface water management system.

5. The Department must be notified in advance of any proposed construction dewatering. If the dewatering activity is likely to result in offsite discharge or sediment transport into wetlands or surface waters, a written dewatering plan must be submitted to and approved by the Department prior to the dewatering event. All dewatering discharges must be in compliance with Rule 62-621.300, F.A.C.

6. At least 48 hours prior to the commencement of construction of any new surface water management system authorized by this license, the licensee shall submit to the Department a written notification of commencement using an "Environmental Resource Permit Construction Commencement Notice" DEP Form 62-343.900(3) or 62-346.900(3), as applicable, indicating the actual start date and the expected completion date. When the duration of construction will exceed one year, the licensee shall submit construction status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), F.A.C.). Status Report Forms shall be submitted the following June of each year.

7 Each phase or independent portion of the approved system must be completed in accordance with the submitted DEP form prior to the operation of site infrastructure located within the area served by that portion or phase of the system. 8. Within 30 days after completion of construction of any new portions of the surface water management system, the licensee shall submit a written statement of completion and certification by a registered professional engineer, or other appropriate registered professional, as authorized by law, utilizing an "As-Built Certification by a Registered Professional" DEP Form 62-343.900(5) or 62-346.900(4), as applicable. 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 deviations noted.

9. Any substantial deviation from the approved drawings, exhibits, specifications or COC, may constitute grounds for revocation or enforcement action by the Department. Examples of substantial deviations may include excavation of ponds, ditches or sump areas deeper than shown on the approved plans.

10. Prior to operation of any new surface water management system, the licensee shall submit to the Department a "Request for Transfer of Environmental Resource Permit Construction Phase to Operation Phase" (DEP Form 62-343.900(7), F.A.C.). The operation phase of any new surface water management system approved by the Department shall not become effective until the licensee has complied with the requirements of the COC herein, the Department determines the system to be in compliance with the approved plans, and the entity approved by the Department accepts responsibility for operation and maintenance of the system.

[Chapters 62-25, 62-302, 62-330, 62-343, 62-346, and Rule 62-4.242, F.A.C.]

C. Wetland and Other Surface Water Impacts

1. All certified facilities shall be constructed in a manner which will avoid or minimize adverse impacts to on-site and/or adjacent wetlands or other surface waters to the extent feasible. When unavoidable impacts to wetlands will occur, an applicant may propose and

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the Department shall consider mitigation to offset otherwise unpermittable activities under the Environmental Resource Permit review process pursuant to Condition A.1.a above.

2. Proposed mitigation plans submitted with the DEP ERP application forms required in Condition A.1.a. above, or submitted and approved as part of an amendment, modification, or certification, and that are deemed acceptable by DEP, shall include applicable construction conditions, success criteria and monitoring plans and shall be incorporated into these COC as Attachment B.

[Sections 373.413, 373.414, 373.4145, 403.511, 403.531, 403.814(6), and 403.9416, F.S.; Chapters 62-330, 62-341 62-342, 62-343, 62-345, and 62-346, F.A.C.]

XXXI. THIRD PARTY IMPACTS

The licensee is responsible for maintaining compliance with these COC even when third party activities authorized by the licensee occur in or on the certified area. Such third party activities authorized by the licensee may include but are not limited to mining, hunting, and timbering.

[Sections 403.506(1), 403.524(1), and 403.9405(1), F.S.]

XXXII. FACILITY OPERATION

The licensee shall properly operate and maintain the certified facility and systems of treatment and control (and related appurtenances) that are installed and used by the licensee to achieve compliance with these COC, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with these COC and when required by Department rules.

[subsection 62-4.160(6), F.A.C.]

XXXIII. RECORDS MAINTAINED AT THE FACILITY

- A. A copy of these COC shall be kept at the work site of the certified facility.
- B. Upon request, the licensee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.
- C. The licensee shall hold at the certified facility, or other location designated by these COC, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation required by these COC, copies of all reports required by these COC, and records of all data used to complete the SCA for this certification. These materials shall be retained at least three (3) years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.
- D. Records of monitoring information shall include:
 - 1. the date, exact place, and time of sampling or measurements;
 - 2. the person responsible for performing the sampling or measurements;
 - 3. the dates analyses were performed;
 - 4. the person responsible for performing the analyses;

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5. the analytical techniques or methods used; and,
6. the results of such analyses.

[subsection 62-4.160(12) and paragraph 62-4.160(14)(b), F.A.C.]

XXXIV. WATER DISCHARGES

A. Discharges

1. The licensee shall not discharge to surface waters wastes which are acutely toxic, or present in concentrations which are carcinogenic, mutagenic, or teratogenic to human beings or to significant locally occurring wildlife or aquatic species. The licensee shall not discharge to ground waters wastes in concentrations which, alone or in combination with other substances, or components of discharges (whether thermal or non-thermal) are carcinogenic, mutagenic, teratogenic, or toxic to human beings (unless specific criteria are established for such components in Rule 62-520.420, F.A.C.) or are acutely toxic to indigenous species of significance to the aquatic community within surface waters affected by the ground water at the point of contact with surface waters.

2. All discharges and activities must be conducted so as to not cause a violation of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the provisions of Rules 62-4.243, 62-4.244, and 62-4.246, F.A.C., the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C.;

3. All dewatering discharges must be in compliance with Rule 62-621.300, F.A.C.

[Chapters 62-4, 62-302, 62-520, 62-550, and Rule 62-621.302, F.A.C.]

B. Wastewater Incident Reporting

1. The licensee shall report to the Department any unauthorized discharge to surface or ground waters. Any information shall be provided orally within 24 hours from the time the licensee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the licensee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and time, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

2. For unauthorized releases or spills of treated or untreated wastewater reported that are in excess of 1,000 gallons per incident, or where information indicates that public health or the environment will be endangered, oral reports shall be provided to the Department by calling the STATE WARNING POINT TOLL FREE NUMBER (800) 320-0519, as soon as practical, but no later than 24 hours from the time the Licensee becomes aware of the discharge. The licensee, to the extent known, shall provide the following information to the State Warning Point:

- a. Name, address, and telephone number of person reporting;

SECTION A: GENERAL CONDITIONS

- b. Name, address, and telephone number of licensee or responsible person for the discharge;
 - c. Date and time of the discharge and status of discharge (ongoing or ceased);
 - d. Characteristics of the wastewater spilled or released (untreated or treated, industrial or domestic wastewater);
 - e. Estimated amount of the discharge;
 - f. Location or address of the discharge;
 - g. Source and cause of the discharge;
 - h. Whether the discharge was contained on-site, and cleanup actions taken to date;
 - i. Description of area affected by the discharge, including name of water body affected, if any; and
 - j. Other persons or agencies contacted.
3. If the oral report has been received within 24 hours, the noncompliance has been corrected, and the noncompliance did not endanger health or the environment, the Department shall waive the written report.

