



Florida Department of Environmental Protection

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

December 10, 2009

Charlie Crist
Governor

Jeff Labrecque
Lt. Governor

Michael W. Soto
Secretary

Mrs. Florette Braun
Environmental Specialist
Florida Power & Light
700 Universe Blvd.
Juno Beach, FL 33408

RE: Florida Power and Light St. Johns Pellicer-Pringle Transmission Line
Modification to Conditions of Certification
Corridor adjustments for cement plant and DRI property
DEP Case Number TA05-13A
OGC Case Number 09-3192

FINAL ORDER MODIFYING CONDITIONS OF CERTIFICATION

Dear Mrs. Braun:

The Siting Board issued the Site Certification for the Florida Power and Light (FPL) St. Johns Pellicer-Pringle 230 kV Transmission Line on April 27, 2006. This certification authorized the construction and operation of a 230-kilovolt (kV) transmission line consisting of an approximately 26.1 mile transmission line connecting the existing St. Johns substation near St. Augustine in St. Johns County to the proposed Pringle substation in the City of Palm Coast in Flagler County. Four intermediate substations were constructed in between the St. Johns substation and the proposed Pringle substation: Deerwood, Vermont, Anastasia and Pellicer, and all are located in St. Johns County.

The Department has reviewed FPL's petition dated July 15, 2009 for modification to the Conditions of Certification pursuant to 403.5315(2), Florida Statutes ("F.S."). The petition was to expand the corridor in two locations where two areas, since certification, have been developed or proposed for development. Those two areas are in St. Johns County north of State Road (SR) 207, west of Interstate 95 (I-95), and along SR 206, but east of I-95. For the first area FPL proposed widening the corridor approximately 150 to 800 ft west of the western corridor boundary for a distance of approximately 0.43 mile. For the second area FPL proposed a corridor expansion for a distance of approximately 1.13 miles with an exclusion area extending from the eastern boundary of certified corridor to a line running 200 ft west of the eastern boundary of this modification area. The Department notes that as provided within Section 403.522(10) "After all property interests required for the transmission line right-of-way and maintenance and access roads have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the transmission line right-of-way."

In accordance with 403.5315(2), the Department concurrently initiated modifications to the Conditions of Certification upon its own initiative, for the purpose of updating the General Conditions portion of the license.

On or after September 25, 2009, all parties to the certification proceeding were provided with notice by certified mail of the Department's intent to modify the Conditions of Certification for this facility, along with a copy of the proposed Order Modifying Conditions of Certification.

On October 9, 2009, notice of the Department's intent to modify the Conditions of Certification for this facility was published on the Florida Administrative Weekly (FAW). Pursuant to Section 403.5315, Florida Statutes ("F.S."), all parties to the certification proceeding have 45 days from the issuance of notice by mail to such party's last address of record in which to file a written objection to the modification; that any person who is not already a party to the certification proceeding and whose substantial interests will be affected by the requested modification has 30 days from the date of publication of the public notice in the Florida Administrative Weekly to object in writing; that failure to act within the time frame constitutes a waiver of the right to become a party; and that the Department will issue an Order Modifying the Conditions of Certification for this facility if no written objections are received by the Department.

Potential objections to the modification were received by the Department via email from Hopping, Green & Sams, Attorneys and Counselors (HGS) on behalf of Florida Power & Light Company on November 4, 2009 requesting clarifications and corrections to the revised General Conditions portion of the draft Conditions of Certification.

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

- 1) *Proposed Conditions That Do Not Apply to TLSA-Certified Facilities - Two of the proposed conditions do not apply to TLSA-certified facilities. Proposed Condition III ("Revisions to Department Statutes and Rules") appears to incorporate Section 403.511(5), F.S., which applies to projects certified under the PPSA. Proposed Condition X(A) ("Local Building Codes") appears to incorporate Section 403.511(4), F.S., which similarly applies to projects certified under the PPSA. The corresponding provisions of the TLSA, located at Section 403.531, F.S., do not support these proposed conditions. For example, the TLSA does not require that construction be in compliance with applicable local building construction codes, as it is the National Electrical Safety Code that governs the design of transmission lines, not local building codes. Compare Section 403.531(4), F.S., with Section 403.511(4), F.S. Because neither of these proposed conditions is applicable to facilities certified under the TLSA, FPL would object to their inclusion in the Conditions of Certification for the St. Johns-Pellicer-Pringle transmission line.*

Department Response

For this specific license, the Department has agreed to delete proposed Condition III. For proposed Condition X(A), now Condition IX(A) the language has been changed to reflect the applicable statute.

- 2) *Proposed Conditions That Conflict With the TLSA - It appears that two proposed conditions conflict with provisions of the TLSA and no citation to authority is provided for these proposed conditions. First, in contravention of Sections 403.526(2)(a)5 and 403.526(2)(b)1, F.S., proposed Condition X(C) ("Flood Control Protection") would appear to bind FPL to local government requirements (if any) that were not raised during the certification proceeding or were adopted after site certification. Second, while the purpose and effect of proposed Condition XXI ("Incorporation of Existing State and Local Permits/Licenses") is unclear, the proposed condition appears to conflict with Section 403.531, F.S., which provides that certification constitutes the sole license of the state and any agency as to the approval of the location of transmission line corridors and the construction, operation, and maintenance of transmission lines. Again, these two conditions may have some applicability to PPSA projects, but not TLSA projects such as the St. Johns-Pellicer-Pringle 230 kV transmission line. Therefore, FPL would object to the inclusion of these proposed conditions in the Conditions of Certification.*

Department Response

For this specific license, the Department has agreed to delete proposed Condition X(C) as well as proposed Condition XXI.