[Chapter 376, F.S.; subsection 62-620.610(20), F.A.C.]

XXXV. SOLID AND HAZARDOUS WASTE

A. Solid Waste

The licensee shall comply with all applicable provisions of Chapters 62-701 and 62-702, F.A.C., for any solid waste generated within the certified facility during construction and/or operation.

[Chapters 62-701 and 62-702, F.A.C.]

B. Hazardous Waste

The licensee shall comply with all applicable non-procedural provisions of Chapter 62-730, F.A.C., for any hazardous waste generated from the certified facility. An EPA identification number must be obtained before beginning hazardous waste activities, except for Conditionally Exempt Small Quantity Generators (CESQGs) who are exempt from this regulation under Title 40 Code of Federal Regulations (CFR), §261.5. CESQGs generate no more than 100 kg (220 lbs) of hazardous waste in any month.

[Chapter 62-730, F.A.C.]

C. Hazardous Substance Release Notification

1. Any owner or operator of a facility who has knowledge of any release of a hazardous substance from a facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period shall notify the Department by calling the State Warning Point Number, (850) 488-1320, within one working day of discovery of the release.

SECTION A: GENERAL CONDITIONS

2. Releases of mixtures and solutions are subject to these notification requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

3. Notification of the release of a reportable quantity of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

[Chapter 62-150, F.A.C.]

XXXVI. STORAGE TANK SYSTEMS

Registration, construction, installation, operation, maintenance, repair, closure, and disposal of storage tank systems that store regulated substances shall be in accordance with Chapters 62-761 and 62-762, F.A.C., in order to minimize the occurrence and environmental risks of releases and discharges. Mineral acid storage tank systems are subject only to Rule 62-762.891, F.A.C.

A. Incident Notification Requirements.

Notification of the discovery of the loss of a regulated substance from a storage tank system exceeding 100 gallons on impervious surfaces, other than secondary containment, such as driveways, airport runways, or other similar asphalt or concrete surfaces, provided that the loss does not come in contact with pervious surfaces; or of the discovery of any other incident listed in subsections 62-761.450(2) or 62-762.451(2), F.A.C., shall be made to the affected county on Incident Notification Form 62-761.900(6) within 24 hours or before the close of the county's next business day:

B. Discharge Reporting Requirements

Upon discovery of an unreported discharge, the owner or operator shall report to the affected county on Discharge Report Form 62-761.900(1), F.A.C, within 24 hours or before the close of the county's next business day those items listed in paragraph 62-761.450(3)(a), F.A.C., including a spill or overfill event of a regulated substance to soil or another pervious surface, equal to or exceeding 25 gallons, unless the regulated substance has a more stringent reporting requirement specified in C.F.R. Title 40, Part 302.

C. Discharge Cleanup

If a discharge of a regulated substance occurs at a facility, actions shall be taken immediately to contain, remove, and abate the discharge under all applicable Department rules (for example, Chapter 62-770, F.A.C., Petroleum Contamination Site Cleanup Criteria). Owners and operators are advised that other federal, state, or local requirements may apply to these activities. If the contamination present is subject to the provisions of Chapter 62-770, F.A.C., corrective action, including free product recovery, shall be performed in accordance with that Chapter.

D. Out of Service and Closure Requirements

Storage tank systems shall be taken out-of-service and/or closed as necessary in accordance with Rules 62-761.800 and 62-762.801, F.A.C., as applicable.

[Chapters 62-761 and 62-762, F.A.C.]

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XXXVII. NOISE

The licensee shall comply with applicable local noise ordinances during construction and operation of the certified facility.

XXXVIII. SCREENING

The licensee shall comply with applicable local government requirements concerning the screening of the certified facility.

SECTION B: SPECIFIC CONDITIONS

SECTION B. SPECIFIC CONDITIONS

I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

A. *Potable Water*

1. All the potable water supply well(s) shall be constructed according to public well standards found in Chapter 62-532, F.A.C, and shall comply with the required setbacks in Rule 62-555.312, F.A.C.

2. The non-transient, non-community potable water supply system(s) shall be designed and operated in conformance with the applicable requirements of Chapters 62-550, (Lead & Copper Rule 40 CFR 141, Subpart I), 62-555, 62-560, and 62-699 F.A.C. Information as required in Chapters 62-550, Lead & Copper Rule 40 CFR 141, Subpart I, 62-555, 62-560, and 62-699, F.A.C., shall be submitted to the Department prior to construction and operation of any potable water system. The operation of the potable water supply system shall be certified in accordance with Chapters 62-602 and 62-699, F.A.C. All monitoring reports shall be submitted to the Department's Northeast District Office, Potable Water Section and the SCO.

3. The list of requirements for a Preliminary Design Report (PDR) can be found in subsection 62-555.520(4), F.A.C. A preliminary design report or specifications, details, and design drawings are required for approval of a potable water system and shall be submitted to the Department's Northeast District Office, Potable Water Section and the SCO prior to construction and use.

4. For the non-transient, non-community potable water supply system(s), a demonstration of financial, managerial, and technical capacity (capacity development) form pursuant to Rule 62-555.525, F.A.C., must be completed and submitted to the Department's Northeast District Office, Potable Water Section and the SCO.

5. The limited use potable water system(s) shall be constructed and operated in conformance with the applicable requirements of Section 381.0062, F.S., and Chapter 64E-8, F.A.C. The Florida Department of Health Form 4092B and other required information shall be submitted to the Alachua County Health Department and the SCO for approval prior to the construction and operation of the limited use potable water system(s).

B. *Industrial Wastewater Treatment Facilities*

Within thirty days of completion of construction of any new industrial wastewater facilities, the licensee shall submit to the Department a completed "Certification of Completion of Construction" (DEP Form 62-620.910(12)) signed and sealed by the engineer of record or other engineer registered in the state of Florida.

C. *Solid Waste General*

1. All solid waste generated from the site during operation including: bottom ash from the boiler; solids/sludges from the water (process and waste) treatment facilities; used oil/sludges collected from the oil/water separator; spent lubricating oils; used oil filters; and related used petroleum products shall be collected in vendor provided or other suitable containers and transported offsite for disposal in a permitted landfill. Transportation and disposal of solid wastes shall be in accordance with applicable provisions of Chapters 62-701 and 62-702, F.A.C, and any specific requirements of the permitted landfill receiving the waste.

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2. The licensee shall submit to the Department a best management practices plan for handling, transporting, and disposing of solid waste prior to commercial operation of the certified facility.

[Rule 62-4.030, F.A.C.]

D. Fly Ash

1. Fly ash generated from the BFB boiler shall be transported and temporarily stored on site in accordance with the design specifications provided in the GREC Application.

2. Fly ash that may be used as a soil supplement shall undergo an initial test according to the Toxicity Characteristic Leaching Procedure (or an alternate plan proposed by the licensee and approved by the Department) prior to land application to assure the ash is not a characteristic hazardous waste.

[Rule 62-4.030, F.A.C.]

3. The results of the initial sampling shall be submitted to the Department for review within 30 days, prior to land application of any fly ash. If elevated levels of contaminants are discovered, the Department may require additional sampling.

[Rule 62-4.030, F.A.C.]

4. According to the Application, the biomass fuel will be derived primarily from forest residue and urban wood waste. If there is a material change in the fuel or fuel supply, the Department shall be notified and additional sampling of fly ash may be required before it is used as a soil supplement.

[Rule 62-4.030, F.A.C.]

5. Fly ash that is not used as a soil supplement shall be transported offsite in covered trucks and disposed of in a permitted landfill. Transportation and disposal of fly ash shall be in accordance with applicable provisions of Chapters 62-701 and 702, F.A.C, and any specific requirements of the permitted landfill receiving the waste.

6. Reasonable precautions pursuant to F.A.C. Rule 62-296.320(4)(c) shall be taken to control fugitive particulate at the site when loading/unloading and transporting fly ash.

E. Wetlands Mitigation

The licensee shall provide the Department with the executed conservation easement between GRU and DEP as described in the mitigation plan submitted with the SCA prior to construction of the certified facility. The conservation easement is incorporated by reference herein as Attachment B. Violation of the limitations set forth in the conservation easement shall be a violation of these COC.

II. DEPARTMENT OF TRANSPORTATION

A. Access Management to the State Highway System

Any access to the State Highway System will be subject to the requirements of Chapters 14-96, State Highway System Connection Permits, and 14-97, Access Management Classification System and Standards, F.A.C.

SECTION B: SPECIFIC CONDITIONS

B. Overweight or Overdimensional Loads

Operation of overweight or overdimensional loads by the licensee on State transportation facilities during construction and operation of the certified facility will be subject to safety and permitting requirements of Chapter 316, F.S., and Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

C. Use of State of Florida Right of Way or Transportation Facilities

All usage and crossing of State of Florida ROW or transportation facilities will be subject to Chapter 14-46, Utilities Installation or Adjustment, F.A.C.; Florida DOT's Utility Accommodation Manual (Document 710-020-001); Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Standard Specifications for Road and Bridge Construction; and application sections of the Florida DOT's Project Development and Environmental Manual.

U.S. 441 has been identified as a Florida Intrastate Highway System (FIHS) and Strategic Intermodal System's (SIS) facility. The placement of the transmission line and pipeline should take into consideration the planned widening of this facility. The cost of relocation or reconstruction the transmission line and pipeline will be borne by the licensee to the extent required by Section 337.403, F.S., and Chapter 14-46, F.A.C.

D. Standards

The Manual on Uniform Traffic Control Devices: Florida DOT's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida DOT's Standard Specifications for Road and Bridge Construction; Florida DOT's Utility Accommodation Manual; and application sections of the Florida DOT's Project Development and Environmental Manual shall be adhered to in all circumstances involving the State Highway System and other transportation facilities.

E. Drainage

Any drainage onto State of Florida ROW and transportation facilities will be subject to the requirements of Chapter 14-86, Drainage Connections, F.A.C., including the attainment of any permit required thereby.

F. Use of Air Space

Any newly proposed structure or alteration of an existing structure will be subject to the requirements of Chapter 333, F.S., and Rule 14-60.009, Airspace Protection, F.A.C. Additionally, notification to the Federal Aviation Administration (FAA) is required prior to beginning construction, if the structure exceeds notification requirements of 14 CFR Part 77, Objects Affecting Navigable Airspace, Subpart B, Notice of Construction or Alteration. Notification will be provide to FAA Southern Region Headquarters using FAA Form 7460-1, Notice of Proposed Construction or Alteration in accordance with the instructions therein. A subsequent Determination by the FAA stating that the structure exceeds any federal obstruction standard of 14 CFR Part 77, Subpart C for any structure that is located within a 10-nautical-mile radius of the geographic center of a public-use airport or military airfield in Florida will be required to submit information for an Airspace Obstruction Permit from the Florida DOT or variance from the local government depending on the entity with jurisdictional authority over the site of the proposed structure. The FAA Determination regarding the structures serves only as a

SECTION B: SPECIFIC CONDITIONS

review of its impact on federal airspace and is not an authorization to proceed with any construction. However, FAA recommendations for marking and/or lighting of the proposed structure are made mandatory by Florida law. For a site under Florida DOT jurisdiction, application will be made by submitting Florida DOT Form 725-040-11, Airspace Obstruction Permit Application, in accordance with the instructions therein.

G. Level of Service on State Roadway Facilities

All traffic impacts to State roadway facilities on the FIHS, the SIS, or funded by Section 339.2819, F.S., will be subject to the requirements of the level of service standards adopted by local governments pursuant to Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C., and in accordance with Section 163.3180(10), F.S. All traffic impacts to State roadway facilities not on the FIHS, the SIS, or funded by Section 339.2819, F.S., will be subject to adequate level of service standards established by the local governments.