- 3) *Proposed Conditions Not Supported by an Applicable Statute or Rule - Five other proposed conditions would impose new obligations on FPL, and such obligations do not appear to be supported by an applicable statute or rule. Proposed Condition VIII(B) ("Replacement for Restoration of System Integrity") would establish obligations that exceed those required by existing Rule 62-17.695, F.A.C., which is fully incorporated in proposed Condition VIII(A). Similarly, proposed Condition X (E) ("Underground Utilities") would establish obligations that exceed those required by Chapter 556, F.S., which is the provision cited in support of the proposed condition. Additionally, proposed Condition X(D) ("Vegetation") and XI(L) ("Post- Construction Activities") would require FPL to comply with Florida Department of Transportation (FDOT) and Federal Energy Regulatory Commission (FERC) vegetation management plans, and such a requirement is not supported by Section 163.3209, F.S. Further, while the FDOT requirements are valid in FDOT rights-of-way, they are not applicable project-wide. The FERC requirements, on the other hand, are inapplicable to a TLISA-certified project (and otherwise appear to be appropriate for pipeline construction). Finally, proposed Condition XII ("Dispute Resolution") would mandate that the first attempt to resolve disputes between parties concerning the Conditions of Certification be handled by a Florida Supreme Court Certified Mediator, with the matter being referred to the Division of Administrative Hearings only if the dispute cannot be resolved through mediation. While mediation is allowed under Section 120.573, F.S., without affecting rights to an administrative hearing, no provision of Chapters 403 or 120, F.S., mandates mediation. Additionally, the effects of this proposed condition is unclear because it does not address, among other things, the allocation of costs and fees associated with mediation. FPL notes that existing Condition II ("Applicable Rules") adopted in the final order for the St. Johns-Pellicer-Pringle 230 kV transmission line requires that FPL comply with applicable provisions of Florida Statutes and the Florida Administrative Code. To the extent the Department intends that the five proposed Conditions VIII(B), X(D), X(E), XI(L) and XII only incorporate the provisions of law that otherwise apply to the St. Johns-Pellicer-Pringle certification, they are unnecessary. Because these proposed conditions appear to exceed the provisions of Florida Statutes and the Department's applicable rules, however, FPL would object to their inclusion in the Conditions of Certifications.*

Department Response

For this specific license:

1. The Department has changed the language of Condition VIII from (A) and (B) to one paragraph.
2. Proposed Condition X(E) has been changed to IX(D) and more accurately reflects the requirements of Chapter 556, F.S.
3. Proposed Condition X(D) has been changed to IX(C) and again more accurately reflects the applicable requirements of FDOT and FERC.
4. Proposed Condition XI(L) was deleted and the condition is now Condition X.
5. The Department has changed proposed Condition XII (now Condition XI) back to its original language.

The Conditions of Certification for the St. Johns Pellicer-Pringle 230-kv Transmission Line are hereby modified as shown at this link:

<http://ftp.dep.state.fl.us/pub/siting/Outgoing/FPL-St-Johns-Pellicer-Pringle-TL-SA/Mod A/FPL-SJPP-COC-Mod A-revised from HGS-issues.pdf>

A complete set of the final Conditions of Certification (including attachments) can be viewed and downloaded from the following website: <http://www.dep.state.fl.us/siting/certification.htm>

Copies of the Conditions of Certification and/or attachments may also be obtained by contacting Michael P. Halpin, P.E., Administrator, Siting Coordination Office, Department of Environmental Protection, 3900 Commonwealth Blvd., M.S. 48, Tallahassee, Florida 32399-3000, (850) 245-2002.

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

Executed in Tallahassee, Florida.



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

FILING AND ACKNOWLEDGMENT

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


Clerk

12-10-09
Date

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

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FPL SJPP Mod A
Final Order

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X FPL - JB 700 UNIVERSE BLVD JUNO BEACH FL 33408 ☐ Agent ☐ Addressee
1. Article Addressed to: Mrs. Florette Braun Environmental Specialist Florida Power & Light 700 Universe Blvd. Juno Beach, Florida 33408	B. Return to Sender (if not delivery) C. Date of Delivery 12/14 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
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PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540	

Turner, Essie

From: Becki Spaulding [bspaulding@flaglercounty.org]
Sent: Thursday, December 10, 2009 4:13 PM
To: Turner, Essie
Subject: RE: FPL SJPP Mod A Final Order

From: Turner, Essie [mailto:Essie.Turner@dep.state.fl.us]
Sent: Thursday, December 10, 2009 12:36 PM
To: Becki Spaulding
Subject: FPL SJPP Mod A Final Order

Dear Sir/Madam:

Please send a "reply" message verifying receipt of the attached document(s); this may be done by selecting "Reply" on the menu bar of your e-mail software and then selecting "Send". We must receive verification of receipt and your reply will preclude subsequent e-mail transmissions to verify receipt of the document(s).

The document(s) may require immediate action within a specified time frame. Please open and review the document(s) as soon as possible.

*The document is in Adobe Portable Document Format (pdf). Adobe Acrobat Reader can be downloaded for free at the following internet site:
<http://www.adobe.com/products/acrobat/readstep.html>.*

The Siting Coordination Office is issuing electronic documents for modifications and other correspondence in lieu of hard copies through the United States Postal System to provide greater service to the applicant, agencies and other parties. Please advise this office of any changes to your e-mail address.

Thank you,

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