H. Best Management Practices

Traffic control during facility construction and maintenance will be subject to the standards contained in the Manual on Uniform Traffic Control Devices; Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C.; Florida DOT's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida DOT's Standard Specifications for Road and Bridge Construction; Florida DOT's Utility Accommodation Manual, whichever is more stringent.

It is recommended that the licensee encourage transportation demand management techniques by doing the following:

- Placing a bulletin board on site for car pooling advertisements; and
- Requiring the heavy construction vehicles remain onsite for the duration of construction to the extent practicable.

A temporary traffic control plan for handling construction related traffic is needed subject to the requirements and standards. The plan will need approval by the Florida DOT prior to construction.

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

III. FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

Based on a Geographical Information System (GIS) analysis of the project site, the following imperiled species and associated habitats were identified:

- 16 protected species potentially occur onsite or in the vicinity of the site (see table below),
- Historical wading bird rookery,
- Florida Natural Areas Inventory-identified rare species habitat for the eastern indigo snake, and

SECTION B: SPECIFIC CONDITIONS

- FWC-identified potential habitat and priorities wetlands for Florida black bear and wading birds.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status*</u>
Gopher frog	<i>Rana capito</i>	SSC
Gopher tortoise	<i>Gopherus polyphemus</i>	ST
Florida pine snake	<i>Pituophis melanoleucus mugitus</i>	SSC
Eastern indigo snake	<i>Drymarchon corais couperi</i>	ST; FT
Tricolored heron	<i>Egretta tricolor</i>	SSC
Little blue heron	<i>Egretta caerulea</i>	SSC
Limpkin	<i>Aramus guarauna</i>	SSC
Snowy egret	<i>Egretta thula</i>	SSC
White ibis	<i>Eudocimus albus</i>	SSC
Bald eagle	<i>Haliaeetus leucocephalus</i>	P
Florida sandhill crane	<i>Grus canadensis pratensis</i>	ST
Southeastern American kestrel	<i>Falco sparverius paulus</i>	ST
Wood stork	<i>Mycteria americana</i>	SE; FE
Sherman's fox squirrel	<i>Sciurus niger shermani</i>	SSC
Florida black bear	<i>Ursus americanus floridanus</i>	ST

* SSC - Species of Special Concern; ST - State Threatened; SE - State Endangered; FT - Federally Threatened; FE - Federally Endangered; P - Protected under federal law and state management plan

A. Preserved Areas

The licensee provided baseline wildlife survey results in the Application which were conducted in May of 2009. Provided in the SCA are figures illustrating the vegetation communities using the Florida Land Use Cover and Forms Classification System. These vegetation communities were cross-referenced with Florida Natural Areas Inventory, which is more suitable to assessing wildlife conditions than the FLUCFCS or the results from the GIS analysis. Further, the FWC understands from the licensee, that GRU will be placing easements over those proposed preserve areas that provide potential habitat for listed species. In the event that the proposed construction layout of the certified facility is modified and impacts to those areas that have been identified as being used by listed species are unavoidable, the licensee will consult with the FWC and USFWS, as appropriate, to identify necessary conservation measures to offset impacts on the site adjacent to the certified area, to specifically benefit the impacted listed species.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Chapter 68A-27, F.A.C.]

B. Wetlands

Water resource permitting requirements for wetlands do not always meet all of the ecological needs for fish and wildlife resources in every case. During the pre-application consultation, the FWC provided the licensee with a U.S. Fish and Wildlife Service's wetland

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buffers FAQ sheet. The licensee shall evaluate the wetlands to be preserved within the site on a case-by-case basis and establish compatible-use buffer zones and wetland protection buffers around all wetland areas appropriate for the site's wildlife inventory in accordance with the U.S. Fish and Wildlife Service's wetland buffer guidelines.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Chapter 68A-27, F.A.C.]

C. General Listed Species Surveys

Prior to clearing and construction, the licensee shall conduct species-specific surveys for all listed species that may occur within the certified area, with appropriate buffer distances as defined by the survey protocols. Guidance related to species-specific survey protocols can be found in the FWC's Florida Wildlife Conservation Guide at <http://myfwc.com/conservation/fwcg.htm>. The results of those detailed surveys shall be provided to the FWC and coordination shall occur with the FWC and appropriate permitting agency on proposed impact mitigation methodologies.

[Article IV, Section 9, Florida Constitution; Sections 379.2291 403.507, and 403.5113(2), F.S.; Chapter 68A-27 and Rule 62-17.191, F.A.C.]

D. Listed Species Identified Onsite

1. *Gopher Tortoise*: The licensee acknowledges the presence of gopher tortoise burrows within the project site. It is anticipated that all gopher tortoises and their burrows shall be avoided during this project. However, in order to address unanticipated and unavoidable impacts to gopher tortoises, the licensee shall investigate the need to obtain a permit and shall adhere to the following guidelines:

- Either a conservation permit or a temporary exclusion permit from the FWC shall be obtained if any project activities would impact gopher tortoises, their burrows, or their habitat.
- The licensee shall refer to the most current (revised April 2009) FWC gopher tortoise permitting guidelines (www.myfwc.com/gophertortoise) to determine which specific permit would be best suited to this project, if applicable.
- All gopher tortoise work shall be conducted by "Authorized Agents" pursuant to the gopher tortoise permitting guidelines.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Rule 68A-27.004(2), F.A.C.]

2. *Bald Eagle*: Although the licensee did not identify a bald eagle nest on the project site during their 2009 wildlife surveys, suitable nesting habitat may still exist onsite or adjacent to the site. Given that the existing ponds on the Deerhaven Generating Station site contain fish, bald eagles may occur onsite prior to, during, or following construction of the certified facilities. In the event that the licensee modifies the site certification in the future, the licensee shall include as precautionary measures the following guidelines:

- If eagle nest sites are identified onsite or within the recommended buffer distance established by FWS and FWC, and prior to any future

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modifications to the site certification, the licensee shall avoid impacts to bald eagle nests where possible.

- In areas where adverse impacts to nests cannot be avoided, resulting in nest disturbance, the information required for an FWC Eagle Permit shall be obtained from the FWC, as authorized by Section 379.2291, F.S., and Rule 68A-16.002, F.A.C., and minimization and conservation measures outlined in the FWC Bald Eagle Management Plan shall be followed, as applicable.
- In areas where bald eagle nests occur prior to or during construction activities, efforts shall be made to avoid construction activities during the nesting season (October 1 – May 15) or when eagles are present before October 1 or after May 15.

[Article IV, Section 9, Florida Constitution; Sections 379.2291 and 403.5113(2), F.S.; Rules 62-17.191, 68A-16.002, and Chapter 68A-27, F.A.C.]

3. *Wading Birds and Grulifomres:* The licensee reported that wading birds have been identified in the Deerhaven Generating Station site foraging in the existing ponds. The current habitat may not be conducive for nesting, however, there may be potential for land management operations under this proposal to create more attractive conditions for nesting wading birds and gruliformes habitat such as sandhill crane or limpkin in the future. Whenever practical, the licensee shall avoid the active breeding season for species protected by Sections 68A-27.003-.005, F.A.C. (<https://www.flrules.org/gateway/chapterhome.asp?chapter=68A-27>), when land clearing and construction activities are proposed. If nesting activities are identified, the licensee shall adhere to the following guidelines:

- Monitor nesting activity during all clearing and construction activities. The monitoring shall be conducted by a person with documented experience in identifying normal and abnormal nesting behaviors of protected ground-nesting species and who can detect disturbances or nesting attempts during all clearing and construction activities.
- Stop clearing and construction activities if sandhill crane species start to nest in a dredged, cleared, or graded area, mark the nest site, allow the species to nest, and shall not resume construction activities in that area until all birds have fledged.

[Article IV, Section 9, Florida Constitution; Section 379.2291, F.S.; Chapter 68A-27 and Rule 68A-16.001, F.A.C.]

IV. SUWANNEE RIVER WATER MANAGEMENT DISTRICT

A. *Ground Water Withdrawal Limits*

GREC may initiate groundwater usage beginning approximately July 2012 at a rate of 0.1 million gallons per day (mgd), and may increase to 1.4 mgd (annual average) by approximately November 2013 when the plant is fully operational. The groundwater withdrawal increase for GREC to 1.4 mgd shall be concurrent with or subsequent to the reduction in the authorized groundwater withdrawals for GRU's Deerhaven Generating Station by 1.4 mgd.

[Rule 40B-2.011, F.A.C.]

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B. Operation

1. The licensee shall provide to the District monthly operating reports showing daily groundwater pumpage no later than 10 working days after the end of each quarter.

The Suwannee River Water Management District water use permit number 09-00040 shall be displayed on all reports.

[Water Use Permitting Guide 3.4, incorporated under 40B-2.301(3), F.A.C.]

2. If water use causes or contributes to a violation of Minimum Flows and Levels (MFLs), the District reserves the right to curtail future withdrawal rates or otherwise modify the COC as described in the recovery or prevention strategy associated with the MFL.

[Water Use Permitting Guide 3.1.15, incorporated under 40B-2.301(3), F.A.C.]

3. If water use causes adverse impacts to occur, the District reserves the right to curtail future withdrawal rates or otherwise modify the COC. Adverse impacts include:

a. Cumulative reduction in well water levels that impairs the ability of the well to produce water;

b. Cumulative reduction in levels in an adjacent water body such as a lake, pond, or retention/detention area that impairs the designated function of the water body or the ability for a permitted withdrawal facility to produce water;

c. Saline water intrusion or induced movement of pollutants into the water supply of an adjacent water use, resulting in harm due to a reduction in water quality;

d. Land collapse or subsidence caused by reduction in water levels;

e. Damage to crops and other types of vegetation;

f. Harm to a naturally occurring water body such as lake, pond, or wetland by reducing water levels or changing the hydroperiod; and

g. Harm to the natural system including damage to habitat for endangered or threatened species, or species of special concern.

[Water Use Permitting Guide 3.1.11-13, incorporated under 40B-2.301(3), F.A.C.]

4. The licensee shall maintain an accurate, non-resettable, totalizing flow meter(s) at each water withdrawal point. The meters shall be accurate to within 5 percent of actual flow. The meters shall be calibrated at a minimum every 5 years with a report of the calibration submitted to the District within 30 days of completion. Meters found to be outside the 5 percent flow measurement requirement shall be repaired or replaced within 30 days of discovery. The District shall be notified of any broken meters within 10 days of discovery, and the reported flow shall be estimated and submitted to the District for the time the meter was out of service.

[Water Use Permitting Guide 3.4, incorporated under 40B-2.301(3), F.A.C.]

5. If the actual flow is found to be greater than 5 percent different from the measured flow, within 30 days, the licensee shall have the meter re-calibrated, repaired, or

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replaced, whichever is necessary. Documentation of the test and a certificate of re-calibration, if applicable, shall be submitted within 30 days of each test or re-calibration.

[Water Use Permitting Guide 3.4, incorporated under 40B-2.301(3), F.A.C.]

6. The licensee shall monitor and report groundwater levels continuously at one centrally located well as approved by the District. The groundwater monitoring program shall be implemented at least one year prior to operation. The data shall be submitted no later than 10 working days after the end of each quarter. The reference datum should be North American Vertical Datum of 1988 (NAVD 88).

[Water Use Permitting Guide 3.6.2.6, incorporated under 40B-2.301(3), F.A.C.]

C. Reclaimed Water

1. The licensee shall provide to the District a written implementation plan and schedule for the use of reclaimed water from the City of Alachua to replace as much of the groundwater withdrawals as practicable for cooling purposes no later than 3 years after the commencement of operations. The plan shall include the identification of the supply of reclaimed water, the anticipated uncommitted amount of the supply, the plans, facilities, and estimated costs for providing the reclaimed water to the GREC site, and the schedule to begin the use of the reclaimed water no later than 5 years after the commencement of operations. Based on the District's review and approval of the implementation plan and schedule, the licensee shall implement the plan for the use of reclaimed water according to the approved schedule, and the COC shall be modified to require the use of reclaimed water.

2. In the event that an uncommitted, reasonable reclaimed water supply becomes available or is definitively scheduled to become available to the GREC site to meet all or part of the cooling tower makeup water needs prior to the required schedule above, the licensee shall provide the District a written implementation plan and schedule for using the reclaimed water. Based on the District's review and approval of the plan and schedule, the licensee shall implement the plan and the COC shall be modified to require the use of reclaimed water to reduce groundwater use.

3. If reclaimed water is used to supply all or part of the cooling tower makeup needs, groundwater use shall continue to be allowed for plant process and potable water use and, to the extent necessary, as supplemental or standby water supply for cooling tower makeup.

[Water Use Permitting Guide 3.1, incorporated under 40B-2.301(3), F.A.C.]

V. LOCAL GOVERNMENT

A. Prior to connecting to GRU's existing sewer line, the licensee shall submit the necessary information for a permit application to the City of Gainesville for review and approval and copy the SCO.

B. The licensee shall comply with all applicable ordinances under the City of Gainesville's Code of Ordinances and any requirements made by the City as outlined in the Development Review Staff Report dated June 10, 2010, or any subsequent revisions made thereto.

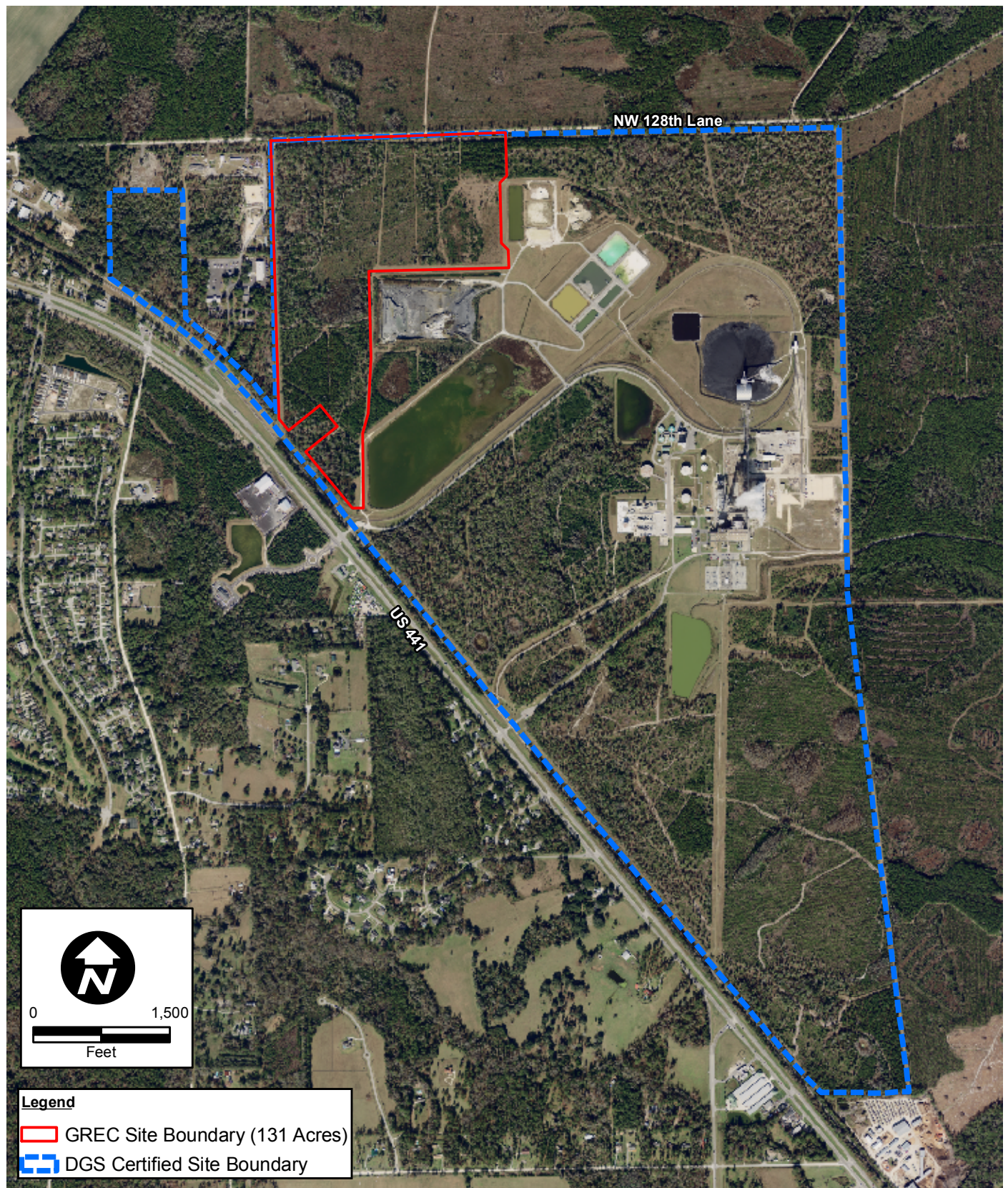


FIGURE 3.1.1-3.

GREC SITE

Sources: GRU, 2009; FDOT, 2008; GENESIS, 2009; ECT, 2009.

Sep 28, 2009 01:18 PM

BOOK 3909 PAGE 2085

J. K. IRBY

Clerk Of Circuit Court
Alachua County, Florida
CLERK3 Receipt # 422122

2530973

6 PGS

This Document Prepared By:
Kristie A. Williams, Land Rights Coordinator
Gainesville Regional Utilities
PO Box 147117
Gainesville, FL 32614-7117

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is executed this 28th day of September, 2009, by and between The City of Gainesville, Florida, d/b/a Gainesville Regional Utilities ("Lessor") and Gainesville Renewable Energy Center, LLC, ("Tenant") and evidences that on the 28th day of September, 2009, a Lease Agreement was executed for the real property described in Exhibit "A", attached hereto and made a part hereof ("the Premises").

1. **Lease Term.** The term of the Lease shall be for forty seven (47) years commencing on the 28th day of September, 2009 and terminating at midnight on September 28, 2056.
2. **Premises.** Subject to the terms of the Lease, Lessor has leased to Tenant the use of the Premises, and during the term of the Lease, Lessor has granted Tenant an easement for ingress, egress and utilities over that property described in Exhibit "B", attached hereto and made a part hereof, which easement is recorded in Official Records Book 3909 Page 2082 of the Public Records of Alachua County, Florida.
3. **Notices.** All notices, requests, demands, and other communications to the Lessor or Tenant shall be made at the following addresses:

Lessor:

Gainesville Regional Utilities
PO Box 147117
Gainesville, Florida 32614-7117
Att.: Robert E. Hunzinger, General Manager

Tenant:

Gainesville Renewable Energy Center, LLC
75 Arlington Street, 5th Floor
Boston, MA 02116
Att.: James S. Gordon, President

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

LESSOR

Signed, sealed and delivered
in the presence of:

Print Name: Rita K. Strother

Print Name: RAYMOND C. MANASCO, JR

CITY OF GAINESVILLE, FLORIDA
d/b/a GAINESVILLE REGIONAL UTILITIES

By:
Robert E. Hunzinger
General Manager for Utilities

Memorandum of Lease
Page 2 of 6

TENANT

Signed, sealed and delivered
in the presence of:

Joshua H. Levine
Print Name: Joshua H. Levine
Vivek Ravishanker
Print Name: Vivek Ravishanker

GAINESVILLE RENEWABLE ENERGY
CENTER, LLC

By: James S. Gordon
James S. Gordon
President

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 28th day of September, 2009, by Robert E. Hunzinger, General Manager for Utilities, of the City of Gainesville, Florida, a municipal corporation, who is personally known to me and duly sworn, acknowledged that as such officer, and pursuant to authority from said corporation, he executed the foregoing instrument on behalf of said corporation, as its act and deed, and for the uses and purposes set forth and contained in said instrument.

Rita K. Strother
Notary Public, State of Florida
My commission expires: May 12, 2012



STATE OF Massachusetts
COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 28th day of September, 2009, by James S. Gordon, President of Gainesville Renewable Energy Center, LLC, a Delaware Limited Liability Company, on behalf of the company. He is personally known to me or has produced _____ as identification.

Laura Martin
Signature of Notary
Print Name: Laura Martin
Notary Public, State of Massachusetts
My Commission Expires: July 4, 2014

Approved as to Form and Legality:

By: Raymond O. Manasco, Jr.
Raymond O. Manasco, Jr.
Utilities Attorney
City of Gainesville, Florida

Memorandum of Lease
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EXHIBIT "A"

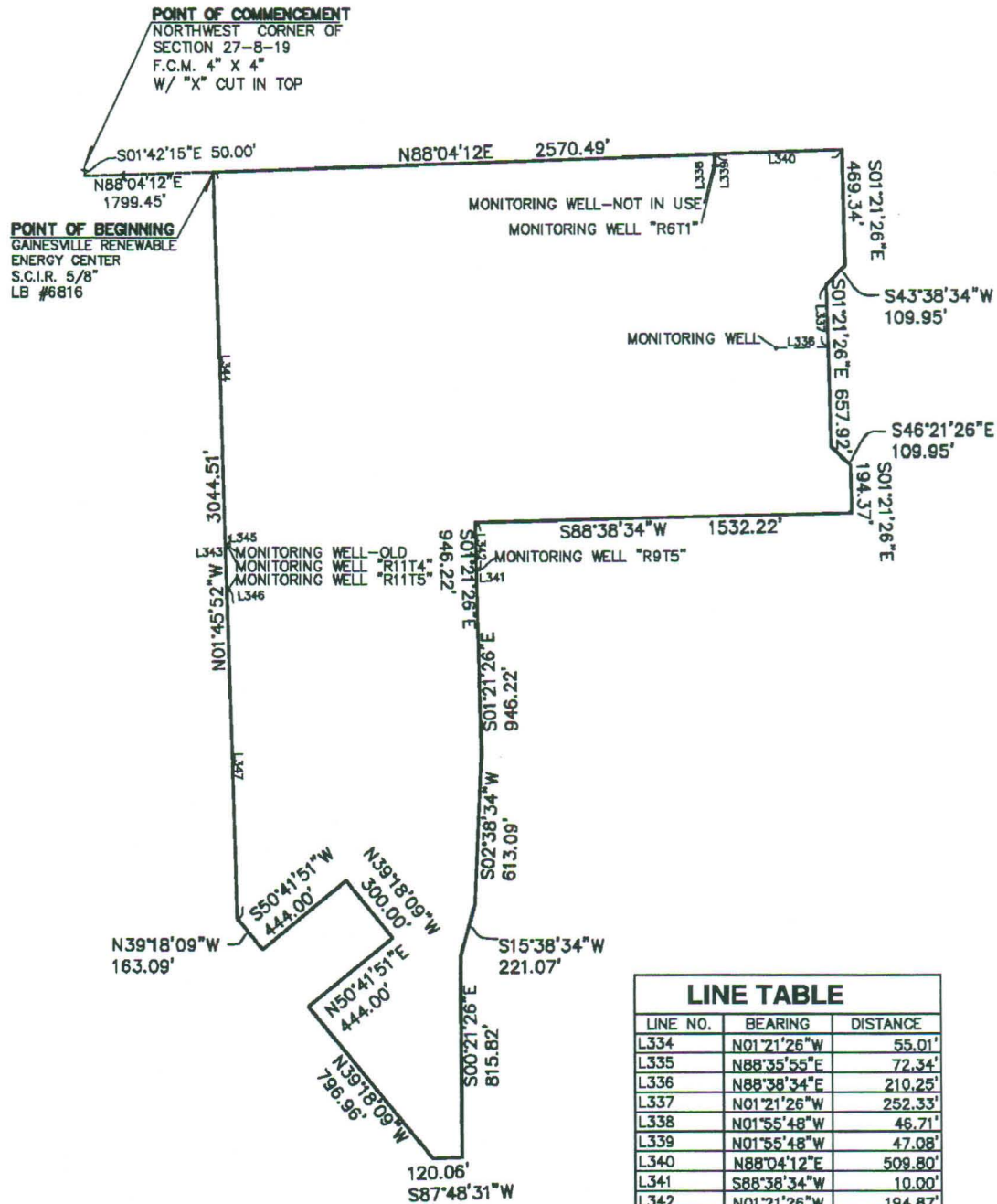
Description of Premises

A PARCEL OF LAND IN SECTION 27, TOWNSHIP 8 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA, LYING NORTH AND EAST OF THE CSX RAILROAD RIGHT-OF-WAY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 8 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA; THENCE S 01°42'15" E, ALONG THE WEST LINE OF SAID SECTION 27, A DISTANCE OF 50.00 FEET, TO A CONCRETE MONUMENT FOUND STAMPED "GFY LB021" MARKING THE INTERSECTION WITH THE SOUTHERLY MAINTAINED RIGHT-OF-WAY LINE OF NW 128TH LANE; THENCE RUN N 88°04'12" E, ALONG SAID SOUTHERLY MAINTAINED RIGHT-OF-WAY LINE, A DISTANCE OF 1799.45 FEET TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF THE EAST LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 883, PAGE 502, PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, FOR A POINT OF BEGINNING; THENCE CONTINUE N 88°04'12" E, ALONG SAID SOUTHERLY MAINTAINED RIGHT-OF-WAY LINE, A DISTANCE OF 2570.49 FEET; THENCE S 01°21'26" E, A DISTANCE OF 469.34 FEET; THENCE S 43°38'34" W, A DISTANCE OF 109.95 FEET; THENCE S 01°21'26" E, A DISTANCE OF 657.92 FEET; THENCE S 46°21'26" E, A DISTANCE OF 109.95 FEET; THENCE S 01°21'26" E, A DISTANCE OF 194.37 FEET; THENCE N 88°38'34" W, A DISTANCE OF 1532.22 FEET; THENCE S 01°21'26" E, A DISTANCE OF 946.22 FEET; THENCE S 02°38'34" W, A DISTANCE OF 613.09 FEET; THENCE S 15°38'34" W, A DISTANCE OF 221.07 FEET; THENCE S 00°21'26" E, A DISTANCE OF 815.82 FEET; THENCE S 87°48'31" W, A DISTANCE OF 120.06 FEET, TO A POINT LYING 100.0 FEET NORTHEASTERLY, AS MEASURED PERPENDICULAR, FROM THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE CSX RAILROAD RIGHT-OF-WAY; THENCE N 39°18'09" W, PARALLEL WITH SAID NORTHEASTERLY RAILROAD RIGHT-OF-WAY LINE AND 100.0 FEET NORTHEASTERLY THEREFROM, A DISTANCE OF 796.96 FEET; THENCE N 50°41'51" E, A DISTANCE OF 444.00 FEET; THENCE N 39°18'09" W, A DISTANCE OF 300.00 FEET; THENCE S 50°41'51" W, A DISTANCE OF 444.00 FEET; THENCE N 39°18'09" W, PARALLEL WITH SAID NORTHEASTERLY RAILROAD RIGHT-OF-WAY LINE AND 100.0 FEET NORTHEASTERLY THEREFROM, A DISTANCE OF 163.09 FEET TO THE INTERSECTION WITH THE SOUTHERLY EXTENSION OF AFORESAID EAST LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 883, PAGE 502, PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA; THENCE N 01°45'52" W, ALONG SAID EAST BOUNDARY AND THE SOUTHERLY AND NORTHERLY EXTENSIONS THEREOF, A DISTANCE OF 3044.51 FEET TO THE POINT OF BEGINNING; BEING AND LYING IN SECTION 27, TOWNSHIP 8 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA.

CONTAINING 130.78 ACRES, MORE OR LESS.

EXHIBIT "A" Continued
Sketch of Premises



LINE TABLE		
LINE NO.	BEARING	DISTANCE
L334	N01°21'26"W	55.01
L335	N88°35'55"E	72.34
L336	N88°38'34"E	210.25
L337	N01°21'26"W	252.33
L338	N01°55'48"W	46.71
L339	N01°55'48"W	47.08
L340	N88°04'12"E	509.80
L341	S88°38'34"W	10.00
L342	N01°21'26"W	194.87
L343	S88°14'08"W	6.96
L344	N01°45'52"W	1524.98
L345	S88°14'08"W	11.27
L346	S88°14'08"W	6.14
L347	S01°45'52"E	1341.96

Memorandum of Lease
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EXHIBIT "B"**Description of Ingress/Egress Easement**

A PARCEL OF LAND LYING IN SECTION 27, TOWNSHIP 8 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 8 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA; THENCE S 01°42'15" E, ALONG THE WEST LINE OF SAID SECTION 27, A DISTANCE OF 50.00 FEET, TO A CONCRETE MONUMENT FOUND STAMPED "GFY LB021" MARKING THE INTERSECTION WITH THE SOUTHERLY MAINTAINED RIGHT-OF-WAY LINE OF NW 128TH LANE; THENCE RUN N 88°04'12" E, ALONG SAID SOUTHERLY MAINTAINED RIGHT-OF-WAY LINE, A DISTANCE OF 1799.45 FEET TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF THE EAST LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 883, PAGE 502; THENCE S 01°45'52" E, ALONG SAID EAST LINE AND NORTHERLY AND SOUTHERLY EXTENSIONS THEREOF, A DISTANCE OF 3208.64 FEET TO A CONCRETE MONUMENT FOUND STAMPED "RLS 509", MARKING THE INTERSECTION WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF A 120.0 FOOT WIDE CSX RAILROAD RIGHT-OF-WAY; THENCE S 39°18'09" E ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1229.34 FEET FOR A POINT OF BEGINNING; THENCE, CONTINUE S 39°18'09" E ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 120.00 FEET TO A POINT ON A CURVE WHOSE RADIUS POINT LIES N 39°18'09" W, A DISTANCE OF 161.11 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 51°03'17", A DISTANCE OF 143.56 FEET TO THE PT OF SAID CURVE; THENCE N 00°21'26" W, A DISTANCE OF 112.06 FEET TO THE INTERSECTION WITH THE SOUTH BOUNDARY LINE OF THE GAINESVILLE RENEWABLE ENERGY CENTER; THENCE S 87°48'31" W ALONG SAID BOUNDARY LINE, A DISTANCE OF 120.06 FEET; THENCE S 00°21'26" E, A DISTANCE OF 108.22 FEET TO THE PC OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 41.11 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE, THOROUGH A CENTRAL ANGLE OF 51°03'17", A DISTANCE OF 36.63 FEET TO THE PT OF SAID CURVE AND THE POINT OF BEGINNING; BEING AND LYING IN SECTION 27, TOWNSHIP 8 SOUTH, RANGE 19 EAST, ALACHUA COUNTY, FLORIDA.

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EXHIBIT "B" Continued
Sketch of Ingress/Egress Easement

